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5 Attorneys for Plaintiff, GLOBAL HORIZONS, INC.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF KERN, NORTH KERN DISTRICT**

10 GLOBAL HORIZONS, INC, a California) Case No.
11 corporation, dba AgriLabor)
12) JUDGE
13 Plaintiff,)
14 vs.) Dept.
15) **COMPLAINT FOR:**
16 MUNGER BROTHERS,LLC., a California) **1. Breach of Contract**
17 Limited Liability company, ALFREDO) **2. Violation of the Cartwright Act**
18 AYALA dba AYALA AGRICULTURAL) **3. Intentional Interference with Economic**
19 SERVICES, JUAN AYALA and ALFREDO) **Benefit**
20 AYALA dba J & A CONTRACTORS, and)
21 DOES 1 TO 100)
22 Defendants.

23
24 **PLAINTIFF, GLOBAL HORIZONS, INCORPORATED, A CALIFORNIA**
25 **CORPORATION ALLEGES AS FOLLOWS:**

26 **General Allegations**

27 1. Plaintiff, GLOBAL HORIZONS, INC., hereinafter referred to as “GLOBAL” is
28 and at all relevant times alleged herein, was a corporation with its principal place of business
in the County of Los Angeles, California and therein doing business under the name of

1 AgriLabor. Plaintiff has duly complied in all respects with the requirements of Business and
2 Professions Code Sections 17910 through 17917 with respect to this fictitious business name.
3 Plaintiff provides farm labor contracting services to commercial farmers. Plaintiff actively
4 markets its ability to provide farm labor contracting services in the commercial farming
5 industry. Plaintiff is a commercial competitor of Defendants AYALA and J&A and DOES 1-
6 50, and competes with Defendants AYALA and J&A and DOES 1-50 with regard to the sale
7 and marketing of commercial farm labor contracting services as Plaintiff actively sells and
8 markets farm labor contracting services in the commercial farming industry.
9

10
11 2. At all relevant times herein, defendant, MUNGER BROTHERS, LLC., hereinafter
12 referred to as “MUNGER BROS.” was a limited liability company with its principal place of
13 business in Kern County, authorized and licensed to do business in the State of California.
14 MUNGER owns a commercial farm and sells and markets fruits and vegetables grown on its
15 farm. MUNGER actively markets its ability to provide fruits and vegetables grown on its
16 farm in the food industry.
17

18 3. At all relevant times herein, defendant, ALFREDO AYALA dba AYALA
19 AGRICULTURAL SERVICES, hereinafter referred to as “AYALA” was a business
20 organization form unknown, with its principal place of business in Kings County, authorized
21 and licensed to do business in the State of California. Defendant, AYALA provides farm
22 labor contracting services to commercial farmers. Defendant actively markets its ability to
23 provide farm labor contracting services in the commercial farming industry.
24

25 4. At all relevant times herein, defendants, JUAN AYALA and ALFREDO AYALA
26 dba J & A CONTRACTORS, hereinafter referred to as “J & A” was a business organization
27 form unknown, with its principal place of business in Kings County, authorized and licensed
28

1 to do business in the State of California. Defendant, J&A provides farm labor contracting
2 services to commercial farmers. Defendant actively markets its ability to provide farm labor
3 contracting services in the commercial farming industry.
4

5 5. Jurisdiction for this matter properly lies with this Court because the amount in
6 controversy is within the jurisdictional limits of this court, Defendants are doing business in
7 the County of Kern, California and also the acts of Defendants occurred within the court's
8 geographical jurisdiction.

9 6. This complaint is filed and this action is instituted under the Cartwright Act,
10 Business and Professions Code Section 16720 et seq., for an unlawful trust, agreement,
11 understanding, and concert of action.
12

13 7. Defendant MUNGER is engaged in intrastate commerce and manufactures,
14 distributes, sells, and markets commercially grown agricultural fruit products throughout
15 central California. This activity represents a regular, continuous and substantial flow of
16 intrastate commerce and, therefore, has a substantial effect on intrastate commerce in
17 California.
18

19 8. Plaintiff further alleges that each defendant named herein was the agent,
20 employee, associate, or affiliated entity of the other. Plaintiff is informed and believes and
21 thereon alleges that at all times material to this complaint each of the individual defendants and
22 each of the defendants fictitiously named in this complaint, In addition to acting for himself,
23 herself, or itself and on his, her, or its own behalf individually, is and was acting as the agent,
24 servant, employee and representative of, and with the knowledge, consent and permission of,
25 and in conspiracy with, each and all of the Defendants and within the course, scope and
26 authority of that agency, service, employment, representation, and conspiracy. Plaintiff further
27 alleges on information and belief that the acts of each of the Defendants were fully ratified by
28 each and all of the Defendants. Specifically, and without limitation, Plaintiff alleges on

1 information and belief that the actions, failures to act, breaches, conspiracy, and
2 misrepresentations alleged herein and attributed to one or more of the specific or fictitiously
3 named Defendants were approved, ratified, and done with the cooperation and knowledge of
4 each and all of the Defendants.

5 9. As such, the act of each defendant specifically and fictitiously named, is
6 attributable to each of the other defendants herein.
7

8 10. DOES 1 through 100 are individuals, business entities, associations, corporations,
9 affiliates, subsidiaries, parent entities, partnerships, limited partnerships, joint ventures,
10 predecessors and/or successors, the true names of which are unknown to Plaintiff, who
11 therefore sues these defendants by such fictitious names. Plaintiff is informed and believes
12 and thereon alleges that these fictitiously-named parties are in some manner legally
13 responsible for the damages alleged herein. Plaintiff will amend its complaint to allege the
14 true names and identities of these parties when the same are ascertained in accordance with
15 Code of Civil Procedure § 474.
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18 **FIRST CAUSE OF ACTION**
19 **(Breach of Contract as to Defendant MUNGER and DOES 1-10)**

20 11. Plaintiff incorporates the allegations set forth in Paragraph 1 through 10 above, as
21 so set forth here at length.

22 12. On February 9, 2006, Plaintiff, GLOBAL and Defendant MUNGER and DOES 1-
23 10 entered into a valid and binding written contract relating to the provision of farm laborers
24 by GLOBAL to MUNGER for the purpose of harvesting the blueberry crop growing on the
25 farm owned and operated by defendant. A true and correct copy of this contract is attached as
26 Exhibit "1."
27
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1 13. GLOBAL expressly represented and warranted in said contract, paragraph 6, that
2 it is in compliance with all applicable federal and state statutes and its workers are legally
3 eligible for employment in the United States.

4 14. The contract, Exhibit "1", according to the express language in Section 1, had a
5 term commencing on April 24, 2006 and continuing until June 20, 2006. During this period,
6 Plaintiff GLOBAL was to provide varying amounts of laborers for each week according to
7 the schedule listed in Exhibit "B" to the contract. Exhibit "B" is titled, "Number of Laborers
8 Needed per Week".

9 15. The parties also attached an Exhibit "A" to the contract. Exhibit "A" in its entirety
10 reads as follows:

11 " The expectation of each of the laborers provided by Global Horizons, LLC is
12 the he/she will pick an acceptable amount of blueberries contingent on the
13 number of times each blueberry plant had previously been harvested in that
14 season (see requirements below):

15 1st Pass: 90 lbs. blueberries per laborer per 7-hour day

16 2nd Pass: 135 lbs. blueberries per laborer per 7-hour day

17 Remainder of the season: 170 lbs. blueberries per laborer per 7-hour day"

18 17. GLOBAL was to provide "qualified and competent labor" under the contract and
19 GLOBAL warranted that the farm laborers provided by GLOBAL were in compliance with
20 Federal laws including but not limited to the Migrant and Seasonal Agricultural Worker
21 Protection Act, 29 U.S.C. § 1801, et. seq.

22 18. The farm laborers provided by GLOBAL harvested an average of 9.5 pounds of
23 blueberries per hour. This rate is also the overall average for the laborers not provided by
24 GLOBAL, who were also harvesting blueberries during the same time period on defendant's
25 farm.

26 19. Defendant, MUNGER demanded that the farm laborers supplied by GLOBAL
27 adhere to the picking schedule referred to as an "expectation" in Exhibit "A" of said contract
28

1 even though none of the hundreds of farm laborers had come close to harvesting the 2nd pass
2 “expectations” of 19.2 pounds per hour, or 135 pounds per seven hour day.

3 20. GLOBAL maintains that the express use of the term “expectation” was a goal for
4 the farm laborers to attempt to achieve if possible, not a strict quota or condition of
5 performance.

6 21. GLOBAL further maintains that the harvesting schedules listed in Exhibit “A” to
7 the contract were impossible to perform and therefore the inability of farm laborers to achieve
8 the “expectation” amounts should be excused.

9 22. Even though the farm laborers provided by GLOBAL were harvesting an average of
10 9.5 pounds of blueberries per hour from the start of contract period through May 10, 2006,
11 Defendant MUNGER sent correspondence to GLOBAL indicating that the laborers
12 “failed to pick an acceptable amount of blueberries”. Defendant also listed complaints relating
13 to the excessive dropping of green and ripe fruit to the ground, and ripe fruit being left on the
14 bushes.

15 23. One week later on May 17, 2006 defendant MUNGER sent a letter to
16 plaintiff, GLOBAL, stating that since plaintiff’s laborers had not picked the “required”
17 170 pounds of blueberries in a seven hour day, MUNGER was going to terminate the
18 contract due to GLOBAL’S “material breach of the agreement.”

19 24. GLOBAL maintains that it performed substantially and in good faith at all times
20 pursuant to the terms of the contract. Further, MUNGER breached the contract on May
21 17, 2006 by terminating the contract prior to its expiration date.

22 25. The parties agreed in Paragraph Ten of the contract that in the event of early
23 termination of the contract by MUNGER, Plaintiff would be entitled to recover the full
24 amount of compensation the laborers would have earned had the contract not been terminated
25 early, which is the remaining balance of \$1,702,400.00, plus the Department of Labor and
26 United States Citizenship and Immigration Services processing fees, plus all processing and
27 expenses incurred prior to the early termination date and attorney’s fees, plus a fifteen percent
28 administrative fee constituting liquidated damages. The amount for liquidated damages is

1 \$256,800.00.
2

3 26. At the time the parties entered into the contract, Plaintiff told defendant, MUNGER
4 and MUNGER knew, or had reason to know that GLOBAL was going to incur great costs
5 associated with providing farm laborers to MUNGER under the H-2A program, including but
6 not limited to airline travel, housing and transportation costs. These costs factors were
7 reasonably within the contemplation of the parties at the time of contracting. As a result of
8 MUNGER'S breach, as alleged, GLOBAL is entitled to the full term worker pay guarantee as
9 per paragraph Ten of the contract, in the amount of \$1,702,400.00 less a credit of \$59,952.00 of
10 and special damages as according to proof at time of trial. _____

11 _____ WHEREFORE, plaintiff prays for damages as set forth below.
12

13 **SECOND CAUSE OF ACTION**

14 **(Violation of the Cartwright Act- Business & Professions Code§ 16660 as to Defendants**
15 **MUNGER, AYALA, J& A and DOES 1-50)**

16 27. Plaintiffs incorporate the allegations set forth in Paragraph 1 through 26 above, as so
17 set forth here at length.

18 28. This complaint is filed and this action is also instituted under the Cartwright Act,
19 Business and Professions Code Section 16720 et seq., for an unlawful trust, agreement,
20 understanding, and concert of action Plaintiff seeks to prevent and restraint Defendant from
21 conducting its commercially restraining activity of violating state laws relating to its use of
22 employee labor.

23 29. Plaintiff alleges Defendants MUNGER and Defendants AYALA and J&A and
24 DOES 1-50 engaged in an illegal trust to restrict trade or commerce and conspired to restrain
25 trade or commerce and lessen competition by Defendants' use of illegal immigrant labor and
26 violation of California wage and hour laws to those workers, the effect of which restrains and
27 directly affects Plaintiff's ability to compete in the marketplace.
28

1 30. Defendant, MUNGER and AYALA and J&A and DOES 1-50 are separate entities
2 with separate interests. Defendant MUNGER is a commercial farmer who grows and sells
3 agricultural products. Defendants AYALA and J&A and DOES 1-50 supply farm labor to
4 commercial farmers. Defendants AYALA and J&A and DOES 1-50 are capable of supplying
5 thousands of farm laborers to commercial farmers in the Kern County area.

6 31. Plaintiff alleges Defendant MUNGER and AYALA and J&A and DOES 1-50
7 illegally conspired to have illegal immigrant undocumented workers used as cheap farm labor
8 on defendant MUNGER'S commercial farm from April thru June 2006. Defendants conspired
9 to use illegal alien undocumented workers to pick the blueberry crop on Defendant
10 MUNGER'S farm from late April through late June, 2006.

11 32. Plaintiff alleges that beginning at a time currently unknown to Plaintiff, but between
12 April 24 and May 18, 2006, Defendants MUNGER and AYALA and J&A and DOES 1-50
13 and others entered into and engaged in an unlawful trust in restraint of trade and commerce and
14 which prevents or lessens competition, described above, in violation of California Business and
15 Profession Code Section 16720.

16 33. Plaintiff alleges these violations of Business and Professions Code Section 16720
17 consisted, without limitation, of a continuing combination, trust, agreement, understanding, and
18 concert of action among Defendants and others, including but not limited to, purchasers
19 concerning the sale and supply of commercial farm labor in California.

20 34. For the purpose of forming and effectuating this unlawful trust, Defendants and
21 others have agreed, combined, and conspired as described in this complaint.

22 35. Entry of new competitors or expansion of the market will not be timely, likely, or
23 sufficient to undo the competitive harm that has resulted and will continue to result from
24 Defendants AYALA and J&A and DOES 1-50 attempt to monopolize the supply of
25 commercial farm laborers and involvement in the prohibited combination with Defendant
26 MUNGER described above in Restraint of Trade in violation of the Cartwright Act, as it was
27 intended to prevent competition in the commercial farm laborer industry.
28

1 36. There are high barriers to entry or expansion in the market for commercial farm
2 laborers. The barriers include providing qualified farm laborers in a manner that is in
3 compliance with California State wage and hour laws and Federal immigration and work visa
4 laws.

5 37. Plaintiff GLOBAL as part of its compliance with the H-2A worker visa program
6 incurs the expense of arranging transportation of the non local workers from and back to their
7 country of origin. GLOBAL provides satisfactory housing for all of the non-local workers for
8 the entire time they are in this country. GLOBAL pays the applicable processing fees to both
9 the Departments of Labor and Immigration. GLOBAL manages the laborers' daily living
10 requirements and ensure that both the housing and job sites pass frequent inspections by the
11 applicable agency overseeing GLOBAL'S treatment of the farm laborers.

12 38. Labor suppliers such as Defendants do not have to incur the cost of providing for
13 any of the above expenses.

14 39. Any business related efficiency resulting from Defendants MUNGER'S and
15 AYALA and J&A and DOES 1-50 involvement in the prohibited combination designed to
16 lessen competition is insufficient to offset the anticompetitive effects of Defendants', and each
17 of their, prohibited combination.

18 40. If Defendant's prohibited combination is allowed to continue unabated, it will likely
19 have the following effects:

20 (a) Competition in the field of commercial farm labor in Kern County will be eliminated
21 or substantially lessened.

22 (b) Actual and future competition between Plaintiff and Defendants AYALA and J&A
23 and DOES 1-50 and between these companies and others, in the provision of commercial farm
24 laborers in the relevant geographic markets will be eliminated or substantially lessened.

25 (c) Innovation and quality of service will likely decrease to levels below those that
26 would prevail absent Defendants' engagement in the prohibited combination.

27 WHEREFORE, plaintiff prays for damages as set forth below.
28

1 **THIRD CAUSE OF ACTION**
2 **(Intentional Interference With Economic Benefit against Defendants AYALA and J&A**
3 **and DOES 1 -50.)**

4 41. Plaintiffs incorporate the allegations set forth in Paragraph 1 through 40 above, as
5 set forth here at length.

6 42. On or about February 9, 2006, Plaintiff GLOBAL and Defendant MUNGER entered
7 into a written agreement under which GLOBAL was to provide commercial farm laborers to
8 harvest the blueberry crop on MUNGER'S farm from April 24, 2006 through June 20, 2006.
9 This contract required GLOBAL to provide gradually increasing amounts of laborers. The first
10 week started with 40 laborers then increased to 120 for week 2, then 400 for week 3 then to a
11 maximum of 600 farm laborers during the peak harvest period during weeks 4, 5 and 6 of the
12 contract. After that time, GLOBAL'S farm laborer requirements dropped to 480 for week 7,
13 then 120 for week 8 and finally 40 for week 9. A true and correct copy of the agreement,
14 marked as Exhibit "B" to the contract, is attached and incorporated herein by reference.

15 43. GLOBAL'S profits under the contract increased in proportion to the number of
16 farm laborers it was providing per week.

17 44. Defendants AYALA and J&A and DOES 1-50 knew of the relationship between
18 Plaintiff and MUNGER as Defendants AYALA and J&A and DOES 1-50 were also providing
19 farm laborers to MUNGER at the time of the aforementioned contract.

20 45. Plaintiff is informed and believes and thereon alleges that Defendants AYALA and
21 J&A and DOES 1-50 also gained additional profits in proportion to the number of laborers they
22 provided to MUNGER.

23 46. Plaintiff is informed and believes and thereon alleges Defendants AYALA and J&A
24 and DOES 1-50 intended to disrupt said relationship between GLOBAL and MUNGER by
25 offering farm laborers to MUNGER who would work for much less than the approximate
26 fourteen dollars (\$14.00) per hour MUNGER was obligated under the contract to pay the
27 laborers provided by GLOBAL.
28

1 47. Plaintiff is informed and believes and thereon alleges Defendants AYALA and J&A
2 and DOES 1-50 engaged in independently wrongful and illegal conduct by using their lower
3 overhead costs, as compared to Plaintiff's legal labor costs, as a result of their hiring of illegal
4 alien undocumented workers and also by not paying their workers according to California wage
5 and hour laws.

6 48. Plaintiff is informed, believes and thereon alleges that Defendants AYALA and J&A
7 and DOES 1-50, between April 24, 2006 and May 18, 2006, met with representatives of
8 MUNGER and offered to produce additional laborers to MUNGER in the event MUNGER
9 terminated the contract with GLOBAL, all with the intent to harm Plaintiff financially and to
10 induce MUNGER to breach its contract with GLOBAL.

11 49. On or about May 17, 2006, MUNGER terminated the contract with GLOBAL.

12 50. Plaintiff's relationship with MUNGER was disrupted as a proximate result of
13 Defendants AYALA and J&A and DOES 1-50, conduct and the breach of the contract by
14 MUNGER resulting in damages to GLOBAL in the amount of \$1,642,448.00

15 51. Plaintiff is informed, believes and thereon alleges he aforementioned acts of
16 Defendants, AYALA and J&A and DOES 1-50, and each of them were willful and malicious.
17 Plaintiff therefore is entitled to punitive damages.

18 WHEREFORE, plaintiff prays for damages as set forth below.

19
20 **PRAYER**

21 **As to the First Cause of Action**

22 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 23 1. For Breach of Contract damages, in the sum of \$1,642,448.00
24 2. For interest at the legal rate on the sum of \$_1,642,448.00 from and after June 1, 2006;
25 3. For Liquidated Damages as per Section 10 of the contract in the amount of \$256,800.00
26 4. For reasonable attorney's fees according to proof;
27 5. For costs of suit; and
28 6. For such other and further relief as the court may deem proper.

1 **As to the Second Cause of Action:**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 3 1. A declaration that the unlawful combination and conspiracy alleged in this complaint is an
4 unreasonable restraint of trade or commerce in violation of the Cartwright Act.
5 2. An award to Plaintiff of damages, as provided by law, as according to proof at trial and
6 judgment in favor of Plaintiff against Defendant, in an amount to be trebled in accordance with
7 antitrust law.
8 3. An award to Plaintiff for the costs of this suit (including expert fees) and reasonable
9 attorney's fees, as provided by law.
10 4. Interest from and after the date of the service of this complaint at the legal rate.
11 5. An award for such other and further relief as the nature of the case may require or as the
12 court deems just, equitable, and proper.

13
14 **As to the Third Cause of Action:**

15 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

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17
18 1. For damages in the amount of \$1,642,448.00 or as according to proof at trial.
19 2. For exemplary and punitive damages.
20 3. An award for such other and further relief as the nature of the case may require or as the
21 court deems just, equitable, and proper

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DEMAND FOR JURY TRIAL

Plaintiff hereby makes a demand for a jury trial in this action.

DATED: August 16, 2006

Law Offices of David Klehm

BY: _____
David Klehm
Attorney for Plaintiff
GLOBAL HORIZONS, INC.

PROOF OF SERVICE
1013A (3) CCP

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: Santa Ana, California.

On _____, **2006**, I served the foregoing document described as **Sumons and Complaint** _____ on the interested parties in this action:

XXX by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

XXX I caused such envelope to be deposited in the mail at Santa Ana, California. The envelope was mailed with postage thereof fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing affidavit.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

_____ (BY FACSIMILE) On the interested parties in this action pursuant to C.R.C. Rule 2009(b). The FAX number that I used was _____. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine.

Executed on _____, **2006**, at Santa Ana, California.

XXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

SERVICE LIST

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