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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

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CLEARING HOUSE
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

WILLIO MILIEN, RISLER PRESENDIEU
and SYLAINE BAPTISTE on behalf of
themselves and all others similarly situated;
YOLETTE FILS-AIME, GUERLIN
DORELYS and MARIE PAUL, individually,

CASE NO:

JURY TRIAL DEMANDED

CLASS REPRESENTATION

Plaintiffs,

vs.

2:16-cv-892-FJM-38/MEM

MCCLURE PROPERTIES, LTD., a Florida
limited partnership and WEST COAST
TOMATO, LLC, a Florida limited liability
company,

Defendants.

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Willio Milien, Risler Presendieu and Sylaine Baptiste, on behalf of themselves and all others similarly situated, Yolette Fils-Aime, Guerline Dorelys and Marie Paul, individually (collectively "Employees"), by and through their attorneys, bring this action for unpaid wages and payroll violations against MCCLURE PROPERTIES, LTD. and WEST COAST TOMATO, LLC (collectively "McClures"), and to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, assert as follows:

INTRODUCTION

The working people who bring this action are current or former farm labor employees who plant, prune and harvest commercially grown tomatoes for McClures. For a fourth growing

season McClures has, for the employer's benefit, required their workforce to receive their wages via payroll debit cards. Because of required convenience fees, foreign fees and other fees and surcharges associated with these payroll debit cards, the workers do not receive their full pay. For this and other reasons McClures' payroll debit card system is in violation of wage laws, other state and federal statutory protections and the Florida common law. Plaintiffs seek to recover for these violations on behalf of a class of similarly situated employees.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over Plaintiffs' claims under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§801, et seq. ("AWPA"), the Electronic Fund Transfer Act, 15 U.S.C. §§1693, et seq. ("EFTA") and 28 U.S.C. §1331.

2. This Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367 since the state law claims are so related to the AWPA and EFTA claims that they form part of the same case or controversy.

3. Venue is proper in this district under 28 U.S.C. §§1391(b) & (c). A substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Defendants reside in this judicial district and are subject to personal jurisdiction in this district, under §48.193, Florida Statutes, Florida's long-arm statute, because they operated, conducted, engaged in, or carried on a business or business venture in this judicial district, have an office in this judicial district and/or are otherwise engaged in substantial and not isolated activity within the judicial district.

PARTIES

4. Plaintiff and putative class representative Willio Milien is an adult man from Immokalee, Florida. At all times relevant to this action, Mr. Milien was a seasonal agricultural

worker within the meaning of the AWP, 29 U.S.C. §1802(10)(A) in that he was employed planting, cultivating or harvesting tomatoes and other crops in southwest Florida.

5. Plaintiff and putative class representative Risler Presendieu is an adult man from Immokalee, Florida. At all times relevant to this action, Mr. Presendieu was a seasonal agricultural worker within the meaning of the AWP, 29 U.S.C. §1802(10)(A) in that he was employed planting, cultivating or harvesting tomatoes and other crops in southwest Florida.

6. Plaintiff and putative class representative Sylaine Baptiste is an adult woman from Immokalee, Florida. At all times relevant to this action, Ms. Baptiste was a seasonal agricultural worker within the meaning of the AWP, 29 U.S.C. §1802(10)(A) in that she was employed planting, cultivating or harvesting tomatoes and other crops in southwest Florida.

7. Plaintiff Yolette Fils-Aime is an adult woman from Immokalee, Florida. At all times relevant to this action, Ms. Fils-Aime was a seasonal agricultural worker within the meaning of the AWP, 29 U.S.C. §1802(10)(A) in that she was employed planting, cultivating or harvesting tomatoes and other crops in southwest Florida.

8. Plaintiff Guerline Dorelys is an adult man from Immokalee, Florida. At all times relevant to this action, Mr. Dorelys was a seasonal agricultural worker within the meaning of the AWP, 29 U.S.C. §1802(10)(A) in that he was employed planting, cultivating or harvesting tomatoes and other crops in southwest Florida.

9. Defendant MCCLURE PROPERTIES, LTD. is a Florida limited partnership whose principal address is in Manatee County, Florida at 502 6th Avenue in Palmetto, Florida and whose sole general partner is a Florida limited liability company at the same address named MCCLURE HOLDINGS, LLC that employed Plaintiffs and members of the plaintiff class performing agricultural work in and around western and southwestern Florida during the relevant

period. At all times relevant to this action, Defendant MCCLURE PROPERTIES, LTD. was an agricultural employer within the meaning of the AWP, 29 U.S.C. §1802(2) in that it owned or operated a farm and employed the Plaintiffs and other migrant and seasonal agricultural workers to plant, cultivate and harvest its tomato crops.

10. Defendant WEST COAST TOMATO, LLC is a Florida limited liability company whose principal address is in Manatee County, Florida at 502 6th Avenue in Palmetto, Florida that employed Plaintiffs and members of the plaintiff class performing agricultural work in and around western and southwestern Florida during the relevant period. At all times relevant to this action, Defendant WEST COAST TOMATO, LLC was an agricultural employer within the meaning of the AWP, 29 U.S.C. §1802(2) in that it owned or operated a farm and employed the Plaintiffs and other migrant and seasonal agricultural workers to plant, cultivate and harvest its tomato crops.

11. MCCLURE PROPERTIES, LTD., MCCLURE HOLDINGS, LLC and WEST COAST TOMATO, LLC – herein collectively referred to as “McClures” – at all relevant times performed related business activities through unified operation and/or common control for a common business purpose and are otherwise collectively an enterprise within the meaning of 29 U.S.C. §203(r)(1) and other laws. After an inquiry reasonable under the circumstances, the Plaintiffs allege that the Defendants share common officers, common customers and common payroll in addition to coordinated, mutually supportive and interdependent business operations, factual contentions that will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. In this complaint the single business enterprise formed by the Defendants for the purposes of the application of the FMWA and other laws is referred to here as

“McClures,” which also refers to any of the named Defendants’ successors, predecessors, related, parent and/or subsidiary entities to which these allegations pertain.

12. MCCLURE PROPERTIES. LTD., MCCLURE HOLDINGS, LLC and WEST COAST TOMATO, LLC, or McClures, are joint employers of Plaintiffs and members of the plaintiff class within the meaning of the FLSA, 29 U.S.C. §203(d), the AWPB, 29 U.S.C. §1802(3), implementing regulations as well as other laws, and are responsible, individually and jointly, for the nonpayment or underpayment of wages based on the aggregated number of hours worked each week by Plaintiffs and members of the putative class. To the extent that joint employer status attaches to the Defendant companies for purposes of liability, they will be referred to in this complaint collectively as “McClures,” which also refers to any of the named Defendants’ successors, predecessors, related, parent and/or subsidiary entities to which these allegations pertain

ALLEGATIONS

Willio Milien

13. During the three most recently completed Florida tomato seasons – 2013-2014, 2014-2015 and 2015-2016 – Mr. Milien worked for McClures in southwest Florida. The agricultural fieldwork Mr. Milien did included planting tomatoes, putting in stakes and tying the tomatoes to them, pulling weeds, pruning the tomato plants and harvesting tomatoes.

14. Mr. Milien was paid a piece rate by McClures for harvesting tomatoes. All of the other work he did was compensated by McClures on an hourly basis at the applicable Florida minimum wage rate.

15. Mr. Milien was not given a choice about how he would be paid his wages. During the three years he worked for them, he was required by McClures to use a debit card they

provided him from third party vendors including Brightwell Payments, Inc. McClures 'loaded' the payroll debit cards with Mr. Milien's wages weekly, crediting the account tied to his debit card with the value of his weekly pay.

16. Mr. Milien accessed his weekly wages via automatic teller machines (ATM) in Immokalee, Florida. Every time he did so, he incurred convenience fees and foreign fees that were subtracted from the value on his payroll debit card and paid to a variety of financial institutions. Each ATM has a maximum amount of currency that can be dispensed in a single withdrawal, often \$100 or \$200. As a result Mr. Milien often had to make several withdrawals to access the full amount of his weekly wages if it exceeded that maximum one-time withdrawal amount, forcing him to incur multiple charges for each withdrawal. Finally, because ATMs are limited in the denominations they dispense, most often to only \$20 bills, Mr. Milien was unable to access amounts on his debit card that, after fees, were not multiples of that denomination. He was, in effect, forced to leave a value on his payroll debit card of up to \$20 that he could not access.

17. Mr. Milien was also subjected to a variety of other fees and surcharges directly associated with attempting accessing his wages; they drained additional resources from his pay but also put him in a Catch 22 situation. Because of the fees and surcharges imposed in order to access his wages, Mr. Milien could not always be sure of the value of his debit card. Brightwell Payments, Inc. and other third party vendors, however, charged fees for balance inquiries so simply determining the value of his wages subjected Mr. Milien to a reduction of those wages. On the other hand, when he guessed at the amount available on his payroll debit card in order to avoid balance inquiry fees and got that amount wrong, Mr. Milien was subjected to fees for insufficient funds.

18. Mr. Milien, because of McClure's payroll debit card system, estimates that he lost a minimum of approximately \$30 per month on a variety of costs incurred simply to access his wages. If there was a way for him to access his weekly wages without incurring any costs, McClures never instructed him on how to do so.

Risler Presendieu

19. Mr. Presendieu worked for McClures for more than six years until the 2015-2016 Florida tomato season. This agricultural fieldwork he did in southwest Florida included planting tomatoes, putting in stakes and tying the tomatoes to them, pulling weeds, pruning the tomato plants and harvesting tomatoes.

20. Mr. Presendieu was paid a piece rate by McClures for harvesting tomatoes. All of the other work he did was compensated by McClures on an hourly basis at the applicable Florida minimum wage rate.

21. Prior to the 2013-2014 Florida tomato season, Mr. Presendieu was paid by check. Starting with the 2013-2014 season, he was required by McClures to use a debit card they provided him from third party vendors including Brightwell Payments, Inc. McClures 'loaded' the payroll debit cards with Mr. Presendieu's wages weekly, crediting the account tied to his debit card with the value of his weekly pay. He was not given a choice about how he would be paid his wages.

22. Mr. Presendieu accessed his weekly wages via automatic teller machines (ATM) in Immokalee, Florida. Every time he did so, he incurred convenience fees and foreign fees that were subtracted from the value on his payroll debit card and paid to a variety of financial institutions. Each ATM has a maximum amount of currency that can be dispensed in a single withdrawal, often \$100 or \$200. As a result Mr. Presendieu often had to make several

withdrawals to access the full amount of his weekly wages if it exceeded that maximum one-time withdrawal amount, forcing him to incur multiple charges for each withdrawal. Finally, because ATMs are limited in the denominations they dispense, most often to only \$20 bills, Mr. Presendieu was unable to access amounts on his debit card that, after fees, were not multiples of that denomination. He was, in effect, forced to leave a value on his payroll debit card of up to \$20 that he could not access.

23. Mr. Presendieu was also subjected to a variety of other fees and surcharges directly associated with attempting accessing his wages; they drained additional resources from his pay but also put him in a Catch 22 situation. Because of the fees and surcharges imposed in order to access his wages, Mr. Presendieu could not always be sure of the value of his debit card. Brightwell Payments, Inc. and other third party vendors, however, charged fees for balance inquiries so simply determining the value of his wages subjected Mr. Presendieu to a reduction of those wages. On the other hand, when he guessed at the amount available on his payroll debit card in order to avoid balance inquiry fees and got that amount wrong, Mr. Presendieu was subjected to fees for insufficient funds.

24. Mr. Presendieu, because of McClure's payroll debit card system, estimates that he lost a minimum of approximately \$80 per month on a variety of costs incurred simply to access his wages. If there was a way for him to access his weekly wages without incurring any costs, McClures never instructed him on how to do so.

Sylaine Baptiste

25. Ms. Baptiste worked for McClures during two of the three most recently completed Florida tomato seasons, with a gap of one year between the two seasons she worked for McClures. This agricultural fieldwork she did in southwest Florida included planting

tomatoes, putting in stakes and tying the tomatoes to them, pulling weeds, pruning the tomato plants and harvesting tomatoes.

26. Ms. Baptiste was paid a piece rate by McClures for harvesting tomatoes. All of the other work she did was compensated by McClures on an hourly basis at the applicable Florida minimum wage rate.

27. Ms. Baptiste was required by McClures to use a debit card they provided her from third party vendors including Brightwell Payments, Inc. McClures 'loaded' the payroll debit cards with Ms. Baptiste's wages weekly, crediting the account tied to her debit card with the value of her weekly pay. She was not given a choice about how she would be paid her wages and she was charged approximately \$10 for the second payroll debit card that was issued to her when she returned to work for McClures for the last season.

28. Ms. Baptiste accessed her weekly wages via automatic teller machines (ATM) in Immokalee, Florida. Every time she did so, she incurred convenience fees and foreign fees that were subtracted from the value on her payroll debit card and paid to a variety of financial institutions. Each ATM has a maximum amount of currency that can be dispensed in a single withdrawal, often \$100 or \$200. As a result Ms. Baptiste often had to make several withdrawals to access the full amount of her weekly wages if it exceeded that maximum one-time withdrawal amount, forcing her to incur multiple charges for each withdrawal. Finally, because ATMs are limited in the denominations they dispense, most often to only \$20 bills, Ms. Baptiste was unable to access amounts on her debit card that, after fees, were not multiples of that denomination. She was, in effect, forced to leave a value on his payroll debit card of up to \$20 that he could not access.

29. Ms. Baptiste was also subjected to a variety of other fees and surcharges directly associated with attempting accessing her wages; they drained additional resources from her pay but also put her in a Catch 22 situation. Because of the fees and surcharges imposed in order to access her wages, Ms. Baptiste could not always be sure of the value of her debit card. Brightwell Payments, Inc. and other third party vendors, however, charged fees for balance inquiries so simply determining the value of her wages subjected Ms. Baptiste to a reduction of those wages. On the other hand, when she guessed at the amount available on her payroll debit card in order to avoid balance inquiry fees and got that amount wrong, Ms. Baptiste was subjected to fees for insufficient funds.

30. Ms. Baptiste, because of McClure's payroll debit card system, estimates that she lost a minimum of approximately \$60 per month on a variety of costs incurred simply to access her wages. If there was a way for her to access her weekly wages without incurring any costs, McClures never instructed her on how to do so.

Yolette Fils-Aime

31. Ms. Fils-Aime worked for McClures during the 2015-2016 Florida tomato season in southwest Florida harvesting tomatoes. She was paid a piece rate by McClures for her work.

32. Ms. Fils-Aime was required by McClures to use a debit card they provided her from third party vendors including Brightwell Payments, Inc. McClures 'loaded' the payroll debit cards with Ms. Fils-Aime's wages weekly, crediting the account tied to her debit card with the value of her weekly pay. She was not given a choice about how she would be paid her wages.

33. Ms. Fils-Aime accessed her weekly wages via automatic teller machines (ATM) in Immokalee, Florida. Every time she did so, she incurred convenience fees and foreign fees that were subtracted from the value on her payroll debit card and paid to a variety of financial

institutions. Each ATM has a maximum amount of currency that can be dispensed in a single withdrawal, often \$100 or \$200. As a result Ms. Fils-Aime often had to make several withdrawals to access the full amount of her weekly wages if it exceeded that maximum one-time withdrawal amount, forcing her to incur multiple charges for each withdrawal. Finally, because ATMs are limited in the denominations they dispense, most often to only \$20 bills, Ms. Fils-Aime was unable to access amounts on her debit card that, after fees, were not multiples of that denomination. She was, in effect, forced to leave a value on his payroll debit card of up to \$20 that he could not access.

34. Ms. Fils-Aime was also subjected to a variety of other fees and surcharges directly associated with attempting accessing her wages; they drained additional resources from her pay but also put her in a Catch 22 situation. Because of the fees and surcharges imposed in order to access her wages, Ms. Fils-Aime could not always be sure of the value of her debit card. Brightwell Payments, Inc. and other third party vendors, however, charged fees for balance inquiries so simply determining the value of her wages subjected Ms. Fils-Aime to a reduction of those wages. On the other hand, when she guessed at the amount available on her payroll debit card in order to avoid balance inquiry fees and got that amount wrong, Ms. Fils-Aime was subjected to fees for insufficient funds.

35. Ms. Fils-Aime, because of McClure's payroll debit card system, estimates that she lost a minimum of approximately \$20 per month on a variety of costs incurred simply to access her wages. If there was a way for her to access her weekly wages without incurring any costs, McClures never instructed her on how to do so.

Guerlin Dorelys

36. Mr. Dorelys first worked for McClures during the 2010-11 Florida tomato season and worked for them thereafter for five seasons. This agricultural fieldwork he did in southwest Florida included planting tomatoes, putting in stakes and tying the tomatoes to them, pulling weeds, pruning the tomato plants and harvesting tomatoes.

37. Mr. Dorelys was paid a piece rate by McClures for harvesting tomatoes. All of the other work he did was compensated by McClures on an hourly basis at the applicable Florida minimum wage rate.

38. Prior to the 2013-2014 Florida tomato season, Mr. Dorelys was paid by check. Starting with the 2013-2014 season, he was required by McClures to use a debit card they provided him from third party vendors including Brightwell Payments, Inc. McClures 'loaded' the payroll debit cards with Mr. Dorelys' wages weekly, crediting the account tied to his debit card with the value of his weekly pay. He was not given a choice about how he would be paid his wages.

39. Mr. Dorelys accessed his weekly wages via automatic teller machines (ATM) in Immokalee, Florida. Every time he did so, he incurred convenience fees and foreign fees that were subtracted from the value on his payroll debit card and paid to a variety of financial institutions. Each ATM has a maximum amount of currency that can be dispensed in a single withdrawal, often \$100 or \$200. As a result Mr. Dorelys often had to make several withdrawals to access the full amount of his weekly wages if it exceeded that maximum one-time withdrawal amount, forcing him to incur multiple charges for each withdrawal. Finally, because ATMs are limited in the denominations they dispense, most often to only \$20 bills, Mr. Dorelys was unable to access amounts on his debit card that, after fees, were not multiples of that denomination. He

was, in effect, forced to leave a value on his payroll debit card of up to \$20 that he could not access.

40. Mr. Dorelys was also subjected to a variety of other fees and surcharges directly associated with attempting accessing his wages; they drained additional resources from his pay but also put him in a Catch 22 situation. Because of the fees and surcharges imposed in order to access his wages, Mr. Dorelys could not always be sure of the value of his debit card. Brightwell Payments, Inc. and other third party vendors, however, charged fees for balance inquiries so simply determining the value of his wages subjected Mr. Dorelys to a reduction of those wages. On the other hand, when he guessed at the amount available on his payroll debit card in order to avoid balance inquiry fees and got that amount wrong, Mr. Dorelys was subjected to fees for insufficient funds.

41. Mr. Dorelys, because of McClure's payroll debit card system, estimates that he lost a minimum of approximately \$50 per month on a variety of costs incurred simply to access his wages. If there was a way for him to access his weekly wages without incurring any costs, McClures never instructed him on how to do so.

Allegations common to all Plaintiffs

42. For work harvesting tomatoes, McClures paid Plaintiffs and members of the putative class a piece rate wage. For all other activities – including planting and pruning – McClures compensated Plaintiffs and members of the putative class at an hourly rate equal to the Florida minimum wage rate.

43. Prior to approximately 2013, McClures paid laborers employed planting, pruning and harvesting tomato crops in Florida via check.

44. After approximately 2013, and from that time until the present, McClures has required all laborers employed by them planting, pruning and harvesting tomato crops in Florida to receive their wages via payroll debit cards. McClures obtained/obtains the payroll debit cards issued by third parties, including Brightwell Payments, Inc. and/or other providers, by setting up accounts for each laborer and then providing the cards to its employees. Laborers' wages were then electronically added to the corresponding account each workweek.

45. Plaintiffs and members of the putative class are not offered and not permitted an alternative payment method to payroll debit cards.

46. Brightwell Payments, Inc. and other third party providers of debit cards used by McClures promote the use of payroll debit cards as 'payroll your way' saving labor costs and administrative expenses that employers would otherwise incur. McClures in fact realizes considerable savings in labor costs and in administrative burdens by using payroll debit cards.

47. Each time Plaintiffs and members of the putative class access funds on their payroll debit cards though purchases, withdrawals or other transactions, they incur convenience fees, foreign fees and other fees and surcharges imposed by the institutions that issued the debit cards and/or the vendors accepting them that range from 50¢ to \$8 per transaction.

48. Among the fees and charges Plaintiffs and members of the putative class are subjected to are charges for balance inquiries and charges for having insufficient funds. These place Plaintiffs and members of the putative class in a challenging position because they are charged to confirm the balance on their payroll cards but are also charged if they overestimate the value of the funds on their payroll debit cards, a challenging task given the variety of charges and fees that they are constantly subjected to and reduce the value on their cards.

49. Plaintiffs and members of the putative class are also subjected to other fees and surcharges unrelated to transactions, including a \$10 cost to replace a lost debit cards, a \$15 cost to close an account and a \$1 cost to contact a customer service representative at the financial institution issuing the card.

50. Plaintiffs and members of the putative class incur added costs because of constraints on accessing wages as cash when utilizing automatic teller machines (ATMs). Limits on the amount of cash that can be withdrawn per transaction mean that Plaintiffs and members of the putative class incur costs when making multiple withdrawals in order to access the full amount of wages on payroll debit card. In addition the denominations of currency issued by ATMs mean that Plaintiffs and members of the putative class are forced to leave un-accessed balances on their debit card when the remaining amount is less than the minimum denomination that can be accessed at an ATM.

51. As a result of the forgoing, Plaintiffs and members of the putative class cannot access their weekly wages without a discount imposed by operation of the fees, surcharges and constraints described above.

52. If there is a way for Plaintiffs and members of the putative class to access their weekly wages without a discount imposed by operation of the fees, surcharges and constraints described above, McClures has failed to inform or instruct Plaintiffs and members of the putative class how to do so.

53. McClures is aware that Plaintiffs and members of the putative class are subjected to the fees, surcharges and constraints described above.

54. Plaintiffs and members of the putative class have incurred costs and attorney's fees in prosecuting this action.

COUNT I

UNPAID FLORIDA MINIMUM WAGES (Class)

Sec. 24, Art. X, FLA. CONST.

55. Plaintiffs restate and reallege the above allegations as if fully set forth here.

56. Plaintiffs and members of the putative plaintiff class at all times during the class period were employees of Defendant McClure's, were employees within the meaning of the Florida Minimum Wage Amendment, art. X, § 24, FLA. CONST. (hereinafter "FMWA"), were covered by the FMWA and were otherwise entitled to the protections of the FMWA.

57. The minimum wage rates that Plaintiffs and members of the putative plaintiff class were entitled to receive under the FMWA during the corresponding period are as follows:

<u>Year</u>	<u>Florida minimum wage rate</u>
2013	\$7.79
2014	\$7.93
2015	\$8.05
2016	\$8.05

58. Per subsection (f) of the FMWA, its provisions are interpreted consistent with the Fair Labor Standards Act, 29 U.S.C. §§201, et seq. (hereinafter "FLSA").

59. The FMWA, consistent with the FLSA, requires that employees be paid at least the minimum wage free and clear. 29 C.F.R. §531.35.

60. Subjected to the costs imposed by the mandatory payroll debit card system, Plaintiffs and members of the putative plaintiff class did not receive their minimum wages free and clear and McClures thus violated the FMWA.

61. The FMWA, consistent with the FLSA, does not permit employees to bear the cost of items primarily for the benefit or convenience of the employer out of their minimum wages. 29 C.F.R. §§531.3(d)(1) and 531.32.

62. Subjected to the costs imposed by the mandatory payroll debit card system, Plaintiffs and members of the putative plaintiff class were improperly made to pay the cost of items primarily for the benefit or convenience of the employer out of their minimum wages and McClures thus violated the FMWA.

63. The FMWA, consistent with the FLSA, requires that minimum wage employees be paid with an instrument uniformly negotiable at par, payable on demand. 29 CFR §§531.27 and 531.34.

64. Plaintiffs and members of the putative plaintiff class were paid with payroll debit cards not uniformly negotiable at par and/or not payable on demand preventing them from accessing their minimum wages as required by the FMWA.

65. McClures otherwise violated the FMWA when Plaintiffs and members of the putative plaintiff class received less than the rates required by the FMWA.

66. McClures' violations of the FMWA entitle Plaintiffs and members of the putative plaintiff class to unpaid back wages and an additional amount equal to the value of unpaid back wages as liquidated damages.

67. McClures' violations of the FMWA were willful violations for purposes of applying a five year statute of limitations.

68. Willio Milien, Risler Presendieu, Sylaine Baptiste, Yolette Fils-Aime and Guerline Dorelys each served a notice of intent to bring an action for unpaid wages meeting the requirements of, and otherwise complying with, §448.110, Florida Statutes, to the extent the obligations of that section may or not be legally required per subsection (f) of Art. X, §24, FLA. CONST.

69. The claims of the Plaintiffs and members of the putative class under this count constitute an action for unpaid wages for purposes of awarding the costs of this action and a reasonable attorney's fee under §448.08 of the Florida Statutes.

COUNT II

VIOLATION OF AGRICULTURAL WORKER PROTECTION ACT (Class)

Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801 et seq.

70. Plaintiffs restate and reallege the above allegations as if fully set forth here.

71. Plaintiffs and members of the putative class are agricultural workers covered by and entitled to the protections of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801, et seq. ("AWPA") and whose work for McClures is subject to the AWPA.

72. The AWPA requires employers to pay wages when due. 29 U.S.C. §§1822(a) & 1832(a) and 29 C.F.R. §500.81.

73. As a result of the charges assessed for the use of the payroll debit cards, Defendant McClures failed to pay wages when due when Plaintiffs and members of the putative class did not receive the full amount of the piece-rate or hourly wages due to them and McClures thus violated the AWPA.

74. Defendant McClures failed to pay wages when due when Plaintiffs and members of the putative class did not receive wages at an hourly rate at least equal to the Florida minimum wage rate and McClures thus violated the AWPA

75. The AWPA prohibits employers from violating without justification the terms of a working arrangement, an arrangement that must incorporate those aspects of the working relationship that are required by law. 29 U.S.C. §§1822(c) and 1832(c),

76. The requirement to pay Plaintiffs and member of the putative class at an hourly rate at least equal to the Florida minimum wage rate was a term of their working arrangement. McClures violated that term and thus also violated the AWP.

77. The AWP requires an itemized written statement for each pay period. 29 U.S.C. §§1821(d)(2) & 1831(c)(2) and 29 C.F.R. §500.80(d). Further, the AWP requires that in making such written disclosures, employer may not provide false or misleading information to employees including about their net pay. 29 U.S.C. §§1821(f) and 1831(e).

78. McClures failed to provide the Plaintiffs and members of the putative class the required itemized written statement for each pay period and thus violated the AWP or in the alternative, if McClures did provided Plaintiffs and members of the putative class itemized written statements, then these were impermissibly misleading. That is, in establishing its system of payment using payroll debit cards, McClures knew, was aware or should have known that the Plaintiffs and members of the putative class would be subjected to convenience fees, foreign fees and other fees and surcharges. This information was not, however, disclosed in any itemized written statement provided to them. As such McClures failed to provide itemized written statements or, in the alternative, if it did McClures knowingly provided false or misleading information to the Plaintiffs and members of the putative class concerning their net pay.

79. The AWP prohibits and employer from requiring employees to purchase goods or services solely from an agent of the employer. 29 U.S.C. §§1822(b) & 1832(b), and 29 C.F.R. §500.73.

80. The providers of the payroll debit cards, including Brightwell Payments, were McClures' agents within the meaning of 29 C.F.R. §500.73.

81. Plaintiffs and members of the putative class, because McClures made them receive wages via payroll debit cards, were required to purchase financial services solely from Defendant's agent and were thereby also subjected to fees and/or surcharges in violation of the AWPA.

82. For purposes of computing statutory damages under 29 U.S.C. §1854, McClures committed at least four separate violations of the AWPA by:

- a) failing to pay wages when due;
- b) failing to comply with the working arrangement;
- c) failing to provide itemized statements or, in the alternative, knowingly providing false or misleading statements on them; and
- d) requiring class members to purchase services solely from Defendant's agent.

83. McClures is liable to Plaintiffs and members of the putative class for damages under 29 U.S.C. §1854.

84. McClures' violations of the AWPA were part of their standard operating practices during the period relevant to this action. McClures' violations of the AWPA were persistent, and extended over several seasons.

85. The violations of the AWPA and its attendant regulations as set forth in this count were the natural consequences of the conscious and deliberate actions of the Defendants and were intentional within the meaning of the AWPA, 29 U.S.C. §1854.

86. As a result of Defendants' violations of the AWPA and its attendant regulations as set forth in this count, Plaintiffs and the other class members have suffered damages.

87. An attempt was made to resolve the issues in dispute before the resort to litigation via a pre-suit demand letter setting forth the forgoing to which McClures did not respond.

88. The claims of Milien and members of the putative class under this count constitute an action for unpaid wages for purposes of awarding the costs of this action and a reasonable attorney's fee under §448.08 of the Florida Statutes.

COUNT III

VIOLATION OF CHAPTER 532 (Class)

Secs. 532.01 & 532.02, FLA. STATS. (Devices Issued in Payment for Labor)

89. Plaintiffs restate and reallege the above allegations as if fully set forth here.

90. By failing to pay the wages due to Plaintiffs and members of the putative class in cash, on demand and without discount, Defendant McClure's violated section 532.01, Florida Statutes, and is liable to Plaintiffs and members of the putative class for the value of the debit cards not received.

91. By failing to properly provide the name and address of the Florida place of business where the payroll debit cards provided to Plaintiffs and members of the putative class were negotiable and payable in cash, Defendant McClure's violated section 532.01 and is liable to Plaintiffs and members of the putative class for the value of the wages on their payroll debit cards not received.

92. Plaintiffs have made a demand, within the meaning of section 532.02, Florida Statutes, for the value of payment made to them with the debit cards and McClures is liable to Plaintiffs and members of the putative class for value of the wages on their payroll debit cards not received.

93. McClures has not responded to the demand made by the Plaintiffs for the value of the wages on their payroll debit cards not received, has failed to comply with section 532.02 and

is otherwise liable to Plaintiffs and members of the putative class for value of the wages on their payroll debit cards not received.

94. The claims of Plaintiffs and members of the putative class under this count constitute an action for unpaid wages for purposes of awarding the costs of this action and a reasonable attorney's fee under section 448.08 of the Florida Statutes.

COUNT IV

VIOLATION OF ELECTRONIC FUNDS TRANSFER ACT (Class)

Electronic Funds Transfer Act, 15 U.S.C. §§1693, et seq.

95. Plaintiffs restate and reallege the above allegations as if fully set forth here.

96. McClure's use of payroll debit cards is a transaction governed by The Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. §§1693, et seq., and Plaintiffs and members of the putative class are entitled to enforce the provisions of the EFTA and its implementing regulations.

97. McClures mandated a payroll debit card system for Plaintiffs and members of the putative class provided by third party financial institutions, including Brightwell Payments.

98. Through its payroll debit card system, McClures required Plaintiffs and members of the putative class to establish an account for receipt of their pay with a particular financial institution as a condition of employment and violated 15 U.S.C. s. 1693k and 12 C.F.R. s. 1005.10.

99. McClures is liable to Plaintiffs and members of the putative class for damages together with costs and attorney's fees under 15 U.S.C. §1693m.

COUNT V

UNJUST ENRICHMENT (Class)

Florida Common Law

100. Plaintiffs restate and reallege the above allegations as if fully set forth here.

101. McClures, through its mandated payroll debit card system, realized considerable savings in labor costs and in administrative burdens.

102. McClures' considerable savings have come at the expense of Plaintiffs and members of the putative class who have no choice but to incur convenience fees, foreign fees and other fees and surcharges associated with the mandated payroll debit card system.

103. Milien and members of the putative class have conferred a benefit on McClures that McClures knowingly accepted and retained under circumstances such that it would be inequitable for McClures to retain the benefit without paying its value to Plaintiffs and members of the putative class and where an adequate remedy at law does not exist.

104. Equity requires Plaintiffs and members of the putative class to restitution in an amount equal to the value of the benefit conferred.

CLASS ACTION ALLEGATIONS – Rule 23, Fed. R. Civ. P.

105. Putative class representatives Willio Milien, Risler Presendieu and Sylaine Baptiste bring all counts as a class action under Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class described as follows:

all current and former employees who performed work for McClures in Florida at any time during the period from four years ago until the present and were required to receive their wages via a payroll debit card

106. After an inquiry reasonable under the circumstances, members of the putative class are estimated to exceed 100 in number – a factual contention that will likely have

evidentiary support after a reasonable opportunity for further investigation or discovery – and are otherwise sufficiently numerous that joinder of individual members in this action is impracticable.

107. Members of the putative class, in being underpaid and incurring other damages and/or restitution because of McClures' use of a mandatory payroll debit card system, have suffered the same injury capable of class wide resolution involving common questions of law or fact.

108. The claims of Milien, Presendieu and Baptiste as the putative representatives are typical of the claims of all members of the putative class. Milien, Presendieu and Baptiste and all members of the putative class were subjected to McClures' mandatory payroll debit card system, incurred the same damages and/or restitution and assert the same legal theory to recover.

109. Milien, Presendieu and Baptiste, as the putative representatives will fairly and adequately protect and represent the interest of each member of plaintiff class in that they:

- a) have interests coextensive with those of all members of the plaintiff class since all have a mutual concern in seeking relief against McClures for wages not received;
- b) will diligently prosecute this action, with no interest or relationship with the defendants that would prevent them from litigating this matter fully and aware that resolution of a class action is subject to court approval; and.
- c) have retained competent attorneys experienced in class action litigation who will competently, responsibly and vigorously prosecute and maintain this action.

110. Questions of law or fact common to all members of the putative class predominate over any questions affecting only individual members, including:

- a) whether McClures mandated a payroll debit card system;

- b) whether members of the putative plaintiff class were forced, as a result, to pay fees and surcharges;
- c) whether McClures' payroll debit card system violates Florida Minimum Wage Amendment;
- d) whether McClures' payroll debit card system violates the provisions of the Migrant and Seasonal Agricultural Worker Protection Act and when any violations of that Act were intentional within the meaning of 29 U.S.C. §1854(c)(1);
- e) whether McClures' payroll debit card system violates sections 532.01 and 532.02 of the Florida Statutes;
- f) whether McClures' payroll debit card system violates the Electronic Fund Transfer Act; and
- g) whether members of the putative plaintiff class are entitled to restitution for the benefit conferred upon McClures by being subjected to McClures' payroll debit card system.

111. A class action is superior to other available methods for the fair and efficient adjudication of claims brought under Florida Minimum Wage Amendment, the Migrant and Seasonal Agricultural Worker Protection Act, sections 532.01 and 532.02 of the Florida Statutes, the Electronic Fund Transfer Act and the Florida common law since they raise the same questions of law and raise questions of fact capable of generalized proof and resolution in a single adjudication. Adjudicating these claims presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them. The alternative to the maintenance of these claims as a class would

be burdensome and inefficient and would require a costly, time-consuming, and repetitive presentation of evidence on common issues.

112. This action is properly maintainable as a class action because the putative representatives satisfy the four prerequisites in part (a) of Rule 23 and the claims they bring under this count satisfy the criteria in part (b)(3) of the rule.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Willio Milien, Risler Presendieu and Sylaine Baptiste, on behalf of themselves and all others similarly situated, and Yolette Fils-Aime, Guerline Dorelys and Marie Paul, individually, demand that this Court:

- a) order, under Rule 23, Fed. R. Civ. P., that a class be certified that consists of all current and former employees who performed work for McClures in Florida at any time during the period from four years ago until the present and were required to receive their wages via a payroll debit card; that Willio Milien, Risler Presendieu and Sylaine Baptiste be appointed as class representatives; and that their counsel be appointed to represent this class;
- b) award the plaintiffs, class representatives and all members of the class unpaid back wages and an additional amount equal to the value of unpaid back wages as liquidated damages under Art. X, s. 24, Fla. Const.;
- c) award the plaintiffs, class representatives and all members of the class the greater of either actual damages or \$500 in statutory damages per violation per plaintiff and per class member, under 29 U.S.C. §1854;

- d) award the plaintiffs, class representatives and all members of the class damages, consisting in the full value of wages not received, under Chapter 532, Florida Statutes;
- e) award the plaintiffs, class representatives and all members of the class actual and/or statutory damages sustained, under 15 U.S.C. § 1693m, for violations of the Electronic Fund Transfers Act;
- f) award the plaintiffs, class representatives and all members of the class restitution in an amount equal to the value of the benefit they conferred on the defendant, under Florida common law;
- g) award the plaintiffs the costs for this action and reasonable attorneys' fees under §448.24, Fla. Stats., and 15 U.S.C. §1693m(a)(3);
- h) award the plaintiffs an amount equal to ten percent of the amount awarded under Chapter 532 as attorneys' fees under §532.02(3), Fla. Stats.; and
- i) grant any such other relief in law or equity as this Court deems just.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: December 15, 2016

Kelley Uustal, PLC

By: 

Jose J. Rodriguez, Trial Counsel
Florida Bar No. 29469
Attorneys for Plaintiffs
500 North Federal Highway, Suite 200
Fort Lauderdale, Florida 33301
Telephone: (954) 522-6601
Facsimile: (954) 522-6608
jjr@kulaw.com

JS 44 (Rev 12/12)

CIVIL COVER SHEET RECEIVED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS WILLIO MILIEN, RISLER PRESENDIEU and SYLAINE BAPTISTE, et al.,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Seminole County, Florida</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Jose J. Rodriguez, Esquire, Kelley Uustal, PLC 500 N. Federal Hwy., St. 200, Ft. Lauderdale, FL 33301 Phone: 954-522-6601; Fax: 954-522-6608</p>	<p>DEFENDANTS MCCLURE PROPERTIES, AN LTD PARTNERSHIP AND WEST COAST TOMATO, LLC, a Florida limited liability company,</p> <p>County of Residence of First Listed Defendant <u>Manatee County, FL</u> (EXCEPT IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> </tr> </table> <p>Incorporated or Principal Place of Business In This State: <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State: <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation: <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
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Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1											
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2											
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3											

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<p>LABOR</p> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395(f)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable-Sat TV <input type="checkbox"/> 850 Securities Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609			
			IMMIGRATION			
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §§801, et seq and 15 U.S.C. §§1693, et seq.

Brief description of cause:
Class of employees forced to forgo portion of their wages for employer's benefit

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint.
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE: [Signature] DOCKET NUMBER: _____

DATE: December 15, 2016 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY

RECEIPT # FMD/0323 AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

2:16CV-892-FM-38MRM

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Over Employee Payroll Debit Cards](#)
