

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BARBARO ROSAS and GUADALUPE
TAPIA, as individuals and on behalf of all
other similarly situated persons,

Plaintiffs,

v.

SARBANAND FARMS, LLC, MUNGER
BROS., LLC, NIDIA PEREZ, and CSI VISA
PROCESSING S.C.,

Defendants.

CASE NO. C18-0112-JCC

ORDER

This matter comes before the Court on Plaintiffs’ motion to certify class (Dkt. No. 57).
Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral
argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

Defendants Sarbanand Farms, LLC and Munger Bros., LLC (collectively, “Growers”) are
separate companies who share common owners. (Dkt. No. 11.) In 2017, Defendant Nidia Perez
was employed by Growers and was involved with Growers’ hiring of workers through the H-2A

1 visa program for the 2017 harvesting season. (Dkt. Nos. 12 at 3, 8; 18 at 3; 19 at 3.)¹ Robert
2 Hawk is the Chief Executive Officer of Defendant Munger Bros. (Dkt. No. 68 at 1.) Cliff
3 Woolley serves as Defendant Sarbanand Farms’ Chief Administrative Officer. (Dkt. No. 18 at
4 13.) Plaintiffs Barbaro Rosas and Guadalupe Tapia are Mexican nationals who worked for
5 Growers as foreign H-2A agricultural workers during the 2017 harvesting season, and bring this
6 action on behalf of a proposed class and subclass of other Mexican nationals who worked for
7 Growers in Sumas, Washington during the 2017 harvesting season. (Dkt. Nos. 12, 57 at 2.)

8 In 2017, after employing Mexican nationals through the H-2A visa program in 2015 and
9 2016, Growers wished to expand their use of foreign workers to farms in California, and hired
10 Giovanna Sierra and Defendant CSI Visa Processing S.C. (“CSI”) to assist in the process. (Dkt.
11 Nos. 58 at 2, 68 at 2–3.) Defendant CSI is a Mexican corporation, and was retained to recruit
12 workers in Mexico. (Dkt. Nos. 18 at 3, 10; 19 at 3, 10.) One of Defendant Perez’s primary
13 contacts at Defendant CSI was Roxana Marcias, its Director of Compliance. (Dkt. Nos. 12 at 10,
14 31 at 8.) Neither Defendant Perez nor Defendant CSI are licensed or bonded by Washington to
15 operate as a farm labor contractor. (Dkt. Nos. 12 at 10–11, 31 at 8.)

16 Growers obtained clearance from the U.S. Department of Labor (the “Department”) to
17 hire approximately 600 workers from Mexico through the H-2A visa program through two
18 contracts. (See Dkt. Nos. 61-2, 61-3.) In March 2017, Defendant Munger Bros. obtained
19 clearance from the Department to employ 387 H2-A workers in California. (Dkt. Nos. 61-3, 68
20 at 3.)² The California H-2A contract ran from May 15 to June 30, 2017. (Dkt. No. 61-3.) Putative
21

22 ¹ The H-2A visa program “allows agricultural employers to obtain visas for foreign
23 workers to work in the United States if there are not enough domestic workers to fill the labor
24 needs of the farm.” (Dkt. No. 58 at 2.)

25 ² Crowne Cold Storage, LLC, another company owned by or associated with the owners
26 of Growers, submitted two applications to hire 111 and 60 workers for work in California from
May 15 to June 30, 2017. (Dkt. No. 61-4.) Crowne Cold Storage, LLC is not a named party to
this action, but some of the workers it hired are members of the proposed class of workers who
worked for Defendant Sarbanand Farms in Washington. (See Dkt. No. 57 at 3.)

1 class members were hired through Defendant CSI after being contacted by Defendant Perez or a
2 recruiter employed by Defendant CSI. (Dkt. Nos. 59 at 3, 60 at 3; *see generally* Dkt. Nos. 61-9-
3 61-32.)³ Class members were not shown a Washington farm labor contractor license or proof of
4 bonding. (Dkt. Nos. 59 at 4, 60 at 4; *see generally* Class Decls.)

5 Plaintiffs allege that the H-2A workers hired to work for Defendant Munger Bros. in
6 California were subjected to threatening responses to work- or food-related complaints. For
7 example, managers would tell workers to “go back to Mexico,” which the workers interpreted as
8 a threat that they would be fired, forced to return to Mexico using their own funds, and
9 prohibited from working in the United States in the future. (Dkt. Nos. 58 at 5, 59 at 4–5, 60 at 4–
10 5; *see generally* Class Decls.) Several workers became ill from the food provided by Defendant
11 Munger Bros., and spent personal funds to purchase additional food to avoid becoming sick.
12 (Dkt. Nos. 59 at 5, 60 at 5; *see generally* Class Decls.) Ms. Sierra also became sick after eating
13 food being served to the workers. (Dkt. No. 58 at 8–9.) In addition, Defendant Perez threatened
14 the workers that they would be sent back to Mexico if they did not work hard, and that she would
15 tell Ms. Macias and Defendant CSI to not hire them in the future. (Dkt. No. 58 at 6–7.) Several
16 workers who questioned or disagreed with Defendant Perez were sent back to Mexico and were
17 not transferred to Washington after the conclusion of the California contract. (*Id.* at 7.)

18 Following the completion of their work in California, the workers were offered a choice
19 of returning to Mexico or traveling to Sumas, Washington to assist with blueberry harvesting for
20 Defendant Sarbanand Farms. (Dkt. No. 68 at 3.) Defendant Sarbanand Farms obtained clearance
21 from the Department to hire workers on H-2A visas to work in Sumas, Washington through two
22 contracts (the “H-2A contracts”): one requested 558 workers beginning on July 10, 2017 and the

23 ³ Plaintiffs have filed numerous declarations of putative class members and cite them
24 collectively in their motion for class certification. (*See* Dkt. No. 57 at 4; *see generally* Dkt. Nos.
25 61-9–61-32). Plaintiffs cited to these declarations alternatively as “*Class Decls*” or “*Worker*
26 *Decls.*” (*See* Dkt. No. 57 at 4 (using “*Class Decls*”), *cf.* 5 (using “*Worker Decls.*”)) The Court
will adopt Plaintiffs’ citation convention and refer to these declarations collectively as “*Class*
Decls.” where relevant.

1 other requested 60 workers beginning on July 20, 2017. (Dkt. No. 61-2 at 2, 22.) Both H-2A
2 contracts anticipated that the periods of employment would conclude on October 25, 2017. (*Id.*)
3 Both stated that the workers would be required to work at a sustained and vigorous pace, and
4 would be required to make bona fide efforts to work efficiently and consistently. (*Id.* at 14, 34.)
5 The H-2A contracts also stated that Defendant Sarbanand Farms would provide workers with
6 three meals a day in exchange for deducting \$12.07 per day from their paychecks, and obligated
7 Defendant Sarbanand Farms to provide housing. (*Id.* at 3, 10, 23, 30.) All putative class members
8 were subject to one of the H-2A contracts. (Dkt. No. 57 at 6.)

9 When putative class members arrived in Sumas, Washington, they were housed in
10 dormitories enclosed by a fence, and a security guard restricted access to Defendant Sarbanand
11 Farms' property. (Dkt. Nos. 59 at 6, 60 at 6; *see generally* Class Decls.) On or around July 3,
12 2017, Defendant Sarbanand Farms held meetings where the putative class members signed their
13 H-2A forms. (Dkt. Nos. 59 at 6, 60 at 6; *see generally* Class Decls.) At the meeting, Defendant
14 Perez stated that the putative class members were expected to work every day, and only those
15 "on their death beds" could remain in their housing; putative class members interpreted this to
16 mean that they could not take a day off for injury or illness. (Dkt. Nos. 59 at 6, 60 at 6; *see*
17 *generally* Class Decls.) Prior to starting work, putative class members were told that they would
18 have to pick two boxes of blueberries per hour, and would receive written warnings if they failed
19 to do so. (Dkt. Nos. 59 at 7, 60 at 7; *see generally* Class Decls.) Putative class members worked
20 under the same managers as in California, including Defendant Perez, and were subjected to the
21 same threats that they could be terminated and sent back to Mexico if they complained or
22 received three written warnings. (Dkt. Nos. 59 at 6–8, 60 at 6–9; *see generally* Class Decls.)

23 Putative class members worked under harsh conditions in the fields, and were repeatedly
24 told that they needed to work faster. (*See* Dkt. Nos. 59 at 6–7, 60 at 7–8; *see generally* Class
25 Decls.) Plaintiffs allege that the food provided by Defendant Sarbanand Farms was of poor
26 quality, and that putative class members were not given sufficient amounts to meet their daily

1 needs. (Dkt. Nos. 59 at 7, 60 at 8; *see generally* Class Decls.)

2 On August 2, 2017, Honesto Ibarra, one of the H-2A workers, fell ill. (Dkt. No. 68 at 4.)
3 Mr. Ibarra was taken to a hospital and eventually passed away. (*Id.*) On August 4, approximately
4 60 putative class members refused to appear for work. (*Id.*) The striking class members refused
5 to work in order to protest the poor work conditions and to obtain information about what
6 happened to Mr. Ibarra. (Dkt. Nos. 59 at 9, 60 at 10; *see generally* Class Decls.) On August 5,
7 the striking class members reported for work but were separated from the other H-2A workers by
8 Mr. Hawk and told to gather in the dining hall. (Dkt. Nos. 59 at 10, 60 at 10; *see generally* Class
9 Decls.) Mr. Hawk told the gathered striking class members that they were fired for
10 insubordination, and that they had to leave Defendant Sarbanand Farms' housing within an hour.
11 (Dkt. Nos. 59 at 9, 60 at 10, 61-8; *see generally* Class Decls.)⁴ When the striking class members
12 refused to sign paperwork, Defendant Perez became angry and threatened to call the police and
13 immigration officials. (Dkt. Nos. 59 at 10, 60 at 11; *see generally* Class Decls.) The striking
14 class members, believing that they did not have a legal right to remain in the housing, left the
15 housing and were not given their final paychecks. (Dkt. Nos. 59 at 9, 60 at 10; *see generally*
16 Class Decls.) Many did not have sufficient funds to immediately return to Mexico. (Dkt. Nos. 59
17 at 9, 60 at 10; *see generally* Class Decls.) The remaining putative class members continued to
18 work until October 3, 2017, after which they returned to Mexico. (Dkt. No. 68 at 4.)

19 Plaintiffs now move for certification of a proposed class and subclass. (Dkt. No. 57.)
20 Plaintiffs propose a 2017 H-2A Blueberry Harvester Class, defined as, "All Mexican nationals
21 who worked at Sarbanand Farms, LLC in Sumas, Washington picking blueberries pursuant to an
22 H-2A contract that offered employment from July 2017 through October 2017." (Dkt. No. 57 at
23 1–2.) The proposed 2017 H-2A Blueberry Harvester Class alleges that all Defendants violated
24 the Washington Farm Labor Contractor Act ("FLCA"), Wash. Rev. Code § 19.30, for using

25 _____
26 ⁴ Documents show that Defendant Sarbanand Farms terminated Plaintiffs Rosas and
Tapia as "Protester[s]." (Dkt. No. 61-7.)

1 unlicensed farm labor contractors to recruit members of the class. (Dkt. No. 57 at 2.) The
2 proposed 2017 H-2A Blueberry Harvester Class also alleges that Growers violated the federal
3 Trafficking Victims Protection Act (“TVPA”), 18 U.S.C. § 1589, violated Washington’s Law
4 Against Discrimination (“WLAD”), Wash. Rev. Code. § 49.60.180(3), and breached the H-2A
5 contracts between the parties. (Dkt. No. 1 at 23–25; Dkt. No. 57 at 2.)

6 Plaintiffs also propose a Wrongful Termination Subclass, defined as “approximately 70
7 H-2A workers who were terminated and evicted from Sarbanand Farms for protesting dangerous
8 working conditions.” (Dkt. No. 57 at 2.) The proposed Wrongful Termination Subclass alleges
9 that Growers violated Washington’s Little Norris-LaGuardia Act (“WLNLA”), Wash. Rev. Code §
10 49.32.020, and violated Washington’s employment and landlord-tenant laws by improperly
11 discharging and evicting the subclass members. (*Id.*; *see also* Dkt. No. 1 at 25–26.)

12 **II. DISCUSSION**

13 **A. Legal Standard for Class Certification**

14 A party seeking to litigate a claim as a class representative must affirmatively satisfy the
15 requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the
16 categories under Federal Rule of Civil Procedure 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
17 338, 345 (2011); *see Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). In
18 determining whether Plaintiffs have carried their burden, the Court must conduct a “rigorous
19 analysis.” *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982). A district court must not
20 decide the merits of a factual or legal dispute before it grants class certification. *See Eisen v.*
21 *Carlisle & Jacquelin*, 417 U.S. 156, 177–78 (1974); *United Steel, Paper & Forestry, Rubber,*
22 *Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union v. ConocoPhillips Co.*, 593 F.3d 802,
23 808–09 (9th Cir. 2010). But a district court “*must* consider the merits [of class members’
24 substantive claims] if they overlap with the Rule 23(a) requirements.” *Ellis v. Costco Wholesale*
25 *Corp.*, 657 F.3d 970, 981 (9th Cir. 2011). The ultimate decision to certify a class is within the
26 Court’s discretion. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir.

1 2009).

2 **B. Rule 23(a) Requirements**

3 Rule 23(a) states that one or more members of a class may sue as a representative
4 plaintiff only if (1) the class is so numerous that joinder is impracticable; (2) there are questions
5 of law or fact common to the class; (3) the claims or defenses of representative parties are typical
6 of those of the class; and (4) the representatives will fairly and adequately protect the interests of
7 the absent class members. Fed. R. Civ. P. 23(a); *Mazza*, 666 F.3d at 588 (“Rule 23(a) requires
8 that plaintiffs demonstrate numerosity, commonality, typicality and adequacy of representation
9 in order to maintain a class action.”).

10 1. Numerosity

11 Rule 23(a)’s first requirement is satisfied when the proposed class is sufficiently
12 numerous to make joinder of all members impracticable. Fed. R. Civ. P. 23(a)(1). A numerosity
13 determination requires an examination of the specific facts of each case, though “[i]n general,
14 courts find the numerosity requirement satisfied when a class includes at least 40 members.”
15 *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010). Plaintiffs assert that there are 600
16 members of the H-2A Blueberry Harvester Class and 70 members of the Wrongful Termination
17 Subclass. (Dkt. No. 57 at 10.) Defendants agree that both the class and subclass, if certified,
18 would satisfy the numerosity requirement. (See Dkt. No. 67 at 10.) Therefore, the Court finds
19 that numerosity is satisfied as to both the H-2A Blueberry Harvester Class and the Wrongful
20 Termination Subclass.

21 2. Commonality

22 Under Rule 23(a)(2)’s commonality requirement, Plaintiffs must demonstrate that the
23 “class members’ claims ‘depend upon a common contention’ such that ‘determination of its truth
24 or falsity will resolve an issue that is central to the validity of each claim in one stroke.’” *Mazza*,
25 666 F.3d at 588 (quoting *Dukes*, 564 U.S. at 350). The key inquiry is not whether Plaintiffs have
26 raised common questions, but whether “class treatment will ‘generate common *answers* apt to

1 drive the resolution of the litigation.” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th
2 Cir. 2013) (quoting *Dukes*, 564 U.S. at 350). Every question of law or fact need not be common
3 to the class. *Id.* Rather, all Rule 23(a)(2) requires is “a single *significant* question of law or fact.”
4 *Id.* Ultimately, the existence of “shared legal issues with divergent factual predicates is
5 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the
6 class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). “Whether a question will
7 drive the resolution of the litigation necessarily depends on the nature of the underlying legal
8 claims that the class members have raised.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165
9 (9th Cir. 2014).

10 *a. 2017 Blueberry Harvester Class*

11 **i. FLCA Claim**

12 “No person shall act as a farm labor contractor until a license to do so has been issued to
13 him or her by the director, and unless such license is in full force and effect and is in the
14 contractor’s possession.” Wash. Rev. Code § 19.30.020. A farm labor contractor is “any person,
15 or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting
16 activity.” Wash. Rev. Code § 19.30.010(5). “‘Farm labor contracting activity’ means recruiting,
17 soliciting, employing, supplying, transporting, or hiring agricultural employees.” Wash. Rev.
18 Code § 19.30.010(4).

19 Plaintiffs assert that putative class members were recruited by recruiters employed by
20 Defendant CSI, who did not show them a labor contractor license or inform them that Defendant
21 CSI had a bond. (*See* Dkt. Nos. 59 at 4, 60 at 4; *see generally* Class Decls.)⁵ Defendants do not
22 contend that the question of whether Defendant CSI’s recruiters improperly recruited putative
23 class members is not common to the 2017 Blueberry Harvester Class. (*See* Dkt. No. 67 at 12–

24 _____
25 ⁵ In their complaint, Plaintiffs allege that Defendants CSI and Perez violated the FLCA
26 when they failed obtain a farm labor contractor license prior to recruiting Plaintiffs and satisfy
other obligations under the FLCA, and that Growers violated the FLCA when they knowingly
used the services of an unlicensed farm labor contractor. (Dkt. No. 12 at 31–32.)

1 14.) The Court finds that a common question regarding whether Defendant CSI's recruiters
2 possessed a farm labor contractor license while engaging in farm labor contracting activity exists
3 as to the 2017 Blueberry Harvester Class.

4 Plaintiffs argue that a common question exists as to Defendant Perez's liability under the
5 FLCA because she admits that she transmitted a list of potential visa applicants for work at
6 Defendant Sarbanand Farms in 2017 to Defendant CSI, which included workers who had
7 previously worked for Defendant Sarbanand Farms in 2015 or 2016. (Dkt. Nos. 64 at 8–9, 71 at
8 7.)⁶ This common question raises issues regarding whether Defendant Perez's transmission of
9 the list to Defendant CSI constituted farm labor contracting activity, and whether Defendant
10 Perez did not hold the necessary license when she did so. *See* Wash. Rev. Code § 19.30.020,
11 19.30.010(4)–(5). These issues are only common to putative class members who appeared on
12 Defendant Perez's list, and therefore may have been improperly recruited or solicited; for
13 example, several putative class members did not work for Growers in 2015 or 2016, but were
14 recommended by family members. (*See* Dkt. Nos. 61-11 at 4, 61-12 at 4, 61-13 at 4). Therefore,
15 the Court finds that the common question of whether Defendant Perez violated the FLCA is only
16 applicable to those members of the 2017 Blueberry Harvester Class who appeared on the list sent
17 by Defendant Perez to Defendant CSI (the "2017 Blueberry Harvester Class – Defendant Perez
18 Subclass").

19 **ii. TVPA Claims**

20 The TVPA prohibits a person from obtaining labor or services through "abuse or
21 threatened abuse of law or legal process." 18 U.S.C. § 1589(a)(3). The TVPA defines an "abuse
22 or threatened abuse of law or legal process" as the use or threatened use of such law or legal
23

24 ⁶ Only a few of the numerous declarations submitted by Plaintiffs detail direct
25 involvement by Defendant Perez in the recruitment process, and those declarations do not
26 present a uniform factual scenario. (*See* Dkt. Nos. 61-10 at 4, 61-15 at 4, 61-16 at 4, 61-26 at 4,
61-30 at 4.) These unique claims are not amenable to class certification, and Plaintiffs must bring
such claims against Defendant Perez individually. *See Mazza*, 666 F.3d at 588

1 process “in any manner or for any purpose for which the law was not designed, in order to exert
2 pressure on another person to cause that person to take some action or refrain from taking some
3 action.” 18 U.S.C. § 1589(c)(1).

4 The TVPA also prohibits a person from providing or obtaining labor or services through
5 use of “any scheme, plan, or pattern intended to cause the person to believe that, if that person
6 did not perform such labor or services, that person or another person would suffer serious harm
7 or physical restraint.” 18 U.S.C. § 1589(a)(4). The TVPA defines “serious harm” as “any harm,
8 whether physical or nonphysical[,] . . . that is sufficiently serious, under all the surrounding
9 circumstances, to compel a reasonable person of the same background and in the same
10 circumstances to perform or to continue performing labor or services in order to avoid incurring
11 that harm.” 18 U.S.C. § 1589(c)(2).

12 Plaintiffs assert that a common question exists as to whether Growers violated the TVPA
13 when they compelled putative class members to continue to work through a variety of threats,
14 including implied threats that they would be sent back to Mexico if they complained or did not
15 meet Growers’ production standard. (Dkt. Nos. 59 at 7–8, 60 at 9; *see generally* Class Decls.)
16 Defendants’ arguments in response focus on whether individualized issues predominate over
17 class-wide issues, discussed further below. (*See* Dkt. No. 67 at 14–16.) Therefore, the Court
18 finds that common questions exist regarding whether Growers obtained labor or services from
19 the 2017 Blueberry Harvester Class in violation of 18 U.S.C. § 1589(a)(3) and 18 U.S.C. §
20 1589(a)(4).

21 **iii. WLAD Claim**

22 Employers are prohibited from discriminating against a person in their terms or
23 conditions of employment based on race or national origin. Wash. Rev. Code § 49.60.180(3). To
24 establish a hostile work environment claim, the plaintiff must establish that the alleged
25 harassment “(1) was unwelcome, (2) was because of a protected characteristic, (3) affected the
26 terms or conditions of employment, and (4) is imputable to the employer.” *Blackburn v. State*

1 *Dep't of Soc. & Health Servs.*, 375 P.3d 1076, 1081 (Wash. 2016).

2 Plaintiffs allege that Growers created a hostile work environment in violation of Revised
3 Code of Washington § 49.60.180(3) when they engaged in a “practice of threatening to send
4 workers back to their home country for any work condition complaints.” (Dkt. No. 57 at 17.)
5 Defendants’ arguments in response focus on whether individualized issues, particularly whether
6 individual putative class members heard the alleged threats and interpreted them as threats,
7 predominate over class-wide issues. (*See* Dkt. No. 67 at 17–18.) Therefore, the Court finds that a
8 common question regarding whether Growers violated the WLAD exists as to the 2017
9 Blueberry Harvester Class.

10 **iv. Breach of Contract Claims**

11 In this case, Defendant Sarbanand Farms’ H-2A contracts provided that, “Workers may
12 work at a sustained, vigorous pace and make bona-fide efforts to work efficiency and
13 consistently that are reasonable under the climatic and all other working conditions.” (Dkt. No.
14 61-2 at 14, 46.) The H-2A contracts further provided that Defendant Sarbanand Farms would
15 provide putative class members with three meals per day in exchange for deducting \$12.07 per
16 day from their paychecks. (*Id.* at 15, 35.) When putative class members arrived in Washington to
17 work for Defendant Sarbanand Farms, they were informed that they were required to pick two
18 boxes of blueberries an hour. (Dkt. Nos. 59 at 7, 60 at 7; *see generally* Class Decls.) They also
19 were provided with low-quality food in quantities insufficient to meet their daily needs. (Dkt.
20 Nos. 59 at 7, 60 at 8; *see generally* Class Decls.) Plaintiffs assert that a common question
21 regarding whether Growers breached the H-2A contracts by imposing a previously undisclosed
22 production standard and providing low quality food in insufficient quantities exists as to the 2017
23 Blueberry Harvester Class. (Dkt. No. 57 at 17.) Defendants’ arguments in response focus on
24 whether issues of individual putative class members’ subjective interpretation and understanding
25 of the H-2A contracts predominate over this common question. (*See* Dkt. No. 67 at 18–20.)
26 Therefore, the Court finds that a common question regarding whether Growers breached the H-

1 2A contracts by imposing a new production standard and by providing low-quality food in
2 insufficient quantities exists as to the 2017 Blueberry Harvester Class.

3 *b. Wrongful Termination Subclass*

4 **i. Termination for Engaging in Protected Activities Claim**

5 Under Washington law, employers are prohibited from interfering with, restraining, or
6 coercing labor employees engaging “in self-organization or in other concerted activities for the
7 purpose of collective bargaining or other mutual aid or protections.” Wash. Rev. Code §
8 49.32.020. The concerted activities must relate to the terms and conditions of employment or be
9 seeking improved working conditions. *Briggs v. Nova Servs.*, 213 P.3d 910, 915 (Wash. 2009).
10 “[T]he term ‘concerted activities’ encompasses the collective action of non-unionized
11 employees.” *Bravo v. Dolsen Cos.*, 888 P.2d 147, 149 (Wash. 1995) (analyzing farm worker
12 plaintiffs’ argument that defendant employer violated Revised Code of Washington sections
13 49.32.020 when it terminated them for participating in strike for better working conditions).

14 Plaintiffs assert that a common question exists as to whether Growers violated
15 Washington employment law when they terminated the Wrongful Termination Subclass for
16 holding a one-day strike to protest working conditions. (Dkt. No. 57 at 18.) Defendants’
17 arguments in response focus on whether the issues of individual members of the Wrongful
18 Termination Subclass’s intent when they did not go to work on August 4, 2017 and Growers’
19 reason for terminating the subclass members predominate over the common question. (Dkt. No.
20 67 at 20–21.) Therefore, the Court finds that a common question regarding whether Growers
21 violated Revised Code of Washington section 49.32.020 exists as to the Wrongful Termination
22 Subclass.

23 **ii. Unlawful Eviction Claim**

24 A person who “by fraud, intimidation or stealth, or by any kind of violence or
25 circumstance of terror, enters upon or into any real property; or . . . [w]ho, after entering
26 peaceably upon real property, turns out by force, threats or menacing conduct the party in actual

1 possession” is guilty of forcible entry. Wash. Rev. Code § 59.12.010.

2 Plaintiffs contend that Growers unlawfully evicted members of the Wrongful
3 Termination Subclass when Growers threatened to call law enforcement and immigration
4 authorities if members of the subclass did not vacate their housing within an hour. (Dkt. No. 57
5 at 19.) Defendants do not contend that this question is not common to members of the Wrongful
6 Termination Subclass. Therefore, the Court finds that a common question exists regarding
7 whether Growers unlawfully evicted the Wrongful Termination Subclass.

8 3. Typicality

9 Plaintiffs must next show that the named Plaintiffs’ claims are typical of the class and
10 subclasses. Fed. R. Civ. P. 23(a)(3). “The test of typicality ‘is whether other members have the
11 same or similar injury, whether the action is based on conduct which is not unique to the named
12 plaintiffs, and whether other class members have been injured by the same course of conduct.’”
13 *Ellis*, 657 F.3d at 984 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.
14 1992)). The commonality and typicality inquiries “tend to merge” and both serve as “guideposts
15 for determining whether under the particular circumstances[,] maintenance of a class action is
16 economical and whether the named plaintiff’s claim and the class claims are so interrelated that
17 the interests of the class members will be fairly and adequately protected in their absence.”
18 *Dukes*, 564 U.S. at 349 n. 5. Ultimately, representatives’ class claims are typical if they are
19 “reasonably co-extensive with those of absent class members; they need not be substantially
20 identical.” *Hanlon*, 150 F.3d at 1020.

21 Plaintiffs Rosas and Tapia have each declared that the recruiter of Defendant CSI who
22 they met with did not present a labor contractor licensor or say that Defendant CSI had a bond,
23 that they received implicit threats that they would be sent back to Mexico in response to
24 questions or complaints while working for Defendant Sarbanand Farms, that they were present at
25 the meeting where Defendant Perez said they could not take a day off unless they were “on their
26 death beds,” that they were held to a production standard not set forth in their employment

1 contracts, and that they were given food of insufficient quality and quantity. (Dkt. Nos. 59 at 4–
2 8, 60 at 4–9.) These allegations concern the same factual predicates underlying the 2017
3 Blueberry Harvester Class’s common claims, as discussed above, and thus the named Plaintiffs’
4 claims are based on conduct that is not unique to them. *See Ellis*, 657 F.3d at 984.

5 In response, Defendants contend that the named Plaintiffs’ claims are not sufficiently
6 coextensive with those of the 2017 Blueberry Harvester Class because both named Plaintiffs
7 were terminated prior to the conclusion of their employment contract. (Dkt. No. 67 at 11.) Thus,
8 Defendants argue that the named Plaintiffs “are unaware of what happened for the majority of
9 the time spent on the farm.” (*Id.*) But the duration of the harm suffered by the named Plaintiffs
10 relative to other members of the 2017 Blueberry Harvester Class is not determinative of the
11 typicality of their claims. Both they and the other members of the 2017 Blueberry Harvester
12 Class were subjected to the same alleged course of harmful conduct by Defendants giving rise to
13 their common claims. *See Ellis*, 657 F.3d at 984; *Hanlon*, 150 F.3d at 1020. The fact that the
14 pattern of alleged misconduct and harm may have subsided after Plaintiffs Rosas and Tapia were
15 terminated does not cure the alleged harms that had already occurred to the 2017 Blueberry
16 Harvester Class. Therefore, the Court finds that the named Plaintiffs’ claims are typical of the
17 2017 Blueberry Harvester Class.

18 Similarly, Plaintiffs Rosas and Tapia were part of the group of H-2A workers who went
19 on strike and were subsequently terminated and evicted on August 5, 2017. (Dkt. Nos. 59 at 8–
20 10, 60 at 9–11.) Defendants do not contend that the named Plaintiffs’ claims are not typical of
21 the Wrongful Termination Subclass. (*See* Dkt. No. 67 at 11.) Further, Plaintiff Tapia was
22 recruited by Defendant CSI because he worked for Defendant Munger Bros. in 2016, and thus
23 any claim he might have against Defendant Perez would be typical of the 2017 Blueberry
24 Harvester Class – Defendant Perez Subclass. (Dkt. No. 60 at 3. Therefore, the Court finds that
25 the named Plaintiffs’ claims are typical of the Wrongful Termination Subclass and the 2017
26 Blueberry Harvester Class – Defendant Perez Subclass.

1 4. Adequacy of Representation

2 To determine whether the representative parties will adequately represent a class, the
3 Court must examine whether the named Plaintiffs and their counsel (1) have any conflicts of
4 interest with other class members and (2) will prosecute the action vigorously on behalf of the
5 class. *Ellis*, 657 F.3d at 985. The named Plaintiffs have asserted that they understand the claims
6 in this case and the need to think and act on behalf of the class members while following the
7 orders of the Court. (Dkt. Nos. 59 at 2, 60 at 2.) Plaintiffs’ counsel have experience in
8 representing workers in class action litigation and will vigorously prosecute this action. (*See* Dkt.
9 Nos. 61, 62.) In response, Defendants only argue that “Plaintiffs have a potential conflict of
10 interest with the [2017 Blueberry Harvester] class in that they worked for [Growers] for a much
11 shorter period, and therefore have less of a vested interest.” (Dkt. No. 67 at 12.) Defendant’s
12 argument does not present a conflict of interest because the named Plaintiffs’ length of exposure
13 to the alleged misconduct does not make Defendants’ alleged violations of law any less severe,
14 as discussed above. Therefore, the Court finds that the named Plaintiffs and their counsel will
15 adequately represent the 2017 Blueberry Harvester Class, 2017 Blueberry Harvester Class –
16 Defendant Perez Subclass, and Wrongful Termination Subclass.

17 **C. Rule 23(b) Requirements**

18 In addition to meeting the Rule 23(a) requirements, a proposed class action must also be
19 maintainable under Rule 23(b)(1), (b)(2), or (b)(3). *Dukes*, 564 U.S. at 345. Plaintiffs seek
20 certification under Rule 23(b)(2) and (b)(3). (*See* Dkt. No. 57 at 1.)

21 1. Rule 23(b)(2)

22 “[A] class action may be maintained if . . . the party opposing the class has acted or
23 refused to act on grounds that apply generally to the class, so that final injunctive relief or
24 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.
25 23(b)(2). Common issues need not predominate for plaintiffs to seek relief under Rule 23(b)(2);
26 “[i]t is sufficient if class members complain of a pattern or practice that is generally applicable to

1 the class as a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). Relief may be
2 appropriate under Rule 23(b)(2) “[e]ven if some class members have not been injured by the
3 challenged practice.” *Id.* “Standing . . . is a jurisdictional element that must be satisfied prior to
4 class certification.” *LaDuke v. Nelson*, 762 F.2d 1318, 1325 (9th Cir. 1985). “[O]nly current
5 employees have standing to seek injunctive relief” under Rule 23(b)(2). *Ellis*, 657 F.3d at 988.

6 In their complaint and motion for class certification, Plaintiffs seek permanent injunctive
7 relief against several of Defendants’ alleged illegal practices. But Plaintiffs concede that putative
8 class members lack standing to seek injunctive relief as they are no longer employed by
9 Defendants. (Dkt. No. 71 at 12.) Therefore, Plaintiffs’ request for injunctive relief under Rule
10 23(b)(2) is DENIED.

11 Plaintiffs did not request declaratory relief in their complaint or their request for class
12 certification under Rule 23(b)(2). (*See* Dkt. Nos. 12 at 33–35, 57 at 23.) Plaintiffs argue in their
13 reply to Defendants’ opposition to class certification that the Court may still grant declaratory
14 relief regardless of the availability of injunctive relief. (*Id.*) (citing *Yniguez v. State of Arizona*,
15 975 F.2d 646, 647 (9th Cir. 1992) (“A plaintiff’s pursuit of nominal damages provides a
16 sufficiently concrete interest in the outcome of the litigation to confer standing to pursue
17 declaratory relief”). Plaintiffs’ argument in their reply brief cannot cure their failure to
18 request declaratory relief pursuant to Rule 23(b)(2) in their complaint. (*See* Dkt. No. 12 at 33–
19 35.) Plaintiffs may move to file a third amended complaint to add a cause of action for
20 declaratory relief, and, thereafter, may move for class certification under Rule 23(b)(2)
21 consistent with this order. If Plaintiffs choose to do so, the parties’ arguments should be limited
22 to those not already addressed in this order.

23 2. Rule 23(b)(3)

24 A class action may be maintained under Rule 23(b)(3) when “the court finds that
25 questions of law or fact common to the members of the class predominate over any questions
26 affecting only individual members, and that a class action is superior to other available methods

1 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3); *see Amchem*
2 *Prods., Inc. v. Windsor*, 521 U.S. 591, 615–16 (1997) (explaining that Rule 23(b)(3) requires a
3 two-part analysis of “predominance” and “superiority”). Ultimately, certification under Rule
4 23(b)(3) is appropriate “whenever the actual interests of the parties can be served best by settling
5 their differences in a single action.” *Hanlon*, 150 F.3d at 1023.

6 *a. Predominance*

7 The predominance inquiry under Rule 23(b)(3) “tests whether proposed classes are
8 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. This
9 inquiry presumes the existence of common factual or legal issues required under Rule 23(a)’s
10 “commonality” element, focusing instead “on the relationship between the common and
11 individual issues.” *Hanlon*, 150 F.3d at 1022; *see Comcast Corp. v. Behrend*, 569 U.S. 27, 34
12 (2013) (“Rule 23(b)(3)’s predominance criterion is even more demanding than Rule 23(a).”).
13 “[A] common question is one where ‘the same evidence will suffice for each member to make a
14 prima facie showing [or] the issue is susceptible to generalized, class-wide proof.’” *Torres v.*
15 *Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (quoting *Tyson Foods v. Bouaphakeo*,
16 136 S. Ct. 1036, 1045 (2016)). Thus, the analysis of whether a common question of law or fact
17 predominates “begins . . . with the elements of the underlying cause of action.” *Erica P. John*
18 *Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). “When common questions present a
19 significant aspect of the case and they can be resolved for all members of the class in a single
20 adjudication, there is clear justification for handling the dispute on a representative rather than on
21 an individual basis.” *Hanlon*, 150 F.3d at 1022 (internal quotation omitted).

22 **i. 2017 Blueberry Harvester Class Claims**

23 **I. FLCA**

24 As discussed above, a common question applicable to the 2017 Blueberry Harvester
25 Class exists as to Defendants’ liability for violation of the FLCA stemming from Defendant
26 CSI’s alleged recruitment of putative class members without the necessary licensure. (*See supra*

1 Section II.B.2.a.i.) A common question exists as to Defendant Perez’s liability for violation of
2 the FLCA to those putative class members in the 2017 Blueberry Harvester Class who appeared
3 on the list Defendant Perez sent to Defendant CSI to assist in its recruitment of H-2A workers.
4 (*See id.*) Defendants do not contend that individual questions predominate over these particular
5 common questions. (*See* Dkt. No. 67 at 12–14). Both common questions are susceptible to
6 generalized, class-wide proof: whether Defendant CSI improperly recruited putative class
7 members without holding the required license, and whether Defendant Perez engaged in farm
8 labor contracting activity without holding the required license when she sent the list of potential
9 visa applicants to Defendant CSI. Wash. Rev. Code §§ 19.30.010(4)–(5), 19.30.020; *Torres*, 835
10 F.3d at 1134. The Court finds that the ability to adjudicate the elements of Plaintiffs’ FLCA
11 claims in a class action demonstrates that the common factual and legal questions predominate.

12 II. TVPA

13 The TVPA prohibits a person from obtaining labor or services through a scheme, plan, or
14 pattern intended to cause another “to believe that, if that person did not perform such labor or
15 services, that person or another person would suffer serious harm or physical restraint.” 18
16 U.S.C. § 1589(a)(4). In evaluating whether serious harm has been threatened, the court looks to
17 whether “under all the surrounding circumstances . . . a reasonable person of the same
18 background and in the same circumstances [would be compelled] to perform or to continue
19 performing labor or services.” 18 U.S.C. § 1589(c)(2).

20 “According to the statute, the threat, considered from the vantage point of a reasonable
21 person in the place of the victim, must be ‘sufficiently serious’ to compel the person to remain.”
22 *United States v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011) (quoting 18 U.S.C. § 1589(c)(2)).
23 Threats to send an individual back to their home country may constitute serious harm within the
24 scope of 18 U.S.C. § 1589(c)(2). *See id.* at 1172. In addition, the employer must have intended to
25 cause the victim to believe that he or she would suffer serious harm if he or she did not continue
26 to work. *Id.* An allegation that the defendant engaged in a common scheme or practice to coerce

1 labor from putative class members may be sufficient to establish that the class’s claim is
2 susceptible to class-wide resolution. *See, e.g., Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 920
3 (10th Cir.), *cert. denied*, 139 S. Ct. 143 (2018) (holding that a court may allow a class to rely on
4 circumstantial evidence shared by the class to establish causation, such as an allegation that
5 defendant coerced labor from putative class through uniform policy).

6 Under the TVPA, the determination of whether Growers wrongfully obtained labor from
7 the members of the 2017 Blueberry Harvester Class depends on whether Growers threatened
8 serious harm against the members that would have compelled a reasonable person in the same
9 circumstances to perform the labor. *See* 18 U.S.C. §§ 1589(a)(4), 1589(c)(2); *Dann*, 652 F.3d at
10 1170. Plaintiffs allege that putative class members were threatened with serious harm, in that
11 Growers threatened to terminate them and send them back to Mexico if they asked questions,
12 complained about work conditions, or received three written warnings for not meeting Growers’
13 production standard. (Dkt. Nos. 59 at 6–8, 60 at 6–9; *see generally* Class Decls.); *see Dann*, 652
14 F.3d at 1172. Contrary to Defendants’ assertions that individual inquiries will be necessary to
15 determine whether individual members perceived Growers’ statements as threats, the inquiry
16 under the statute focuses on whether a reasonable person in the same circumstances would be
17 compelled to continue to work. *See Dann*, 652 F.3d at 1170; 18 U.S.C. § 1589(c)(2). As the
18 members of the 2017 Blueberry Harvester Class share many salient characteristics, including that
19 they are Mexican nationals, were employed under the same H-2A contracts, worked under the
20 same conditions, and were subjected to the same threats, a uniform reasonable person standard
21 may be applied to determine whether Growers’ statements violated the TVPA. *See* 18 U.S.C. §
22 1589(c)(2). Finally, as Plaintiffs have alleged that Growers’ use of the threats was pervasive and
23 directed at the class as a whole (*see* Dkt. Nos. 59 at 6–8, 60 at 6–9; *see generally* Class Decls.),
24 the determination of whether Growers threatened serious harm sufficient to compel a reasonable
25 person to perform labor is susceptible to generalized, class-wide evidence. *See Menocal*, 882
26 F.3d at 920; *Torres*, 835 F.3d at 1134. Therefore, the Court finds that the common question of

1 whether Growers violated 18 U.S.C. § 1589(a)(4) predominates over unique issues that may
2 pertain to individual members of the 2017 Blueberry Harvester Class.

3 The TVPA also prohibits a person from obtaining labor or services through “abuse or
4 threatened abuse of law or legal process.” 18 U.S.C. § 1589(a)(3). The TVPA defines an “abuse
5 or threatened abuse of law or legal process” as the use or threatened use of such law or legal
6 process “in any manner or for any purpose for which the law was not designed, in order to exert
7 pressure on another person to cause that person to take some action or refrain from taking some
8 action.” 18 U.S.C. § 1589(c)(1). Threats of deportation may constitute an abuse of the legal
9 process within the scope of 18 U.S.C. § 1589(c)(1). *See Ruiz v. Fernandez*, 949 F. Supp. 2d
10 1055, 1077 (E.D. Wash. 2013). As discussed above, Plaintiffs have asserted that Growers
11 obtained labor or services from the 2017 Blueberry Harvester Class through pervasive threats to
12 send members who asked questions, complained, or did not meet Growers’ production standard
13 back to Mexico. (Dkt. Nos. 59 at 6–8, 60 at 6–9; *see generally* Class Decls.) Such threats may
14 constitute an abuse of the law or legal process sufficient to support a claim under the TVPA. *See*
15 *Ruiz*, 949 F. Supp. 2d at 1077; 18 U.S.C. §§ 1589(a)(3), 1589(c)(1). As the question of whether
16 Growers’ pervasive threats were made in order to exert pressure on the members of the 2017
17 Blueberry Harvester Class to take action or refrain from taking action in violation of 18 U.S.C. §
18 1589(a)(3) is susceptible to generalized, class-wide proof, the Court finds that this question
19 predominates over unique issues that may pertain to individual class members. *Torres*, 835 F.3d
20 at 1134.

21 III. WLAD

22 As discussed above, a common question exists as to whether Growers violated the
23 WLAD by creating a hostile work environment. (*See supra* Section II.B.2.a.iii.) Employers are
24 prohibited from discriminating against a person in their terms or conditions of employment based
25 on race or national origin. Wash. Rev. Code § 49.60.180(3). To establish a hostile work
26 environment claim, the plaintiff must establish that the alleged harassment “(1) was unwelcome,

1 (2) was because of a protected characteristic, (3) affected the terms or conditions of employment,
2 and (4) is imputable to the employer.” *Blackburn*, 375 P.3d at 1081.

3 “In order to constitute harassment[,] the complained of conduct must be unwelcome in
4 the sense that the plaintiff-employee did not solicit or incite it, and in the further sense that the
5 employee regarded the conduct as undesirable or offensive.” *Glasgow v. Ga.-Pac. Corp.*, 693
6 P.2d 708, 712 (Wash. 1985). To establish that the harassment was due to a protected
7 characteristic, the plaintiff “need only produce ‘evidence that supports a reasonable inference
8 that [his protected class status] was the motivating factor for the harassing conduct.’” *Alonso v.*
9 *Qwest Commc’ns Co.*, 315 P.3d 610, 618 (Wash. Ct. App. 2013) (quoting *Doe v. State, Dep’t of*
10 *Transp.*, 931 P.2d 196, 199 (Wash. Ct. App. 1997)). “The harassment must be sufficiently
11 pervasive so as to alter the conditions of employment and create an abusive working
12 environment.” *Glasgow*, 693 P.2d at 712. The harassment may be imputed to the employer when
13 “an owner, manager, partner or corporate officer personally participates in the harassment.” *Id.*

14 In this case, Plaintiffs have alleged that Defendants engaged in a pervasive practice of
15 threatening to send putative class members back to Mexico if they asked questions, made work-
16 related complaints, or failed to meet Growers’ production standard. (*See* Dkt. Nos. 59 at 6–8, 60
17 at 6–9; *see generally* Class Decls.) Plaintiffs also allege that Defendant Perez told the class at a
18 meeting that they were expected to work every day, and only those “on their death beds” could
19 remain in their housing when they were supposed to be working. (Dkt. Nos. 59 at 6, 60 at 6; *see*
20 *generally* Class Decls.) The alleged threats and comments made by Defendants were pervasive
21 and substantially identical between members of the 2017 Blueberry Harvester Class. Moreover,
22 they uniformly promised negative consequences for members who attempted to improve
23 working conditions or failed to meet Growers’ expectations. Therefore, establishing each
24 member’s *prima facie* case of Growers’ liability for creating a hostile work environment would
25 depend on the same evidence of Defendants’ behavior. *Torres*, 835 F.3d at 1134.

26 Similarly, many of the threats made to putative class members focused on their Mexican

1 nationality, the threats were made to the class as a whole or were pervasively made to individual
2 members, and the threats were allegedly made by Growers' managers or officers. (Dkt. Nos. 59
3 at 6–8, 60 at 6–9; *see generally* Class Decls.) Therefore, the issues of whether there is a
4 reasonable inference that class members' national origin was the motivating factor for the
5 harassing conduct, whether the harassment was pervasive enough to create a hostile work
6 environment, and the imputation of the harassment to Growers are all susceptible to generalized,
7 class-wide proof. *See Torres*, 835 F.3d at 1134. The Court finds that the common question of
8 whether Growers are liable under the WLAD for creating a hostile work environment
9 predominates over unique issues that may pertain to individual members of the 2017 Blueberry
10 class. *See Torres*, 835 F.3d at 1134.

11 IV. Breach of Contract

12 As discussed above, a common question exists as to the 2017 Blueberry Harvester Class
13 regarding whether Growers breached the H-2A contracts by imposing a previously undisclosed
14 production standard and by providing low quality food in insufficient quantities to meet class
15 members' daily needs. (*See supra* Section II.B.2.a.iv.) “A breach of contract is actionable only if
16 the contract imposes a duty, the duty is breached, and the breach proximately causes damage to
17 the claimant.” *Nw. Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 899 P.2d 6, 9 (Wash. Ct. App.
18 1995). Washington applies the objective manifestation theory of contracts, under which the
19 Court “attempt[s] to determine the parties’ intent by focusing on the objective manifestations of
20 the agreement, rather than on the unexpressed subjective intent of the parties.” *Hearst*
21 *Commc’ns, Inc. v. Seattle Times Co.*, 115 P.3d 262, 267 (Wash. 2005). “Thus, when interpreting
22 contracts, the subjective intent of the parties is generally irrelevant if the intent can be
23 determined from the actual words used.” *Id.*

24 Under Washington law, individual class members' interpretations of the terms of the H-
25 2A contracts are not determinative on the issue of Growers' liability for breach of the contracts.
26 Rather, Growers' liability will depend on (1) whether imposition of a production standard of two

1 boxes of blueberries an hour and (2) providing low-quality food in meager quantities violated the
2 parties' objective manifestations in the H-2A contracts. *See id.* Thus, the issue of whether
3 Growers owed duties to putative class members under the H-2A contracts that were breached by
4 the imposition of a new production standard and the provision of low-quality food in insufficient
5 quantities, and thus caused harm to putative class members, is susceptible to generalized, class-
6 wide proof. *See Torres*, 835 F.3d at 1134. Therefore, the Court finds that the common questions
7 on this issue predominate over unique issues raised by individual class members.

8 **ii. Wrongful Termination Subclass**

9 **I. Termination for Engaging in Protected Activities**

10 As discussed above, a common question exists as to whether Growers violated Revised
11 Code of Washington section 49.32.020 when they terminated the members of the Wrongful
12 Termination Subclass following a one-day strike. (*See supra* Section II.B.2.b.i.) To prevail on a
13 claim of wrongful discharge, a plaintiff must establish that “(1) Washington has a clear public
14 policy (the *clarity* element), (2) discouraging the conduct would jeopardize the public policy (the
15 *jeopardy* element), and (3) that policy-protected conduct caused the dismissal (the *causation*
16 element).” *Briggs v. Nova Servs.*, 213 P.3d 910, 914 (Wash. 2009). Under Washington law,
17 employers are prohibited from interfering with, restraining, or coercing labor employees
18 engaging “in self-organization or in other concerted activities for the purpose of collective
19 bargaining or other mutual aid or protections.” Wash. Rev. Code § 49.32.020. The concerted
20 activities must relate to the terms and conditions of employment or be seeking improved working
21 conditions. *Briggs*, 213 P.3d at 915.

22 Washington has a clear public policy of allowing employees to engage in concerted
23 activities to seek improved working conditions. *See Briggs*, 213 P.3d at 914; Wash. Rev. Code §
24 49.32.020. Terminating employees in retaliation for engaging in such activities would clearly
25 discourage the conduct. *Briggs*, 213 P.3d at 914. Plaintiffs assert that members of the Wrongful
26 Termination Subclass were engaged in a protected activity when they did not attend work on

1 August 4, 2017 because they were protesting harsh working conditions. (*See* Dkt. Nos. 59 at 9,
2 60 at 9–10; *see generally* Class Decls.) Plaintiffs further assert that the Wrongful Termination
3 Subclass was terminated for engaging in this protected activity, as one of Growers’ managers
4 was present at the meeting during which the decision to strike was reached and subclass
5 members were given identical separation and termination forms which described them as
6 “Protestor[s]” and stated that they were terminated for “insubordination.” (Dkt. Nos. 57 at 19,
7 61-7, 61-8.) Therefore, Plaintiffs have established that the same evidence will suffice for each
8 member of the Wrongful Termination Subclass to make a *prima facie* showing of wrongful
9 termination in violation of Washington employment law. *See Torres*, 835 F.3d at 1134.

10 In response, Defendants argue that not all members of the Wrongful Termination
11 Subclass were engaged in protected activities when they did not go to work on August 4, and
12 thus the Court will have to make individualized inquiries of each member. (Dkt. No. 67 at 21.)
13 For example, Defendants argue that Plaintiff Tapia decided on August 4 that he did not want to
14 participate in the strike after all and requested to be allowed to work, and another member of the
15 Wrongful Termination Subclass stated that he was simply late to work on August 4 and was
16 subsequently terminated. (*Id.*) (citing Dkt. Nos. 60 at 10, 69 at 5, 70 at 1.) Although Defendants
17 have highlighted that some members of the Wrongful Termination Subclass may have unique
18 issues related to this claim, such issues do not predominate over the common question of whether
19 the Wrongful Termination Subclass as a whole engaged in protected activity and was
20 subsequently terminated for doing so.

21 Defendants also argue that the Court must determine the reason for the Wrongful
22 Termination Subclass’s terminations, and that individualized inquiries will be required to
23 determine why each member was terminated. (Dkt. No. 67 at 21.) The question of why
24 Defendants terminated all of the members of the Wrongful Termination Subclass at the same
25 time on August 5, 2017 is the very question that may be answered on a class-wide basis. Further,
26 the question of why each subclass member was terminated may be resolved by the same

1 evidence, as the subclass members were allegedly provided with identical separation and
2 termination forms. (*See* Dkt. Nos. 57 at 19, 61-7, 61-8, 71 at 5.) Therefore, Defendants’
3 arguments do not demonstrate that the common question identified above does not predominate
4 over issues raised by individual members of the subclass.

5 Thus, the Court finds that the common question of whether Growers violated Washington
6 employment law when they terminated the Wrongful Termination Subclass on August 5, 2017
7 predominates over unique issues pertaining to individual subclass members.

8 II. Unlawful Eviction

9 As discussed above, a common question exists as to whether Growers wrongfully evicted
10 members of the Wrongful Termination Subclass. (*See supra* Section II.B.2.b.ii.) A person who
11 uses threats or menacing conduct to turn out a party in actual possession of real property is liable
12 for forcible entry. Wash. Rev. Code. § 59.12.010. Plaintiffs contend that after the members of the
13 Wrongful Termination Subclass were terminated, Defendants demanded that the subclass
14 members vacate their housing within one hour. (Dkt. No. 57 at 19; *see* Dkt. Nos. 59 at 10, 60 at
15 11; *see generally* Class Decls.) Plaintiffs further allege that Defendants threatened to call the
16 police and immigration officials to enforce their demands. (*Id.*) Defendants do not argue that
17 individual claims of subclass members predominate over the common question presented for this
18 claim. (*See generally* Dkt. No. 67 at 12–22.) Therefore, the Court finds that resolution of this
19 claim of the Wrongful Termination Subclass depends on generalized, class-wide proof, and that
20 the common question predominates over individual issues of subclass members. *See Torres*, 835
21 F.3d at 1134.

22 b. Superiority

23 Rule 23(b)(3) requires that the Court find that a “class action is superior to other available
24 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). When
25 undertaking this inquiry, the Court considers (1) the interest of individuals within the class in
26 controlling their own litigation; (2) the extent and nature of any pending litigation commenced

1 by or against the class involving the same issues; (3) the convenience and desirability of
2 concentrating the litigation in a particular forum; and (4) the manageability of the class action.
3 *See* Fed. R. Civ. P. 23(b)(3)(A)–(D); *Zinzer v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190–
4 92 (9th Cir. 2001). Consideration of these factors must “focus on the efficiency and economy
5 elements of the class action so that cases allowed under subdivision (b)(3) are those that can be
6 adjudicated most profitably on a representative basis.” *Zinzer*, 253 F.3d at 1190.

7 In this case, a class action is superior to other available methods of adjudicating the
8 claims of the 2017 Blueberry Harvester Class, 2017 Blueberry Harvester Class – Defendant
9 Perez Subclass, and Wrongful Termination Subclass.⁷ Based on the record before the Court, it
10 does not appear that individual class members have an interest in controlling their own litigation,
11 as each individual class or subclass member’s claim for damages is unlikely to exceed the cost of
12 pursuing the claims alleged. *See Saucedo v. NW Mgmt. & Realty Servs., Inc.*, 290 F.R.D. 671,
13 684–85 (E.D. Wash. 2013). It does not appear that other litigation regarding this action is
14 pending elsewhere. *See id.* at 685; (Dkt. No. 57 at 22.) The parties have not argued that the
15 Western District of Washington is not an appropriate and convenient forum for the litigation. *See*
16 *Saucedo*, 290 F.R.D. at 685. It does not appear that there are issues with regard to the
17 manageability of the class action. *See id.* Therefore, Plaintiffs have established that class action
18 litigation is superior to other methods of adjudicating this action.

19 **D. Class Definitions**

20 The Court has discretion to modify class definitions where appropriate. *Booth v.*
21 *Appstack, Inc.*, 2015 WL 1466247, slip op. at 5 (W.D. Wash. 2015) (citing *Armstrong v. Davis*,
22 275 F.3d 849, 872 (9th Cir. 2001)). Based on the preceding analysis, the Court hereby defines
23 and CERTIFIES the follow classes under Rule 23(b)(3):

24 2017 Blueberry Harvester Class: “All Mexican nationals who worked at Sarbanand
25

26 ⁷ Defendants do not substantively argue that class treatment would not be superior in this
case. (*See* Dkt. No. 67 at 12–24.)

1 Farms, LLC in Sumas, Washington picking blueberries pursuant to an H-2A contract that offered
2 employment from July 2017 through October 2017.” The 2017 Blueberry Harvester Class is
3 certified on the following claims raised by Plaintiffs: Defendant CSI’s violation of the FLCA and
4 Growers’ resultant liability; Growers’ violation of the TVPA, 18 U.S.C. § 1589(a)(3) and 18
5 U.S.C. § 1589(a)(4); Growers’ creation of a hostile work environment in violation of the WLAD;
6 Growers’ breach of the H-2A contracts.

7 2017 Blueberry Harvester Class – Defendant Perez Subclass: “Mexican nationals who
8 worked for Defendant Sarbanand Farms in 2015 and/or 2016 and appeared on a list sent by
9 Defendant Perez to Defendant CSI for potential visa applications for work with Defendant
10 Sarbanand Farms in 2017.” The 2017 Blueberry Harvester Class – Defendant Perez Subclass is
11 certified on Plaintiffs’ claim that Defendant Perez is liable for violation of the FLCA and
12 Growers’ resultant liability.

13 Wrongful Termination Subclass: “H-2A workers who were terminated and evicted from
14 Sarbanand Farms for protesting dangerous working conditions.” The Wrongful Termination
15 Subclass is certified on the following claims raised by Plaintiffs: Growers’ wrongful termination
16 of the subclass in violation of Revised Code of Washington section 49.32.020; Growers’
17 unlawful eviction of the subclass in violation of Revised Code of Washington section 59.12.010.

18 **E. Appointment of Class Counsel**

19 “Unless a statute provides otherwise, a court that certifies a class must appoint class
20 counsel.” Fed. R. Civ. P. 23(g)(1). In appointing class counsel, the Court considers the work
21 counsel has done to identify and investigate potential claims; counsel’s experience in handling
22 class actions, other complex litigation, and the types of claims asserted in the action; counsel’s
23 knowledge of the applicable law; and the resources counsel will commit to representing the
24 class. Fed. R. Civ. P. 23(g)(1)(A)(i)–(iv). Plaintiffs’ counsel have experience in handling class
25 actions concerning the types of claims asserted in this case, and have extensive knowledge of the
26 applicable law. (Dkt. Nos. 61, 62.) Plaintiffs’ counsel has also committed to expend the

1 resources necessary to represent the class. (*Id.*) For the foregoing reasons, Plaintiffs' counsel in
2 this case are hereby APPOINTED as class counsel.

3 **III. CONCLUSION**

4 For the foregoing reasons, Plaintiffs' motion for class certification (Dkt. No. 57) is
5 GRANTED pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).

6 DATED this 20th day of December 2018.

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10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
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