

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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CRISPIN HERNANDEZ, WORKERS'  
CENTER OF CENTRAL NEW YORK, and WORKER  
JUSTICE CENTER OF NEW YORK,

Index No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs,

v.

THE STATE OF NEW YORK and GOVERNOR ANDREW  
CUOMO, in his official capacity,

Defendants.

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**INTRODUCTION**

1. Farmworkers are some of New York's poorest and most exploited workers. Hidden from public view, they live and toil on farms across the State. The work they perform is dangerous and grueling, with among the highest fatality rates of any occupation. Many live in farm "labor camps" plagued by unhygienic conditions and are subject to abusive and hostile treatment by their employers, all while working long, exhausting days for meager wages.

2. Farmworkers also contribute significantly to New York's economy and have propelled the State to become one of the leading producers in the nation of various agricultural products such as milk, yogurt, cottage cheese, apples, grapes, onions, and cabbages.

3. Despite their contributions, the reality for New York's farmworkers remains bleak because of the State's indifference to their plight. In addition to other injustices, the State denies farmworkers access to the most fundamental tool enjoyed by workers in other industries – legal protections for exercising the right to organize in pursuit of humane and just working conditions.

4. Farmworkers, often already separated from their family and communities, can be fired or otherwise retaliated against for simply meeting to discuss with co-workers how to improve conditions where they work. By failing to extend to farmworkers necessary legal protections for organizing and collective bargaining that are extended to virtually everyone else, the State perpetuates farmworkers' isolation and economic exploitation.

5. Crispin Hernandez is a young man who has worked full time since he was a teenager to help support his large family. He experienced firsthand the repercussions of the State's failure to protect farmworkers when he tried to associate with his fellow employees at Marks Farms LLC, one of the largest dairies in New York.

6. Seeking to reduce the sense of isolation he felt at his job and to address unfair working conditions on the farm, such as not providing full-length gloves to protect against dangerous chemicals, Mr. Hernandez tried to create a workers' committee. He reached out to the Workers' Center of Central New York for its assistance and together they organized a meeting with a group of four other Marks Farms employees in one of their homes. That meeting was interrupted, and nearly derailed, when a farm manager, in an intentional act of intimidation, called local and state police to the scene to try to have the Workers' Center representative arrested.

7. When Mr. Hernandez and another worker, Saul Pinto, refused to succumb to this intimidation and continued their efforts to discuss workplace conditions with their co-workers the following week, the farm promptly fired both of them and demanded that they vacate the rooms they rented from the farm within four days.

8. If Mr. Hernandez had been employed in virtually any other industry, such employer conduct—using law enforcement to intimidate workers, refusing to allow advocates

access, firing workers who simply seek to know and exercise their rights—would be considered unlawful and the employee would be able to seek relief under state law for the violation of his or her rights. In sharp contrast, state law does not protect farmworkers such as Mr. Hernandez and his colleagues.

9. By failing to protect the rights of farmworkers such as Mr. Hernandez to organize, the State is violating Article 1, Section 17 of the New York State Constitution. That provision, located in New York’s Bill of Rights, guarantees – without limitation – that “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”

10. Mr. Hernandez, along with the Workers’ Center of Central New York and the Worker Justice Center of New York, two organizations devoted to protecting and advancing the rights of farmworkers, bring this declaratory judgment action to end the decades-long exclusion of farmworkers from the State’s labor relations regime so that farmworkers may finally have the opportunity to meaningfully exercise their right to organize for the purpose of improving their working conditions, and in so doing, achieve the type of progress that is possible when workers join together for mutual aid and protection.

## **PARTIES**

### Plaintiffs

11. Plaintiff CRISPIN HERNANDEZ currently resides in Onondaga County, New York. He was employed by Marks Farms LLC from April 2012 until being terminated on the first day of September 2015. He began his work at the farm when he was still a teenager and used his earnings to support nearly a dozen family members who rely on his financial assistance.

12. Plaintiff WORKERS' CENTER OF CENTRAL NEW YORK ("WCCNY") is a membership-based, non-profit 501(c)(3) organization based in Syracuse, New York. All of its members are farmworkers or other low-wage workers. Its mission statement states: "The Workers' Center of Central New York is a grassroots organization focused upon workplace and economic justice. Through organizing, leadership development, collective action, popular education, and policy advocacy, we support and empower low-wage workers from all backgrounds to combat workplace abuses and to fight for improved wages and working conditions." Since 2013, WCCNY has had a committee of agricultural workers dedicated to advancing farmworkers' rights under the law and improving their working conditions. Rebecca Fuentes is the Lead Organizer of WCCNY.

13. Plaintiff WORKER JUSTICE CENTER OF NEW YORK ("WJCNY") is a 501(c)(3) organization dedicated to protecting agricultural and other low wage workers through legal and social services. It maintains offices in Rochester, New York and Kingston, New York. WJCNY's mission is to "pursue[] justice for those denied human rights with a focus on agricultural and other low-wage workers through legal representation, community empowerment, and advocacy for institutional change." In 2013, WJCNY began to focus on dairy workers for increased education and advocacy due to the number of serious injuries and fatalities being reported among the industry's workers. Carly Fox is a Worker Rights Advocate at WJCNY.

#### Defendants

14. Defendant the STATE OF NEW YORK, its legislature, and its executive agencies are required by the New York Constitution to protect New Yorkers' right to organize and

collectively bargain and to do so in a manner that affords equal protection of that right. The State Capitol and center of State government is in Albany County.

15. Defendant GOVERNOR ANDREW CUOMO is the Governor of the State of New York and as such is responsible for ensuring the State complies with the New York Constitution, including Article 1, Section 17. The Governor is sued in his official capacity.

#### **JURISDICTION AND VENUE**

16. The Court has jurisdiction over this action pursuant to C.P.L.R. § 3001 and venue is proper pursuant to C.P.L.R. § 505(a).

#### **STATEMENT OF FACTS**

##### *The Path to New York's Constitutional Commitment to the Right to Organize for All Employees*

17. In the 1930s, the black population in this country remained predominantly southern, rural, and impoverished. Black employment in the South was disproportionately concentrated in agricultural and domestic labor.

18. The Southern political economy rested, to a large extent, on the economic and social subordination of black workers. Southern Democrats in Congress often voted as a bloc to maintain that social and economic regime, repeatedly ignoring the needs of black Americans and pressing for policies that perpetuated racial inequality. These Democrats were an important part of the political base for President Roosevelt and his pursuit of New Deal legislation in response to the Great Depression. Their posture is encapsulated by the comment of a congressional representative from Florida during the consideration of one such piece of legislation: "You cannot put the Negro and the white man on the same basis and get away with it."

19. Accordingly, even as progressive legislation was drafted and adopted at the federal level to address the economic problems created by the Depression, by design most black workers were excluded from the protective reach of such enactments.

20. The National Labor Relations Act (“NLRA”), also known as the Wagner Act, provides an example of such exclusion. The statute, enacted in 1935, provided for the right of private sector employees to organize and collectively bargain for improved working conditions. Agricultural workers, however, were excluded from the Wagner Act. The omission rested in no small measure on the fact that Southern Democrats were influential within Congress and would not countenance laws that provided federal rights that were contradictory to the Jim Crow system.

21. The Wagner Act covered only certain laborers engaged in businesses affecting interstate commerce. Consequently, approximately 1 million private sector workers within New York State remained unprotected by the federal law.

22. In an effort to extend coverage to those not protected by the federal law, New York State began considering a “little Wagner Act” shortly after the federal statute was enacted. The initial state proposal included protections for farmworkers.

23. In an effort to conform with the federal analog, a new version was introduced in April 1937 that adopted the NLRA’s exclusion of farmworkers, along with other sections of the federal law. This state bill was enacted into law as the New York State Labor Relations Act (since renamed the New York State Employment Relations Act (“SERA”).

24. SERA provides that it should be “the public policy of the state to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own

choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.”

25. New York corrected the failure to protect the right of all employees to organize the next year at its 1938 Constitutional Convention. One of the provisions adopted by the Convention and ultimately approved by the voters guarantees that “[e]mployees shall have the right to organize and to bargain collectively through representatives of their own choosing.” The provision contains no exclusions.

*The Fundamental Right to Organize in New York*

26. The decision to include the right to organize and collectively bargain in New York’s Bill of Rights, rested, according to one of its main proponents, Murray Gootrad, upon the fact that it was “so fundamental and so important to labor[.]”

27. The Chair of the Constitutional Convention Committee (who would later become Governor of New York) Charles Poletti, repeatedly described this right as “fundamental” and advocated for the amendment because it was “important for the people of the State of New York...to emblazon upon the Constitution the declaration of the fundamental principle of collective bargaining.”

28. Senator Wagner urged his fellow delegates to vote in favor of the amendment “so that no temporary reactionary court or reactionary Legislature can deprive the wage earners of [the] State of that fundamental right.”

29. This constitutional amendment was very popular with the People of New York during ratification. The amendment, along with another authorizing the expenditure of state funds for social welfare (commonly known as the Constitution’s “aid to the needy” provision), received the highest number of votes in favor.

30. The inclusion of the right to organize in the New York Constitution's Bill of Rights reflects the strong tradition of organizing among workers in the State. Even before the birth of the nation, journeymen tailors in New York City went on strike in 1768 to demand higher wages. Industrialization along the Erie Canal in the 19th century led to the formation of vibrant worker cultures and labor activism in various parts of the State. One of the nation's earliest pro-labor political organizations, the Workingmen's Party, was established in New York City in the 1820s.

31. In a watershed moment in the nation's labor history, more than 20,000 mostly immigrant women of Jewish and Italian descent took to the picket lines in 1909 to demand improvements to working conditions at garment factories in New York City. This walkout was the first mass strike by women in American history, and it drew widespread publicity and support.

32. Two years later, a fire at the Triangle Shirtwaist factory in Greenwich Village killed 146 workers. Widely recognized as one of the nation's worst industrial disasters, it galvanized both the labor movement and politicians—including, notably, Frances Perkins, who would go on to become President Franklin D. Roosevelt's Secretary of Labor during the New Deal era, and Robert F. Wagner, who would go on to draft and give his name to the National Labor Relations Act (the "Wagner Act")—to advocate for the passage of labor laws that increased the standard of living and working conditions for Americans, eventually culminating in statutory protections for the right to organize and collectively bargain.

33. For all of these reasons, New York has deservedly been described as "the cradle of the American labor movement."



34. Today, New York has the highest union membership rate of any state in the nation.

35. The right of all employees to organize and bargain collectively continues to be set forth in Article 1, Section 17 of the New York Constitution.

*SERA's "Farm Laborer" Exclusion*

36. Despite the guarantee of the right to organize as set forth in New York's Bill of Rights, the State Employment Relations Act's ("SERA") exclusion of "individuals employed as farm laborers" from the statutory definition of employee persists to this day.

37. SERA offers no policy justification for its exclusion of farmworkers. In fact, the farmworker exclusion stands at odds with the original impetus for the bill, which was to protect workers not protected by federal law.

38. By virtue of the farmworker exclusion, the labor relations board created by SERA to protect workers' right to organize, now absorbed within the Public Employee Relations Board ("PERB"), has no jurisdiction to hear complaints by farmworkers for violations of their right to organize.

39. SERA is New York's only labor relations regime protecting private sector employees' right to organize and bargain collectively.

40. The State has long been aware of the discriminatory and harmful impact that the exclusion has on farmworkers.

41. In 1991, a taskforce commissioned by then Governor Mario Cuomo released a report calling for an end to the exclusion of farmworkers from SERA and "recommend[ing] that farmworkers in New York be granted the same right to organize unions and bargain collectively as nonagricultural workers in this state[.]" The taskforce noted that "ending the legal

discrimination [against farmworkers] would mean the full realization of a prerogative rooted in...Article I, Section 17 of the New York State Constitution” which “does not distinguish among workers engaged in different occupations and thus does not exclude agricultural workers.”

42. The taskforce also based its conclusion on the fact that farmworkers are “nobody’s constituents” and are, consequently, “unseen and unheard, and easy to forget.” According to the taskforce, closing the SERA loophole “would begin the slow and difficult process for redressing these inequities.”

43. Indeed, the plight of farmworkers described in the taskforce report remains virtually unchanged today:

“Farmworkers . . . are nobody’s constituents. Relatively defenseless and powerless, they benefit from few protective programs. Most do not qualify for such commonplace benefits as unemployment insurance and disability, paid vacations, sick days or retirement plans. They typically work only part of the year and earn low annual incomes for arduous physical labor. All too many live in deplorable housing and have little recourse against those employers who are unscrupulous.”

44. The taskforce concluded that SERA could and should be amended to include farmworkers.

45. But the farmworker exclusion in SERA persists to this day and as a result, employees of one of New York’s largest industries—agriculture—do not have access to SERA’s protections.

#### *New York’s Agricultural Industry*

46. Farming in New York is a multi-billion dollar industry, with sales of \$6.36 billion in 2014. The State is one of the nation’s leaders in various dairy products and farm produce.

47. In recent years, as a result of both market demand and the State's support, the agricultural industry has seen record growth. From 2000 to 2014, cash receipts from New York's agricultural exports more than tripled, from about \$500 million to over \$1.6 billion.

48. In the nearly eighty years since the passage of SERA, New York's agricultural industry has become more industrialized and consolidated.

49. The dairy industry, where Plaintiff Crispin Hernandez worked until his termination, is a prime example of the modern, factory-like conditions under which agricultural work is performed on larger operations today.

50. The size of the average dairy farm has grown significantly over the past two decades. The national midpoint herd size for dairy farms was 101 cows in 1991 and grew to become 900 cows in 2012. In the Northeast region, in 2014, farms with 700 cows or more contributed to nearly 50% of overall milk production from the region.

51. New York is the fourth largest dairy producer in the United States, following California, Wisconsin, and Idaho.

52. The U.S. Department of Agriculture has tracked the "dramatic restructuring" of the dairy industry since the end of World War II and identified three causes for this changing landscape: "technological innovations, changes in the milk production system, and specialization." Don P. Blayney, *The Changing Landscape of Milk Production*, U.S. Dep't of Agriculture, Statistical Bulletin No. 978 (June 2002).

53. While many farms continue to be run as partnerships or family corporations, the dramatic restructuring of the industry means that so-called "family farms" today often oversee operations that bear little resemblance to the family farms of the 1930s or 1940s.

54. Modern dairies rely on increasingly high-tech mechanized milking with computerized monitoring tools for herd management and sophisticated waste disposal systems.

55. As if on an assembly line, farms herd cows into a “milking parlor” and hook them into mechanized milking machines that pump milk out of them. Extracted milk flows to a cooling tank where it is stored until it can be pumped into a truck for transport to a processing plant.

56. Large tankers pick up and transport milk to dairy processors. At the processors, milk is homogenized, pasteurized, packaged and shipped to retailers in refrigerated trucks. Milk at this stage is also sold to other large factories that convert it to by-products like cottage cheese or yogurt.

57. Waste handling and disposal is an important part of the work performed in dairies and is another process that has seen significant technological innovation. Manure is collected from the floors of the feeding and lounging barns and the milking parlor and processed for storage in a chamber or well near the building complex where the barn and parlor are located. The process of storing manure involves sophisticated equipment to ensure that nutrients necessary for fertilizing are retained. Eventually a variety of technologies are used to spread large volumes of manure onto surrounding fields or dispose of it into manure lagoons or pits.

58. Despite the fact that dairy farm operations are increasingly capital intensive, workers continue to be essential: they herd and feed cows, connect and disconnect them to the milking machines, clean and scrub the parlor floors, administer antibiotics and perform animal husbandry and veterinary tasks, and operate, maintain, and repair the various equipment used in the milk production and waste management processes.

### *New York's Farmworkers*

59. There are approximately 60,000 workers employed in the agriculture industry in New York.

60. Farmworkers' average wages are typically well below the poverty level. According to estimates from the New York State Department of Labor for the first quarter of 2015, the median wages for farm, ranch, and aquacultural animal workers is \$28,430 per year, with entry level wages (the mean wages of the bottom third of wages) of \$19,230. The median wages for crop, nursery, and greenhouse workers is \$21,760, with entry level wages of only \$18,230. Farmworkers are paid far less than the average wage for New Yorkers at large, whose median wages are \$41,650 with entry level wages of \$22,330.

61. Farmworkers often have very low levels of educational attainment. Nationally 31% of farm laborers and supervisors have less than a 9th grade education, compared to 3% of the general workforce. A 2005 Survey of Hispanic Dairy Workers in New York State identified that approximately 50% only had a primary level education and over 75% had not completed high school.

62. New York's farmworkers are also predominantly racial and ethnic minorities. Southern black migrants and Caribbean immigrants formed the majority of this workforce until the 1980s. In the last three decades, this workforce has largely been replaced by immigrants from Mexico and Central America.

63. Many farmworkers are monolingual Spanish speakers. A 2009 survey of New York State Dairy Farms found that only 26.8% of Hispanic workers spoke "good" English and 30.4% spoke no English at all. The 2005 Survey of Hispanic Dairy Workers found that 56.7% spoke English not very well or not at all.

64. Many farmworkers also lack lawful immigration status (sometimes referred to as being “undocumented”). Cornell University’s Community and Regional Development Institute estimates that as many as 75% of farmworkers in New York are undocumented.

65. The influential agricultural industry has successfully lobbied the federal government to ensure a supply of cheap and reliable farm labor by, among other initiatives, creating temporary guest worker programs that bring workers to the United States seasonally every year. In New York, 4,680 workers, comprising 5-10% of the total farm labor supply, came in 2014 as part of the H-2A program for temporary guest workers in the agricultural industry. The agricultural industry lobby continues to press for the expansion of guest worker programs to cover dairy farms.

66. The fact that a disproportionate number of farmworkers are out-of-state residents and/or non-citizens has meant that this group has a limited ability to achieve change through the ballot box. Furthermore, undocumented workers’ fear of deportation and guest workers’ fear that they will be blacklisted and unable to obtain a work visa in subsequent years makes these workers less likely to speak out against abusive or unlawful employer treatment.

67. Many farmworkers are provided housing on their employers’ premises, referred to as “labor camps.” Workers often do not have driver’s licenses or access to transportation and are therefore physically isolated on the farms where they live and work.

68. Farmworkers generally labor long hours. The 2009 Survey of New York Dairy Farm Employers found that 75% of those surveyed reported their employees worked, on average, for more than 40 hours per week. Over 32% work for more than 60 hours per week.

69. Farmworkers, unlike other workers in the State, have no statutory right to overtime pay or a day of rest per week.

70. Farm work is a dangerous occupation. Workers are exposed to difficult working conditions including exposure to pesticides and other dangerous chemicals, extreme heat in the summer and cold in the winter, repetitive motion injuries and they are required to work with large and unpredictable animals.

71. For 2013, the State's fatality rate per 100,000 workers was 2.1 overall, but it was 44.7 in agriculture, forestry, fishing, and hunting.

72. Farm employers, unlike other employers in the State, are not required to carry disability benefits insurance for farmworkers.

73. Farmworkers are also all too often subject to abusive treatment by their employers including wage theft and sub-standard housing. They are also sometimes subject to threats of calling Immigration and Customs Enforcement (ICE) as retaliation for complaining about employment and health and safety practices on the job.

74. This combination of poverty, isolation, hazardous working conditions, lack of benefits, lack of permanent legal status, and substandard housing makes farmworkers among the most exploited groups in the American labor force.

75. The discriminatory treatment of farmworkers is highlighted by the irrational and arbitrary line-drawing between which workers are, and which workers are not, protected if they exercise the right to organize.

76. For instance, for employees working in packing sheds located on farms, only workers who pack products grown on different farms are protected by the statutory right to organize. Workers employed in packing sheds that pack only produce grown on the farm where the shed is located are excluded from statutory protections. The type of work these two groups of workers perform on a daily basis could be identical.

77. In the dairy industry, a worker who connects a cow to a mechanized milking machine or who manages manure storage and disposal does not enjoy the statutory right to organize, but a worker employed in a plant that processes milk or converts the milk to cottage cheese or yogurt does; a worker who manages the equipment that delivers the milk to a transportation truck does not enjoy the statutory right but the truck driver generally does (as long as he is not employed by the dairy).

78. States such as California that have extended statutory protections to farmworkers who exercise the right to organize have found that there have been few negative consequences on the agricultural industry.

79. Instead, the agricultural industry has been able to adapt and flourish since farmworkers secured statutory protections for the right to organize in 1975 through passage of California's Agriculture Labor Relations Act ("ALRA"). California's agricultural industry is one of the most competitive in the nation.

80. Under the protection of the ALRA, California's farmworkers have been able to organize and advocate for laws that improve workplace conditions, leading to healthier and safer work environments.

*The Unfair Labor Practices of Marks Farms LLC*

81. On information and belief, Marks Farms LLC is one of the largest dairies in New York State with over ten thousand cows and calves.

82. Marks Farms LLC is a modern dairy operation and a limited liability company. Despite the fact that it is, according to its website, a "closely held family business," it is also "one of the largest, progressive, self-contained dairy enterprises in the state" whose "current business plan includes continued growth of [the] herd, the development of a manure handling



system which include sand separation, solids separation and composting, analysis of the applicability of aerobic digester systems, water treatment and wetlands development.”

83. Marks Farms LLC employs approximately 60 workers.

84. The majority of Marks Farms LLC employees are Spanish-speaking with limited English proficiency. Most are foreign-born.

85. Most of these workers live on farm-owned property in housing they rent from the farm’s owners.

86. Many do not own cars or have driver’s licenses, and therefore rely on outside providers for transportation off-property.

87. There are several types of jobs that workers perform at Marks, including milking and herding cows, birthing calves, administering medicines to cows, cleaning barns and cow beds, working the field, removing and processing manure and other waste, and operating various farm equipment.

88. Mr. Hernandez began working for Marks Farms LLC in April 2012. He received a weekly pay check and was on the farm’s payroll. He used a punch card to punch in at the start of the day, punch in and out at lunch, and punch out at the end of the day. All the tasks he completed at Marks Farms LLC were under the direct supervision and direction of the Farms’ owners and managers.

89. For the over three years he worked at the company, he received praise for his work from managers and was given tasks with increasing complexity and responsibility.

90. Mr. Hernandez, like many of the Marks Farms LLC employees, lived on the farm in a room that he rented from the owners.

91. Because Mr. Hernandez wanted a forum to discuss workplace issues with other farmworkers, he became a member of Plaintiff Workers' Center of Central New York ("WCCNY") in August 2014, and began to attend monthly members' meetings when those meetings did not conflict with his work schedule.

92. In the spring and summer of 2015, Mr. Hernandez was working as a milker at the farm. The work routinely involved twelve-hour shifts six days a week. He either had the day shift which ran from 6AM to 6PM or the night shift which ran from 6PM to 6AM.

93. The work he performed as a milker was very intense and physically demanding. Although he was supposed to have a thirty minute meal-break during his 12-hour shift, Mr. Hernandez, like other milkers, often had less time because of the constant pressure he was under not to fall behind or damage the quality of the milk product. He also would often go the entire shift without taking a break for water or using the bathroom because he wanted to do a good job and he worried he would not be able to complete all that was required of him during his shift if he took a break that lasted even a few minutes.

94. In July 2015, one of the monthly WCCNY meetings was scheduled on a day that Mr. Hernandez did not have off from work. For the very first time during his employment at Marks Farms LLC, he asked for a day off in order to attend the meeting. He did not specify the reason that he needed a day off when he sought permission. His request was granted.

95. Upon information and belief, Isaias, a worker who acted as a supervisor and intermediary with management, was aware that Mr. Hernandez was associated with WCCNY at this point in time.

96. Immediately after he returned from the WCCNY meeting, Marks Farms LLC changed his work assignment. During a pre-shift meeting where assignments were handed out to

workers on the shift, Isaias told Mr. Hernandez that he was assigned to be a “relevo” or a relief worker.

97. Although previously Mr. Hernandez worked as a milker with a regular shift six days a week, as a relevo, he was instead assigned to do odd jobs around the milking parlors and barns and to cover other milkers’ shifts when they were on break or if they had a day off. This was a less desirable job assignment because it was the type of work given to inexperienced workers, it was not respected by other people on the farm, and it sent a signal to others that Mr. Hernandez was not good at his job.

98. At first Mr. Hernandez thought that the relief job was temporary and that he would soon go back to his regular work as a milker. But Marks Farms LLC continued to assign him to the relief worker role.

99. Mr. Hernandez was determined not to complain about the new assignment; he also worried that one of the supervisors or farm owners would berate him if he asked why his work had changed or question him more about his affiliation with the Workers’ Center. He resolved to continue to work hard at whatever task was asked of him.

100. On August 24, 2015, Ms. Fuentes, the Lead Organizer of WCCNY, came to Marks Farms LLC at the request of Mr. Hernandez and four other workers to discuss steps for creating a workers’ committee. She also brought another member of the WCCNY who used to work as a farmworker to describe his experiences with the organization.

101. The group met at the home of Saul Pinto and another worker who was interested in learning more about how workers’ committees function. The home of Mr. Pinto and the other worker was located in a trailer on the farm that they rented from the farm’s owners.

102. This meeting was scheduled and conducted during a time when all five workers were off-the-clock and not expected to report to work.

103. On August 24, the other four workers who met with Ms. Fuentes signed up to become members of WCCNY and they took photos for their identification cards.

104. The group discussed the failure to provide free, full-sleeve gloves to milkers for protection from dangerous chemicals (milkers who elect to wear this type of glove have to pay out of pocket for them) and the possibility of setting up an English-language instructor to visit the farm and tutor workers. They also discussed how they could recruit other employees to join the committee. The group also discussed work done by WCCNY on various worker rights issues, such as wage theft and health and safety, and how WCCNY could assist the Marks Farms LLC employees with their organizing efforts.

105. These discussions were cut short when one of the supervisors at Marks Farms (and son of the owners), Christopher Peck, appeared at the trailer where the workers were meeting.

106. Mr. Peck infrequently visited workers at the trailers and his presence surprised and concerned them.

107. He demanded to know why Ms. Fuentes was in the trailer. He also told Ms. Fuentes that she had to leave or else he would call the police.

108. The workers tried to assure him that she was present as their guest, but Mr. Peck left and returned approximately 40 minutes later accompanied by two officers, a female officer who appeared to be a state trooper and a male officer who appeared to be a local county police officer. Mr. Peck also brought with him the supervisor Isaias, who spoke English, to act as an intermediary and translate for the police.

109. The police requested that Ms. Fuentes step outside where she was asked for her ID, interrogated about the reason for her presence at the trailer, and asked if she had visited any other trailers.

110. Ms. Fuentes maintained that the workers had a right, as tenants, to invite guests of their choosing to their homes, consistent with a legal opinion by New York's Attorney General.

111. During this time, the female officer remained inside the trailer and asked the workers whether they wanted Ms. Fuentes to be there. They confirmed they wanted Ms. Fuentes to remain. The officer then stepped outside, leaving the workers alone.

112. While Ms. Fuentes was asked to remain outside with the female officer, the male officer came back into the trailer and further interrogated the workers in the presence of Mr. Peck and with Isaias translating. He asked about who lived in the trailer, how many times Ms. Fuentes had visited the trailer, and whether Ms. Fuentes was an invited guest. Given the types of questions and the manner in which they were asked, Mr. Hernandez felt that the workers were being pressured to ask Ms. Fuentes to leave.

113. However, the workers continued to maintain that they wanted Ms. Fuentes to remain. The male officer went outside and asked Ms. Fuentes whether she wanted to stay or go. Ms. Fuentes said that she was going to stay until the meeting was over. The officer told her that the farm owners wanted her arrested. She said that the owners did not have the authority to have her arrested since she was a guest of the workers. The officer told her that he would have to research the law on that particular issue.

114. The two officers, Isaias, and Mr. Peck left.

115. Ms. Fuentes went back into the trailer and the meeting resumed. At its conclusion, with some trepidation given the intimidation tactics employed by their employer, the five

workers agreed to continue their efforts to create a workers' committee. They agreed on a plan for Ms. Fuentes to return a week later, on August 31, 2015.

116. During the intervening week, Ms. Fuentes spoke with Mr. Pinto on the phone, who suggested that when Ms. Fuentes returned the following Monday, they go from trailer to trailer to raise awareness amongst the workers about WCCNY and the possibility of setting up a workers' committee at Marks Farms LLC.

117. Also during that week, one of the five workers from the August 24th meeting informed Ms. Fuentes on the phone that he was frightened by the farm management's decision to call the police and afraid he would lose his job if he continued to engage in worker organizing.

118. Another one of the workers did not return Ms. Fuentes' phone calls.

119. When Ms. Fuentes returned on Monday, August 31, she brought with her WCCNY member Rosa Mejias and volunteer Dave Kashmere, as well as Carly Fox, a Workers' Right Advocate from WJCNY.

120. At Marks, only Mr. Hernandez and Mr. Pinto went forward with the plan of visiting the different trailers to speak with their co-workers about joining their nascent committee.

121. Both workers were off-the-clock and not required to report to work when they conducted this outreach.

122. The other three workers that had met with Ms. Fuentes on August 24 were, upon information and belief, intimidated by the events of the previous meeting. They no longer wanted to participate in the workers' committee or associate with representatives from WCCNY or WJCNY.

123. While Mr. Hernandez, Mr. Pinto, and the WJCNY and WCCNY representatives were walking along a road to visit another group of trailers where workers lived, Christopher Peck drove up alongside them in his open-air four-wheeler. His large German shepherd was in the front seat next to him.

124. He stopped his car in front of Mr. Hernandez and Mr. Pinto and engaged in a brief conversation with the group. He then drove away.

125. The next day, Tuesday, September 1, 2015, Marks Farms LLC fired Mr. Hernandez and Mr. Pinto.

126. Michael Talbot and Steven Peck, their respective supervisors, told them they were fired immediately, had to move out of their trailers by Saturday, and that their final paychecks would be withheld until they signed a piece of paper stating—in English, a language they do not understand—that they were discharged as part of a workforce reduction at the farm.

127. However, Marks Farms LLC had recently hired several new workers. In addition, Mr. Hernandez and Mr. Pinto were only given four days to vacate their trailers; Mr. Pinto was told that they needed to move out quickly so that their beds could be given to new, incoming workers.

128. Mr. Hernandez spent three days at Marks Farms LLC after he was fired because he had nowhere else to go. During these few days, Mr. Hernandez felt extremely anxious. His heart was pounding constantly and he felt physically ill. He worried that Marks Farms LLC would call the police on him again or reach out to other law enforcement authorities. He also worried about the other workers left on the farm and whether Marks Farms LLC would take any action against them for having met with representatives of WCCNY and WJCNY. He felt very alone.

129. Mr. Hernandez was also very anxious about how he would pay for basic necessities, such as food and housing, after he was fired. He worried about his family members who rely on his financial assistance.

130. Eventually, on September 4, three days after they were fired, representatives of WCCNY and WJCNV were able to secure the workers alternative housing and they came to Marks Farms LLC to help them move out.

131. In the weeks after the two workers were fired, Lindsey Peck, a manager at the farm, and Isaias, the same supervisor who had acted as a translator on August 24, were waiting at the office on payday and asking some of the workers to sign a form indicating that they did not want Ms. Fuentes visiting the trailer they lived in on the farm.

132. When some of the workers questioned why they were being asked to sign this form, they were told that Ms. Fuentes' goal was to close down the farm.

*The Impact of SERA's Exclusion on New York's Farmworkers*

133. Marks Farms LLC's actions constitute unfair labor practices for which Mr. Hernandez would have a remedy but for the farmworker exclusion in the State Employment Relations Act ("SERA"). SERA explicitly prohibits interfering with the formation of an employee group, conducting surveillance of employees who organize, or otherwise obstructing employees' collective action (New York Labor Law § 704).

134. These types of employer interference with organizing are not unique to Marks Farms LLC; similar fact patterns are repeated in farms across New York.

135. Management at another dairy in Lowville called the police to break up a meeting of workers and Ms. Fuentes. After this incident, workers who had previously wanted to learn



about organizing at the workplace and about WCCNY told Ms. Fuentes they no longer wanted to pursue these interests.

136. In another incident, a manager at a Livingston County dairy told his employees they are not allowed to meet in groups to coordinate a demand for increased wages because they are not protected by the labor law.

137. Workers at a large dairy enterprise in the North Country who invited a WJCNY representative to their living quarters so they could ask questions about their right to free drinking water, workers' compensation, and other workplace issues, and who then attempted to discuss what they had learned about their rights with the farm management, were swiftly retaliated against. The farm management fired the worker who invited the WJCNY representative to visit, telling him that he was terminated for causing dissent among his co-workers. That worker continued to face retaliation in the form of intimidating phone calls from an associate of the farm even after he was fired.

138. Farmworker women, who face a high rate of sexual harassment and abuse, are also unable to use collective action as a tool to combat such unlawful and demeaning working conditions. WJCNY attempted to help two women at a farm in Genesee County who were both subjected to sexual harassment by a supervisor to report this treatment to senior management. The goal was to empower the two workers to advocate for themselves. Although one worker was willing, the other was too afraid to join in a collective effort.

139. But for the exclusion of "farm laborers" from SERA, Mr. Hernandez, as well as WCCNY and WJCNY, would be entitled to file charges seeking PERB's intervention at Marks Farms LLC.

140. As a result of the company's conduct, both WCCNY and WJCNV have spent money, time, and staff resources advocating for Marks Farms LLC to respect employees' constitutional right to organize, through protests, an online campaign, presentation of a petition to the owners requesting that the company end retaliation against workers trying to meet and organize around workplace conditions, and by organizing a meeting with the dairy cooperative that purchases milk from Marks Farms LLC.

141. Both WCCNY and WJCNV spent money, time, and staff resources to assist Mr. Hernandez's move from the Marks Farms' trailer and his search for new housing.

142. The farmworkers that WCCNY and WJCNV serve across the State are in continuing danger of being subject to the economic hardship that results from retaliation and termination due to the State's failure to protect farmworkers' constitutional right to organize.

143. Many of WCCNY's farmworker members, including past and present employees of Marks Farms LLC, are afraid to step forward and fully exercise their right to organize at work because they are afraid that their employer will retaliate against them and the State will not step in to protect their rights. Some of WCCNY's current and former farmworker members have been retaliated against for attempting to organize in their workplaces. WCCNY membership numbers have suffered because of employer harassment and intimidation.

144. When Ms. Fuentes and Ms. Fox conduct Know-Your-Rights trainings on behalf of WCCNY and WJCNV, they both must modify their presentations to farmworkers to exclude the right to organize because of the lack of protections available to this group of workers and the fear, borne out of experience, that farmworkers may be retaliated against if they chose to organize. The other low-wage workers served by the two organizations enjoy statutory protections for organizing and collectively bargaining.

145. Unlike when workers in other industries seek out assistance, referrals, and representation for violation of their right to organize, WJCNY and WCCNY are unable to assist farmworkers subject to similar injustices because of the State's failure to protect farmworkers' constitutional right to organize.

146. For instance, WCCNY has assisted members and workers employed in other industries, such as hotel housekeeping and food processing plants, to seek relief for violations of their right to organize and seek mutual aid and protection.

147. Both organizations have an organizational model of empowering workers to help themselves, rather than just delivering them legal and social services. Neither organization can fully pursue this goal with agricultural workers because they have to temper their encouragement of collective action as a means of building worker power given the severe consequences and lack of redress for workers who are retaliated against.

148. Because of the exclusion from the protections and procedures available under SERA, established unions have not used their resources to organize New York farmworkers. In fact, farmworker advocates have approached labor unions about the possibility of organizing New York's farmworkers but have been told that the lack of a statutory scheme that structures and regulates labor relations makes it very difficult for traditional unions to become involved in organizing this sector.

149. As a direct result of the lack of statutory protections, farmworkers are unable to independently organize themselves because of the severe consequences of retaliation and termination.

## **CLAIMS**

### **FIRST CAUSE OF ACTION**

(Violation of Article I, Section 17 of New York Constitution)

150. The exclusion of farmworkers from the protections of SERA violates Article 1, § 17 of the New York Constitution.

### **SECOND CAUSE OF ACTION**

(Violation of Equal Protection)

151. The exclusion of farmworkers from the protections of SERA violates Equal Protection under the law guaranteed by Article 1, § 11 of the New York State Constitution.

### **THIRD CAUSE OF ACTION**

(Violation of Due Process)

152. The exclusion of farmworkers from the protections of SERA violates Due Process of Law guaranteed by Article 1, § 6 of the New York Constitution.

### **FOURTH CAUSE OF ACTION**

(Violation of the Right to Freedom of Association)

153. The exclusion of farmworkers from the protections of SERA violates the freedom of association guaranteed by Article 1, §§ 8-9 and Article 1, § 11 of the New York State Constitution.

## **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs request that this Court:

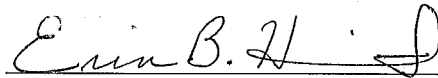
- (1) Declare, pursuant to CPLR § 3001, that SERA's exclusion of farm laborers, contained in N.Y. Labor Law § 701, is unconstitutional;

- (2) Issue injunctive relief prohibiting the State from excluding farmworkers from SERA's protections, thereby providing a remedy for the violation of Mr. Hernandez's right to organize;
- (3) Award the Plaintiffs attorneys' fees, costs, and disbursements accrued in pursuit of this action under CPLR § 8601;
- (4) Grant any other relief the Court deems necessary or proper.

Dated: May 10, 2016  
New York, NY

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION, by



Erin Beth Harrist  
Aadhithi Padmanabhan  
Jordan Wells  
Arthur Eisenberg  
Christopher Dunn