

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

<b>JOSE DUARTE, RICARDO PENA</b>	§	
<b>RAMIREZ, JORGE RUIZ, and</b>	§	
<b>JOSE RAMON RUIZ ESPARZA</b>	§	<b>CIVIL ACTION NO. 2:15-CV-00352-J</b>
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>BLAINE LARSEN FARMS, INC.,</b>	§	
<b>Defendant.</b>	§	

**ORIGINAL ANSWER OF DEFENDANT BLAINE LARSEN FARMS, INC.**

TO THE HONORABLE DISTRICT JUDGE PRESIDING:

Defendant, BLAINE LARSEN FARMS, INC., (“Larsen Farms”) files this Original Answer to Plaintiffs’ Original Complaint, and respectfully shows the Court as follows:

**I.  
ADMISSIONS AND DENIALS**

Unless specifically admitted herein, all of Plaintiffs’ allegations in the Complaint are denied.

1. Larsen Farms admits only that Plaintiffs assert claims under the statutes recited in Paragraph 1 of the Complaint, but deny that Plaintiffs have stated a claim upon which relief can be granted under those statutes.

2. Larsen Farms only admits utilizing the H-2a Visa program in its business, but denies that by doing so, it adversely affected the wages and working conditions of its domestic migrant workers.

3. Larsen Farms admits that Plaintiffs allege various Federal and State claims as referenced in Paragraph 3 of their Complaint, but deny the allegations made therein.

4. Larsen Farms admits that this Court has federal-question subject matter jurisdiction over Plaintiffs' Complaint.

5. Larsen Farms admits only that Plaintiffs assert claims under federal law as detailed in Paragraph 5 of the Complaint, but deny the Plaintiffs have stated a claim upon which relief can be granted.

6. Larsen Farms admits that Plaintiffs have invoked the supplemental jurisdiction of this Court over their state law claims, but denies that Plaintiffs have stated a claim upon which relief can be granted.

7. Larsen Farms admits the allegations in Paragraph 7 of Plaintiffs' Complaint.

8. Larsen Farms admits the allegations in Paragraph 8 of Plaintiffs' Complaint.

9. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9 of the Complaint, and accordingly denies the same.

10. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10 of the Complaint, and accordingly denies the same. Furthermore, Larsen Farms specifically pleads that Plaintiff, Ricardo Pena, declared his address to be 228 Plum Avenue, Dumas, Texas, while he was employed by Larsen Farms.

11. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11 of the Complaint, and accordingly denies the same. Furthermore, Larsen Farms specifically pleads that Plaintiff Jorge Ruiz listed an address of Dalhart, Texas while working for Larsen Farms.

12. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12 of the Complaint, and accordingly denies the same. Furthermore, Larsen Farms specifically pleads that Plaintiff Jose Ramon Ruiz Esparza listed an

address of Dalhart, Texas while working for Larsen Farms.

13. Larsen Farms admits the allegations in Paragraph 13 of the Complaint.

14. Larsen Farms admits only that it maintained facilities in and around Dalhart, Texas, that it formerly employed Plaintiffs, and did business in the State of Texas. Larsen Farms denies the remaining allegations in Paragraph 14 of the Complaint.

15. Larsen Farms admits the allegations in Paragraph 15 of Plaintiffs' Complaint.

16. Larsen Farms admits only that it employed Plaintiffs Jorge Ruiz and Jose Ramon Ruiz Esparza to work at its facility in Dalhart, Texas, with an offered wage of \$15.00 per hour and time and a half paid for hours worked in excess of 40 hours per week. Larsen Farms denies all other allegations in Paragraph 16 of the Complaint.

17. Larsen Farms denies the allegations in Paragraph 17 of Plaintiffs' Complaint.

18. Larsen Farms admits the allegations in Paragraph 18 of Plaintiffs' Complaint.

19. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of Paragraph 19 of the Complaint. Larsen Farms denies the remaining allegations in Paragraph 19 of the Complaint except to admit that it employed Plaintiff Jose Duarte and offered him wages of \$15.00 per hour and time and a half paid for hours worked in excess of 40 hours per week.

20. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of Plaintiffs' Complaint.

21. Larsen Farms lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 of Plaintiffs' Complaint.

22. Larsen Farms admits only that Plaintiff, Jose Duarte, was hired by Larsen Farms on or about September 11, 2014, as a truck driver with a starting wage of \$15.00 per hour and

time and a half paid for hours worked in excess of 40 hours per week, and denies all remaining allegations in Paragraph 22.

23. Larsen Farms denies the allegations in Paragraph 23 of Plaintiffs' Complaint.

24. Larsen Farms denies the allegations in Paragraph 24 of Plaintiffs' Complaint.

25. Larsen Farms denies the allegations in Paragraph 25 of Plaintiffs' Complaint.

26. Larsen Farms denies any "working arrangement" pursuant to 29 U.S.C. § 1822(c), but admits that it strived to comply with applicable state and federal laws.

27. Larsen Farms denies the allegations in Paragraph 27 of Plaintiffs' Complaint regarding an alleged "working arrangement", and admits only that it offered wages of \$15.00 per hour and time and a half paid for hours worked in excess of 40 hours per week.

28. Larsen Farms admits the allegations in Paragraph 28 of Plaintiffs' Complaint.

29. Larsen Farms denies the allegations in Paragraph 29 of Plaintiffs' Complaint.

30. Larsen Farms denies the allegations in the first two (2) sentences of Paragraph 30 of the Complaint, and admits the allegations in the third sentence of said paragraph.

31. Larsen Farms denies the allegations in Paragraph 31 of Plaintiffs' Complaint.

32. Larsen Farms denies the allegations in Paragraph 32 of Plaintiffs' Complaint.

33. Larsen Farms denies the allegations in Paragraph 33 of Plaintiffs' Complaint.

34. Larsen Farms denies the allegations in Paragraph 34 of Plaintiffs' Complaint.

35. Larsen Farms denies the allegations in Paragraph 35 of Plaintiffs' Complaint.

36. Larsen Farms denies the allegations in Paragraph 36 of Plaintiffs' Complaint.

37. Larsen Farms denies the allegations in Paragraph 37 of Plaintiffs' Complaint.

38. Deny. Larsen Farms terminated Plaintiff, Jorge Ruiz's employment on or about December 9, 2014, for sleeping on the job. Plaintiff Ruiz signed an acknowledgment as to the

reason for his termination of employment.

39. Larsen Farms denies the allegations in Paragraph 39 of Plaintiffs' Complaint.

40. Larsen Farms denies the allegations in Paragraph 40 of Plaintiffs' Complaint.

41. Larsen Farms admits only that on or about January 27, 2015, Plaintiff Jose Duarte had a meeting with a Larsen Farms supervisor who had complained that Plaintiff Duarte did not have a valid commercial driver's license and was therefore not certified by the United States Department of Transportation to drive large trucks, despite Plaintiff Duarte's representations to the contrary when he was hired, and therefore he could not be paid the agreed hourly rate of \$15.00 per hour unless he was able to present a valid commercial driver's license, and was informed that because of his failure to have a valid commercial driver's license, his pay would be reduced to \$10.75 per hour.

42. Larsen Farms denies that Plaintiff Duarte was told that his job duties would not change, and admits that after January 27, 2015, Larsen Farms representatives told Plaintiff Duarte that his rate of pay would not be the same as that of a truck driver. Larsen Farms denies the remaining allegations in Paragraph 42 of the Complaint.

43. Larsen Farms denies the allegations in Paragraph 43 of the Complaint, and states that Plaintiff Duarte's supervisor allowed him three (3) days off so he could allegedly travel to his home to retrieve his commercial driver's license and present it to Larsen Farms. Plaintiff Duarte was told that if he could present a valid commercial driver's license, his hourly rate of pay would remain unchanged. Plaintiff Duarte told his supervisor that he would return in a few days with a valid commercial driver's license. However, Plaintiff Duarte failed to return to work, therefore, Larsen Farms was forced to terminate his employment. Aside from these aforementioned admissions, Larsen Farms denies the allegations in Paragraph 43 of the

Complaint.

44. Larsen Farms denies the allegations in Paragraph 44 of Plaintiffs' Complaint, and states that Plaintiff Duarte's supervisor allowed him three (3) days off so he could allegedly travel to his home to retrieve his commercial driver's license and present it to Larsen Farms. Plaintiff Duarte was told that if he could present a valid commercial driver's license, his hourly rate of pay would remain unchanged. Plaintiff Duarte told his supervisor that he would return in a few days with a valid commercial driver's license. However, Plaintiff Duarte failed to return to work, therefore, Larsen Farms was forced to terminate his employment. Aside from these aforementioned, Larsen Farms denies the allegations in Paragraph 44 of the Complaint.

45. Larsen Farms denies the allegations in Paragraph 45 of Plaintiffs' Complaint.

46. Larsen Farms denies the allegations in Paragraph 46 of Plaintiffs' Complaint. Plaintiff Ricardo Pena Ramirez provided a residence address to Larsen Farms of 228 Plum Avenue, Dumas, Texas, upon commencement of employment.

47. Larsen Farms admits only that it hired Plaintiff Ricardo Pena Ramirez on or about May 23, 2014, with a starting was of \$10.86 per hour to work as an irrigator and later as a well checker. Larsen Farms denies the remaining allegations in Paragraph 47 of the Complaint.

48. Larsen Farms denies the allegations in Paragraph 48 of Plaintiffs' Complaint.

49. Larsen Farms denies the allegations in Paragraph 49 of Plaintiffs' Complaint.

50. Larsen Farms denies any "working arrangement" pursuant to 29 U.S.C. § 1822(c), but admits only that Larsen Farms strived to comply with applicable state and federal laws.

51. Larsen Farms admits only that it offered Plaintiff Pena employment at a starting wage of \$10.86 per hour but denies the remaining allegations in Paragraph 51 of the Complaint.

52. Larsen Farms denies the allegations in Paragraph 52 of Plaintiffs' Complaint.

53. Larsen Farms admits the allegations in Paragraph 53 of Plaintiffs' Complaint with a clarification that the free housing described in subparagraph (d) pertains to the H-2A visa workers.

54. Larsen Farms denies the allegations in Paragraph 54 of Plaintiffs' complaint.

55. Larsen Farms denies the allegations in Paragraph 55 of Plaintiffs' Complaint.

56. Larsen Farms denies the allegations in Paragraph 56 of Plaintiffs' Complaint. Plaintiff Pena voluntarily terminated his employment with Larsen Farms on or about October 16, 2014, because he wanted to go to Mexico to visit family. He asked Larsen Farms if he could be re-employed when he returned and was told he could, if a position was open.

57. Larsen Farms denies the allegations in Paragraph 57 of Plaintiffs' Complaint.

58. Larsen Farms denies the allegations in Paragraph 58 of Plaintiffs' Complaint.

59. Larsen Farms denies the allegations in Paragraph 59 of Plaintiffs' Complaint.

60. Larsen Farms denies the allegations in Paragraph 60 of Plaintiffs' Complaint.

61. Larsen Farms denies the allegations in Paragraph 61 of Plaintiffs' Complaint.

62. Larsen Farms denies the allegations in Paragraph 62 of Plaintiffs' Complaint.

63. Larsen Farms denies the allegations in Paragraph 63 of Plaintiffs' Complaint.

64. Larsen Farms denies the allegations in Paragraph 64 of Plaintiffs' Complaint.

65. Larsen Farms denies the allegations in Paragraph 65 of Plaintiffs' Complaint.

66. Larsen Farms denies the allegations in Paragraph 66 of Plaintiffs' Complaint.

67. Larsen Farms denies the allegations in Paragraph 67 of Plaintiffs' Complaint.

68. Larsen Farms denies the allegations in Paragraph 68 of Plaintiffs' Complaint.

69. The allegations in Paragraph 69 of Plaintiffs' Complaint are admitted and denied as detailed in the preceding paragraphs of Larsen Farms' Answer.

70. Larsen Farms admits Plaintiffs' bring a claim under the Fair Labor Standards Act, but deny they have stated a claim upon which relief can be granted.

71. Larsen Farms admits that it produces, markets, and sells potatoes domestically, and that it is one of the biggest potato producers in the United States. Larsen Farms also admits that it sells its products through wholly-owned subsidiaries, and denies all other allegations in Paragraph 71 of the Complaint.

72. Larsen Farms admits the allegations in Paragraph 72 of Plaintiffs' Complaint.

73. Larsen Farms admits the allegations in Paragraph 73 of Plaintiffs' Complaint.

74. Only to the extent admitted in preceding paragraphs, above, Larsen Farms admits it was Plaintiffs' "employer" during those relevant portions of 2014 and 2015.

75. Larsen Farms admits the allegations in Paragraph 75 of Plaintiffs' Complaint. Minimum wage under Federal law under certain circumstances was less than \$7.25 per hour during 2014-2015.

76. Larsen Farms admits the allegations in Paragraph 76 of Plaintiffs' Complaint.

77. Larsen Farms denies the allegations in Paragraph 77 of Plaintiffs' Complaint.

78. Larsen Farms denies the allegations in Paragraph 78 of Plaintiffs' Complaint.

79. Larsen Farms admits Plaintiffs are making claims under the Fair Labor Standards Act, but denies any liability to Plaintiffs under that Act, and denies Plaintiffs have stated claim upon which relief can be granted.

80. The allegations in Paragraph 80 of Plaintiffs' Complaint are admitted and denied as described in the preceding paragraphs.

81. Larsen Farms denies the allegations in Paragraph 81 of Plaintiffs' Complaint.

82. Larsen Farms denies the allegations in Paragraph 82 of Plaintiffs' Complaint.

83. Larsen Farms denies the allegations in Paragraph 83 of Plaintiffs' Complaint.

84. Larsen Farms admits the allegations in Paragraph 84 of Plaintiffs' Complaint.

85. Larsen Farms denies the allegations in Paragraph 85 of Plaintiffs' Complaint.

86. Larsen Farms denies the allegations in Paragraph 86 of Plaintiffs' Complaint.

87. Larsen Farms admits only that Plaintiffs claim damages under the AWPA, but deny liability and deny Plaintiffs have pled a claim upon which relief can be granted.

88. The allegations in Paragraph 88 of Plaintiffs' Complaint are admitted and denied as described in the preceding paragraphs.

89. Larsen Farms denies the allegations in Paragraph 89 of Plaintiffs' Complaint.

90. Larsen Farms denies the allegations in Paragraph 90 of Plaintiffs' Complaint.

91. Larsen Farms denies the allegations in Paragraph 91 of Plaintiffs' Complaint.

92. Larsen Farms denies the allegations in Paragraph 92 of Plaintiffs' Complaint.

93. Larsen Farms denies the allegations in Paragraph 93 of Plaintiffs' Complaint.

94. Larsen Farms denies the allegations in Paragraph 94 of Plaintiffs' Complaint.

95. Larsen Farms denies the allegations in Paragraph 95 of Plaintiffs' Complaint.

96. The allegations in Paragraph 96 of Plaintiffs' Complaint are admitted and denied as described in the preceding paragraphs.

97. Larsen Farms denies the allegations in Paragraph 97 of Plaintiffs' Complaint.

98. Larsen Farms denies the allegations in Paragraph 98 of Plaintiffs' Complaint.

99. Larsen Farms denies the allegations in Paragraph 99 of Plaintiffs' Complaint.

100. Larsen Farms denies the allegations in Paragraph 100 of Plaintiffs' Complaint.

101. Larsen Farms denies the allegations in Paragraph 101 of Plaintiffs' Complaint.

102. Larsen Farms denies the allegations in Paragraph 102 of Plaintiffs' Complaint.

103. The allegations in Paragraph 103 of Plaintiffs' Complaint are admitted and denied as described in the preceding paragraphs.

104. Larsen Farms admits the allegations in Paragraph 104 of Plaintiffs' Complaint.

105. Larsen Farms admits the allegations in Paragraph 105 of Plaintiffs' Complaint.

106. Larsen Farms denies the allegations in Paragraph 106 of Plaintiffs' Complaint.

107. Larsen Farms denies the allegations in Paragraph 107 of Plaintiffs' Complaint.

108. The allegations in Paragraph 108 of Plaintiffs' Complaint are admitted and denied as described in the preceding paragraphs.

109. Larsen Farms denies the allegations in Paragraph 109 of Plaintiffs' Complaint.

110. Larsen Farms denies the allegations in Paragraph 110 of Plaintiffs' Complaint.

111. Larsen Farms denies the allegations in Paragraph 111 of Plaintiffs' Complaint.

112. Larsen Farms denies the allegations in Paragraph 112 of Plaintiffs' Complaint.

113. Larsen Farms denies the allegations in Paragraph 113 of Plaintiffs' Complaint.

114. Larsen Farms denies the allegations in Paragraph 114 of Plaintiffs' Complaint.

## **II.** **AFFIRMATIVE DEFENSES**

115. Plaintiffs have failed to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).

116. The claims of Plaintiffs Duarte, Ruiz, and Esparza ("Trucking Plaintiffs") under the Fair Labor Standards Act are barred under the Motor Carrier Exemption to the Act, 29 U.S.C. § 213(b)(1).

117. Larsen Farms acted in reasonable good faith and had reasonable grounds for believing in fact it did not violate the FLSA, and thus the Court should not award liquidated damages pursuant to 29 U.S.C. §§ 258-260.

118. The Plaintiffs were at-will employees under Texas law.

119. Larsen Farms pleads the relevant statute of limitations to limit Plaintiffs' claims to two (2) and not three (3) years of alleged overtime, because Larsen Farms' actions were not willful. 29 U.S.C. § 255(a).

120. Larsen Farms pleads the applicable statute of limitations to the extent any of Plaintiffs' claims arose prior to the date of the applicable statute of limitations.

121. Plaintiffs cannot be entitled to both liquidated damages and a pre-judgment interest pursuant to *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945).

122. Larsen Farms is entitled to an off-set of any amount of relief claimed by Plaintiffs based upon compensation previously paid by Larsen Farms, if any, to Plaintiffs.

123. Plaintiffs are barred to the extent they are based on *de minimus* time periods.

124. Plaintiffs' claims are barred in whole or in part by the provisions of the Portal-to-Portal Act, including but not limited to time in which Plaintiffs engaged in preliminary or post-liminary activities.

125. Larsen Farms asserts the affirmative defense of payment.

126. Larsen Farms asserts the affirmative defense of failure to mitigate damages.

127. Plaintiffs' breach of contract and quasi contract theories of recovery are barred by the affirmative defenses of ratification, because Plaintiffs ratified the terms and conditions of employment when they accepted them from Larsen Farms.

128. Plaintiffs' claims for overtime are barred by the agriculture exemption to the FLSA, 29 U.S.C. § 213(b)(12).

129. Plaintiffs Pena, Ruiz, and Esparza's claims under the Migrant Seasonal Agriculture Worker Protection Act ("AWPA") are barred under 29 U.S.C. § 1802(8) because

they were not required to be absent from their permanent place of employment due to their disclosure of permanent residences in Dalhart and Dumas, Texas, and therefore they are not “migrant agriculture workers” under the AWWPA.

130. Larsen Farms continue to investigate Plaintiffs’ allegations and reserves the right to amend its pleadings to assert other applicable defenses.

**III.**  
**PRAYER**

WHEREFORE, Defendant Larsen Farms requests that the Court deny all claims for relief brought in Plaintiffs’ Complaint, and that the Court enter judgment that the Plaintiffs take nothing from Larsen Farms, and that Larsen Farms be awarded judgment against Plaintiffs, to include costs of court, attorneys’ fees and all other relief, in law or in equity, to which Larsen Farms is justly entitled.

Respectfully submitted,

By: /s/ Fernando M. Bustos  
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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Original Answer of Defendant Blaine Larsen Farms, Inc. was served on the following parties via CM/ECF on this 15th day of February, 2015:

Douglas L. Stevick  
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/s/ Fernando M. Bustos  
FERNANDO M. BUSTOS