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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

GLOBAL HORIZONS, INC., d/b/a  
Global Horizons Manpower, Inc.;  
GREEN ACRE FARMS, INC.; VALLEY  
FRUIT ORCHARDS, LLC; and DOES 1-  
10 inclusive;

Defendants.

NO. CV-11-3045-EFS

**ORDER GRANTING IN PART AND  
DENYING IN PART THE GROWER  
DEFENDANTS' MOTIONS TO DISMISS**

Before the Court, without oral argument, are Defendant Green Acre Farms, Inc.'s ("Green Acre") and Valley Fruit Orchards, LLC's ("Valley Fruit") (collectively, "Grower Defendants"<sup>1</sup>) Motions to Dismiss Plaintiff Equal Employment Opportunity Commission's (EEOC) First Amended Complaint, ECF Nos. [150](#) & [154](#). Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Grower Defendants ask the Court to dismiss the First Amended Complaint because it fails to state a claim for relief against

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<sup>1</sup> The First Amended Complaint refers to the Grower Defendants as "Farm Defendants." The Court utilizes the phrase "Grower Defendants," finding it to more accurately reflect the Grower Defendants' fruit production.

1 them. The EEOC opposes the motions. After reviewing the filings and  
2 relevant authority, the Court is fully informed. For the reasons set  
3 forth below, the Court grants in part and denies in part the Grower  
4 Defendants' motions.

5 **A. Background<sup>2</sup>**

6 Defendant Global Horizons, Inc. ("Global") recruited impoverished  
7 Thai nationals ("Claimants") to work at farms in the United States,  
8 including Green Acres' and Valley Fruit's orchards. Global  
9 representatives told the Claimants that they would be able to work steady  
10 hours and make much money. Notwithstanding the huge fees that Global  
11 charged the Claimants to participate in their program, the Claimants  
12 agreed to participate believing that they would earn a substantial amount  
13 of money.

14 Global worked with the U.S. Department of Labor (DOL) H2-A guest  
15 worker program to bring these individuals to American farms. Although  
16 Global's DOL application paperwork was deficient (and allegedly contained  
17 fraudulent information), the DOL granted permission to Global to allow

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18 <sup>2</sup> This "background" section is based on the factual allegations  
19 contained in the First Amended Complaint. See *Ashcroft v. Iqbal*, 129 S.  
20 Ct. 1937, 1949 (2009). The Court assumes to be true those portions of  
21 the First Amended Complaint that "contain sufficient allegations of  
22 underlying facts to give fair notice and to enable the opposing party to  
23 defend itself effectively," but does not afford the presumption of truth  
24 to allegations that "simply recite the elements of a cause of action."  
25 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).  
26

1 certain numbers of foreigners ("guest workers") to work at American farms  
2 and orchards. The H2-A program required either Global or its  
3 agricultural client to ensure that the guest workers had housing,  
4 transportation to the farms or orchards and subsistence if necessary, and  
5 to appropriately pay the guest workers. Global brought hundreds of guest  
6 workers to farms and orchards in the United States, including Washington,  
7 California, and Hawaii.

8 Global entered into at least one Farm Labor Contract H2-A Agreement  
9 ("H2-A Agreement") with both Green Acre and Valley Fruit to provide guest  
10 workers at their orchards for certain months in 2003 and 2004. These H2-  
11 A Agreements gave the Grower Defendants control over the work to be  
12 performed by the guest workers and the number of guest workers needed.  
13 Consistent with their H2-A Agreements, Global provided guest workers  
14 ("Claimants") to both Grower Defendants. The Grower Defendants advised  
15 the Claimants what work needed to be done and how to do it, provided the  
16 necessary equipment, set the work hours, and inspected the work done.  
17 Global also had personnel at the orchards and supervised the Claimants  
18 as well. Both the Grower Defendants and Global yelled at the Claimants  
19 and disciplined them for not doing sufficient work. The Grower  
20 Defendants also required the Claimants to engage in orchard tasks that  
21 were more difficult than those assigned to the workers of Mexican  
22 descent. Consistent with the H2-A Agreements, Global transported the  
23 Claimants to the orchards, established the housing, observed that the  
24 Claimants stayed near the Claimants' housing, and assisted in providing  
25 food to the Claimants. The transportation, housing, and subsistence  
26 provided by Global were unsafe and insufficient. The Claimants at Green

1 Acre complained of their work and living conditions to Green Acre and  
2 Global; thereafter, they received lesser hours at work and continued to  
3 suffer from Global's harassment. The Claimants at Valley Fruit  
4 complained to Global and Valley Fruit that their pay was insufficient to  
5 pay off their substantial debt; Valley Fruit reduced their hours of work,  
6 and Global threatened to deport them and transfer them to a different  
7 farm.

8 The Claimants' passports were held by Global, and Global limited the  
9 Claimants' ability to leave the orchards and residences. After suffering  
10 through these living and work conditions and being further harassed by  
11 Global, some of the Claimants were compelled to escape.

12 On April 18 and 24, 2006, Laphit Khadthan and Marut Kongpia,  
13 respectively, filed charges of discrimination with the EEOC against the  
14 Grower Defendants and Global, pertaining to the discrimination and  
15 harassment they allegedly suffered in 2003 and 2004. The EEOC deemed it  
16 appropriate to pursue claims on the Claimants' behalf in federal court,  
17 and on April 19, 2011, the EEOC filed this lawsuit. ECF No. [1](#). On  
18 August 29, 2011, the Grower Defendants filed Answers. ECF Nos. [12](#) & [13](#).  
19 Global has been served, ECF No. [8](#), but has not appeared.

20 On March 2, 2012, the EEOC sought leave to file an amended  
21 complaint, ECF No. [99](#). The Court granted the EEOC leave to do so. ECF  
22 No. [140](#). On March 20, 2012, the EEOC filed its First Amended Complaint,  
23 ECF No. [141](#), asserting the following Title VII, 42 U.S.C. §§ 2000e-5 &  
24 2000e-6 claims: 1) Defendants engaged in a pattern or practice of  
25 discriminatory treatment toward the Claimants because of their national  
26 origin or race, 2) Defendants subjected the Claimants to a hostile work

1 environment because of their race or national origin, thereby  
2 constructively discharging the Claimants who sought to escape, 3)  
3 Defendants discriminated against the Claimants because of their race or  
4 national origin, and 4) Defendants retaliated against the Claimants for  
5 complaining about the subjected-to discrimination and hostile work  
6 environment. On April 6, 2012, the Grower Defendants filed the instant  
7 motions to dismiss. Pursuant to Federal Rule of Civil Procedure  
8 12(b)(6), the Grower Defendants ask the Court to 1) dismiss the First  
9 Amended Complaint because it fails to allege facts sufficient to support  
10 the asserted claims against them, and 2) find that these claims are  
11 subject to 42 U.S.C. § 2000e-5(1)'s 300-day statute of limitation. The  
12 EEOC opposes the motions.

13 **B. Standard**

14 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency  
15 of the pleadings. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
16 A complaint may be dismissed for failure to state a claim under Rule  
17 12(b)(6) where the factual allegations do not raise the right to relief  
18 above the speculative level. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79  
19 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
20 Conversely, a complaint may not be dismissed for failure to state a claim  
21 where the allegations plausibly show that the pleader is entitled to  
22 relief. *Twombly*, 550 U.S. at 555. In ruling on a motion under Rule  
23 12(b)(6), a court must construe the pleadings in the light most favorable  
24 to the plaintiff and accept all material factual allegations in the  
25 complaint, as well as any reasonable inferences drawn therefrom. *Broam*  
26 *v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

1 **C. Authority and Analysis**

2 **1. Timing of Motions to Dismiss**

3 The EEOC contends the Grower Defendants' April 6, 2012 motions are  
4 untimely because they were filed after the Grower Defendants' August 29,  
5 2011 Answers, ECF Nos. [12](#) & [13](#), submitting that Rule 12(b)(6) requires  
6 that a motion for failure to state a claim be filed before an answer.  
7 The EEOC correctly states the general rule regarding the timing of a Rule  
8 12(b)(6) motion. However, on March 20, 2012, the EEOC filed its First  
9 Amended Complaint. Accordingly, the EEOC's initial complaint and the  
10 Grower Defendants' answers thereto are treated as nonexistent. See *Loux*  
11 *v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) ("The amended complaint  
12 supersedes the original, the latter being treated thereafter as non-  
13 existent."). Accordingly, the Grower Defendants permissibly filed these  
14 motions to dismiss the First Amended Complaint under Rule 12(b)(6).

15 **2. Claims**

16 Title VII dictates that it "shall be an unlawful employment practice  
17 for an employer . . . to discharge any individual, or otherwise to  
18 discriminate against any individual with respect to his compensation,  
19 terms, conditions, or privileges of employment because of such  
20 individual's race, color, religion, sex, or national origin." 42 U.S.C.  
21 § 2000e-2(a)(1); see *Faragher v. City of Boca Raton* (analyzing hostile  
22 work environment). As required by Title VII's express terms, an  
23 employment relationship must exist in order for these protections to  
24 apply. *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883 (9th Cir.  
25 1980). Here, the Grower Defendants challenge 1) the existence of a joint  
26 employment relationship with each other and with Global for all of the

1 alleged matters, and 2) whether the Claimants suffered an adverse  
2 employment action because of their race or national origin.

3 Beginning with the "employer" requirement, the EEOC contends that  
4 each respective Grower Defendant employed the Claimants, who worked at  
5 their orchard, for purposes of not only orchard-related matters but also  
6 for transportation, housing, subsistence, and recruiting matters given  
7 what the Grower Defendants should have known about Global's  
8 discriminatory practices and their joint employer relationship with  
9 Global. As discussed below, the First Amended Complaint plausibly  
10 alleges that the Grower Defendants, given their joint employer  
11 relationship with Global, employed the Claimants working at their  
12 respective orchards in regard *only* to orchard-related matters.

13 In regard to orchard-related matters, the First Amended Complaint  
14 alleges that both Global and the Grower Defendants supervised the  
15 Claimants at the respective orchards. *See Torres-Lopez v. May*, 111 F.3d  
16 633, 640-43 (9th Cir. 1997) (discussing joint employment in context of  
17 Fair Labor Standards Act). And it specifically alleges that the Grower  
18 Defendants directed, inspected, and oversaw the work performed by the  
19 Claimants. *Id.* ¶¶ 121-28, 173-86 (alleging facts showing that the Grower  
20 Defendants had control over the work performed by the Claimants); *see*  
21 *Murray v. Principal Fin. Grp., Inc.*, 613 F.3d 943, 945-46 (9th Cir. 2010)  
22 (discussing factors to consider when determining whether a defendant is  
23 an employer for purposes of Title VII). Accordingly, the First Amended  
24 Complaint alleges facts to support a plausible finding that the Grower  
25 Defendants were employers of the Claimants at their respective orchards;  
26 therefore, the EEOC may pursue relief on the Claimants' behalf pertaining  
to the Grower Defendants' conduct at their orchards. However, the pled

1 joint employer relationship between each respective Grower Defendant and  
2 Global does not equate to joint liability for the Grower Defendants and  
3 Global in regard to each others' conduct; rather, the pled facts support  
4 a plausible finding that both are "employers" for Title VII purposes as  
5 to their orchard-related conduct. *See, e.g., Torres-Lopez*, 111 F.3d at  
6 640-43. The Grower Defendants' orchard-related conduct did not extend  
7 to paycheck issues because, under the alleged facts in the First Amended  
8 Complaint, it was Global, and not the Grower Defendants, that was  
9 responsible for calculating pay and issuing paychecks. Accordingly, with  
10 respect to non-paycheck orchard-related matters (hereinafter, "orchard-  
11 related matters"), each Grower Defendant is an employer of the Claimants  
12 working at their orchards.

13 In regard to non-orchard-related matters, the Court finds there are  
14 no alleged facts to support a plausible finding that the Grower  
15 Defendants were responsible for, oversaw, exerted control over, or should  
16 have exerted control over the recruiting process, transporting the  
17 Claimants, or providing subsistence and housing for the Claimants. The  
18 EEOC contends that the Grower Defendants are liable for any deficiencies  
19 in these non-orchard-related matters because they were joint employers  
20 with Global. Under the alleged facts, the Court disagrees.

21 First, as stated above, a joint employer relationship does not  
22 equate to joint liability. Second, the EEOC's argument that the Grower  
23 Defendants and Global are joint employers for all matters is not  
24 supported by the alleged facts: 1) the H2-A Compliance Review Checklist  
25 quoted in the First Amended Complaint identifies Global as the "employer"  
26 and the Grower Defendants as the "client" for purposes of the H2-A  
program, 2) the H2-A Agreements between Global and each Grower Defendant

1 placed the responsibility for recruiting and providing the Claimants with  
2 housing, transportation, and subsistence on Global, not the Grower  
3 Defendants, 3) there is no allegation that it is the Grower Defendants'  
4 practice, or a practice in the orchard industry, to transport, house,  
5 or feed its seasonal employees, and 4) there are no alleged facts that  
6 the Grower Defendants did so here. Therefore, the First Amended  
7 Complaint fails to plausibly allege that Global and each Grower Defendant  
8 are joint employers in regard to the non-orchard-related matters. The  
9 Grower Defendants' employment relationship with the Claimants did not  
10 extend to non-orchard-related matters under the alleged facts.

11 In summary, the facts alleged in the First Amended Complaint only  
12 plausibly support a finding that each Grower Defendant was an employer  
13 of the Claimants working for that Grower Defendant as to orchard-related  
14 matters and therefore only plausibly liable for any Title VII violations  
15 that the Grower Defendants engaged in at their orchards.

16 With this orchard-related limitation on the Grower Defendants  
17 "employer" status, the Court analyzes whether the First Amended Complaint  
18 sufficiently alleges the asserted Title VII disparate treatment, hostile  
19 work environment, constructive discharge, and retaliation claims (and  
20 related pattern and practice claims) against each Grower Defendant. The  
21 First Amended Complaint alleges the following orchard-related employment  
22 actions on account of the Claimants' race and national origin:

- 23 • the Claimants were disciplined and yelled at if their work was  
24 not properly done, ECF No. [141](#) ¶¶ 127 (Green Acre) & 233  
25 (Valley Fruit);
- 26 • the Claimants were subject to deplorable working conditions,  
[id.](#) ¶¶ 131 (Green Acre) & 189 (Valley Fruit);

- 1 • the Claimants had to work four hours without a break, id. ¶ 148  
2 (Green Acre);
- 3 • the Claimants had to do more difficult work than the workers  
4 of Mexican descent, id. ¶¶ 150 (Green Acre) & 214-16 (Valley  
5 Fruit);
- 6 • the working conditions became so intolerable that the Claimants  
7 felt compelled to escape, id. ¶¶ 162 (Green Acre) & 228 (Valley  
8 Fruit);
- 9 • the Claimants were harassed and threatened to meet quotas, id.  
10 ¶¶ 163-67 (Green Acre) & 229-32 (Valley Fruit);
- 11 • the Claimants were told that their work was not good enough,  
12 id. ¶ 185 (Green Acre); and
- 13 • the Claimants were required to continue working in 100 degree  
14 weather, id. ¶ 218 (Valley Fruit).

15 First, in regard to the hostile work environment and constructive  
16 discharge claims, when taking all possible reasonable inferences from the  
17 alleged facts in the EEOC's favor, the Court finds the First Amended  
18 Complaint's orchard-related allegations plausibly state such claims (and  
19 related pattern and practice claims) based on the Claimant's race or  
20 national origin against each of the Grower Defendants. See *Surrell v.*  
21 *Cal. Water Serv. Co.*, 518 F.3d 1097, 1108 (9th Cir. 2008) (identifying  
22 factors for hostile work environment claim as follows: 1) subjected to  
23 verbal or physical conduct, 2) because of race or national origin, 3) the  
24 conduct was unwelcome, and 4) the conduct was sufficiently severe or  
25 pervasive to alter the employment conditions and create an abusive  
26 working environment); *Penn. State Police v. Suders*, 542 U.S. 129, 134  
(2004) (requiring an employee claiming that he was constructively

1 discharged to show "that the abusive working environment became so  
2 intolerable that her resignation qualified as a fitting response"). It  
3 is plausible that the Grower Defendants created a work environment that  
4 was hostile toward the Claimants, as opposed to the Mexican workers, and  
5 the Claimants were compelled to quit working at the orchards. Although  
6 it is also plausible that the Grower Defendants' actions toward the  
7 Claimants were simply to encourage the Claimants to harvest a product  
8 that the Grower Defendants could sell and their actions were not based  
9 on racial animus, the Court must construe the pled facts in the EEOC's  
10 favor at this time. However, the orchard-related hostile work  
11 environment claim may not be based on any argument that the Grower  
12 Defendants failed to provide the Claimants with the amount of work  
13 promised by Global or that they were forced to stay at the orchards  
14 unnecessarily long, because the First Amended Complaint alleges that  
15 recruiting and transporting the Claimants was Global's responsibility.  
16 Accordingly, with this limitation, the First Amended Complaint states  
17 hostile work environment and constructive discharge claims (and related  
18 pattern and practice claims) against the Grower Defendants as to the  
19 orchard-related matters. The Grower Defendants' motion is granted in  
20 part and denied in part.

21 Second, in regard to the disparate treatment claim, the Court finds  
22 the First Amended Complaint fails to allege facts to support a plausible  
23 disparate treatment claim (or related pattern and practice claim). See  
24 *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010)  
25 (identifying factors for disparate treatment claim as follows: 1) a  
26 protected person, 2) qualified for the job and performed satisfactorily,  
3) an adverse employment action was taken by the employer, 4) because of

1 the person's protected status). The alleged facts do not identify a  
2 discrete adverse employment action. See *Brooks v. City of San Mateo*, 229  
3 F.3d 917, 928-29 (9th Cir. 2000) (examining the adverse employment action  
4 element). Although yelling and intolerable working conditions may  
5 constitute a hostile work environment, the alleged facts do not rise to  
6 the level needed to plausibly allege a discrete adverse employment action  
7 necessary to give rise to a disparate treatment claim (or related pattern  
8 or practice claim) distinct from a hostile work environment claim against  
9 the Grower Defendants in regard to orchard-related matters. The Grower  
10 Defendants' motion is granted in this regard.

11 Finally, in regard to the EEOC's claim of retaliation (and related  
12 pattern and practice claim), the Court finds the First Amended  
13 Complaint's orchard-related factual allegations plausibly state such  
14 claims against Green Acre, ECF No. [141](#) ¶¶ 168 & 169 (alleging that  
15 Claimants complained to Green Acre about working conditions and that  
16 thereafter production demands increased and work assignments were  
17 reduced). See *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 891 (9th Cir.  
18 1994) (setting forth elements for a Title VII retaliation claim). In  
19 comparison, the Claimants at Valley Fruit only complained about the need  
20 to work more hours because they had substantial debt. ECF No. [141](#) ¶ 234.  
21 Because it was Global, and not Valley Fruit, that allegedly made promises  
22 regarding the amount of work and pay that the Claimants would receive,  
23 the factual allegations are not sufficient to plausibly support a finding  
24 that the Claimants engaged in a protected activity when complaining about  
25 their work hours and pay received at the Valley Fruit orchards. In this  
26 regard, Green Acres' motion is denied, and Valley Fruit's motion is  
granted.

1           **3. Statute of Limitations**

2           The Grower Defendants contend that a 300-day statute of limitations  
3 applies to the EEOC's 42 U.S.C. § 2000e-5 claims (§ 706 disparate  
4 treatment, hostile work environment, constructive discharge, and  
5 retaliation claims) and § 2000e-6 claims (§ 707 pattern or practice  
6 claims). The EEOC argues that the 300-day time limit set forth in 42  
7 U.S.C. § 2000e-5(e)(1) does not apply to claims brought by the EEOC under  
8 § 2000e-6.

9           Section 2000e-6(e) states:

10           the Commission shall have authority to investigate and act on  
11 a charge of a pattern or practice of discrimination, whether  
12 filed by or on behalf of a person claiming to be aggrieved or  
13 by a member of the Commission. All such actions shall be  
14 conducted in accordance with the procedures set forth in  
15 section 2000e-5 of this title.

16           *Id.* § 2000e-6(e) (emphasis added). Section 2000e-5(e)(1) provides:

17           A charge under this section shall be filed within one hundred  
18 and eighty days after the alleged unlawful employment practice  
19 occurred and notice of the charge (including the date, place  
20 and circumstances of the alleged unlawful employment practice)  
21 shall be served upon the person against whom such charge is  
22 made within ten days thereafter, except that in a case of an  
23 unlawful employment practice with respect to which the person  
24 aggrieved has initially instituted proceedings with a State or  
25 local agency with authority to grant or seek relief from such  
26 practice . . . , such charge shall be filed by or on behalf of  
the person aggrieved *within three hundred days after the  
alleged unlawful employment practice occurred. . . .*

27           42 U.S.C. § 2000e-5(e)(1) (emphasis added). District courts are split  
28 on the question of whether the EEOC may seek relief for aggrieved persons  
29 pertaining to unlawful employment practices occurring more than 300 days  
30 before the filing of the administrative charge. See *EEOC v. Freeman*, No.  
31 RWT 09cv2573, 2010 WL 1728847 (D. Md. April 27, 2010) (listing district  
32 court cases).

1 After reviewing the plain language of §§ 2000e-5 and 2000e-6, the  
2 Court concludes that § 2000e-5(e)(1)'s 300-day statute of limitation is  
3 a "procedure" that applies to an action brought under § 2000e-6(e).  
4 Therefore, the EEOC's claim of retaliation (and related pattern and  
5 practice claim) against Green Acre is a discrete act which must have  
6 occurred within 300 days of the filing of the administrative action. See  
7 *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 111 (2002); *EEOC v.*  
8 *Kaplan Higher Educ. Corp.*, 790 F. Supp. 2d 619, 625 (N.D. Ohio 2011)  
9 ("Even in a pattern-or-practice case such as this, the discrete decisions  
10 to refuse to hire and to terminate employment cannot be linked together  
11 to create a continuing violation. Each refusal to hire or termination  
12 occurred on a readily-identifiable date certain, and is subject to the  
13 time limitation of [§ 2000e-5(e)(1)]."). In contrast, because a hostile  
14 work environment claim (and related constructive discharge and pattern  
15 and practice claims) is "comprised of a series of separate acts that  
16 collectively constitute one unlawful employment practice," *id.* at 117,  
17 the entire period of hostile work environment is considered for liability  
18 purposes so long as the Grower Defendants' act contributing to the  
19 Claimant's hostile work environment claim (and related constructive  
20 discharge claim and pattern and practice claim) occurred within the 300-  
21 day filing period. In summary, the Grower Defendants' motion is granted:  
22 the 300-day statute of limitations applies to actions brought by the  
23 EEOC.

#### 24 **D. Conclusion**

25 For the above-given reasons, **IT IS HEREBY ORDERED:** The Grower  
26 Defendants' Motions to Dismiss Plaintiff's First Amended Complaint, **ECF**  
**Nos. [150](#) & [154](#)**, are:

- 1 • **GRANTED IN PART:** 1) the disparate treatment claim and related  
2 pattern and practice claim are dismissed against all Grower  
3 Defendants, 2) the retaliation claim and related pattern and  
4 practice claim are dismissed against Valley Fruit, 3) no claim  
5 may be based on non-orchard-related matters; and 4) the 300-day  
6 statute of limitations applies as set forth above; and
- 7 • **DENIED IN PART:** 1) the hostile work environment and  
8 constructive discharge claims and related pattern and practice  
9 claims against the Grower Defendants survive as to orchard-  
10 related matters, and 2) the retaliation claim and related  
11 pattern and practice claim against Green Acre survive as to  
12 orchard-related matters.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
14 this Order and provide a copy to all counsel.

15 **DATED** this 27th day of July 2012.

16  
17 s/Edward F. Shea  
18 EDWARD F. SHEA  
Senior United States District Judge

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