IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JOSE ROBERTO RIOS-GUTIERREZ et al., on behalf of themselves and all others similarly situated, Plaintiffs,	)	
v.	)	Case No. 21-0374-CV-W-FJG
BRIGGS TRADITIONAL TURF FARM, INC., et al., Defendants.	)	

ORDER

Before the Court are (1) Plaintiffs' Motion for Partial Summary Judgment against Defendants Briggs Traditional Turf Farm, Inc. and Lawrence Capen Briggs (Doc. No. 116); and (2) Defendants' Briggs Traditional Turf Farm, Inc. ("Briggs Traditional"), L.C. Briggs Turf Farm, LLC ("LC Briggs"), Lawrence "Larry" Briggs ("Larry Briggs"), Capen Briggs ("Capen Briggs"), Naudi-D Investments, LLC ("Naudi-D") and Kenosha, LLC's ("Kenosha") (collectively, "Defendants") Motion for Summary Judgment (Doc. No. 114). Both are considered, below.

I. Background

Plaintiffs Jose Roberto Rios-Gutierrez, Jose Juan Mendoza-Servin, Francisco Javier Martinez-Mendez, Jonathan Rodriguez-Anaya, and Cesar Edgardo Avendaño-Martinez, are Mexican nationals. Plaintiffs worked for Defendants between 2018 and 2021. Plaintiffs allege that they and the other workers on whose behalf they bring this action came to work in the United States as guestworkers on H-2A visas. Under the H-2A visa program, the visa holder is required to "perform agricultural labor or services" as

defined by the Internal Revenue Code, 26 U.S.C. § 3121(g) and the FLSA, 29 U.S.C. § 203(f). See 8 U.S.C. § 1101(a)(15)(H)(ii)(a). H-2A visas only allow the visa holders to work in agriculture, and accordingly the Defendants reported to the government that they needed the workers to perform sod production on Defendants' sod farm.

Agriculture workers, as defined in 29 U.S.C. § 203(f), are generally exempt from overtime. See 29 U.S.C. § 213(a)(6). Thus, if Plaintiffs performed only agriculture work (as required by the H-2A visas), Defendants would not be liable for overtime payments. However, Plaintiffs allege that they were required to perform landscaping work at commercial, residential, and government properties in western Missouri and eastern Kansas. Plaintiffs assert that landscaping workers, as opposed to agricultural workers, should be paid overtime for weeks where they worked more than 40 hours, as landscaping work is not considered agricultural labor or services. See 26 U.S.C. § 3121(g), 29 U.S.C. § 203(f), 2nd Am. Compl. ¶¶ 61-62. Plaintiffs assert that they regularly worked more than 40 hours in a week, but Defendants rarely paid an overtime premium. Therefore, Plaintiffs argue that should have been paid overtime for those weeks in which they worked over 40 hours.

II. Motions for Summary Judgment (Doc. Nos. 114 and 116)

A. Facts[1]

1. The Defendants

Defendant Briggs Traditional is a Missouri corporation that grows and installs sod at businesses, homes, and government buildings in western Missouri and eastern

[1] The Court has omitted conclusions of law and unsupported allegations of fact from its statement of facts. In addition, the Court has omitted immaterial facts from its statement of facts. Additionally, the Court's use of "Plaintiffs" in this Order refers to all named Plaintiffs and class members unless indicated otherwise.

Kansas. Briggs Traditional hired Plaintiffs, other H-2A workers, and non-H-2A workers to install sod. Briggs Traditional's income tax returns show receipts well more than $500,000 for each year it employed Plaintiffs and other class members. Briggs Traditional does not own any properties; instead, it and Capen Briggs grew turf on farms owned by Defendants Briggs Turf and Larry Briggs.

Defendant Capen Briggs is the sole shareholder, Director, President, and Secretary of Briggs Traditional. Capen Briggs managed and supervised the operations of Briggs Traditional, exercised operational control over significant aspects of its day-to-day functions, and exercised control over Plaintiffs' and other H-2A workers' work. Capen Briggs established the Plaintiffs' and other H-2A workers' terms of employment and had the power to hire and fire Plaintiffs and other H-2A workers. No other Defendant in this case has management control over Briggs Traditional, and Defendant Lawrence Clyde Briggs does not have an ownership interest in Briggs Traditional. Briggs Traditional employed approximately twenty-four workers in 2018 and 2019 (12.5 percent on the farm); and approximately twenty-six in 2020 and 2021 (11.5 percent on the farm). At all relevant times, Defendant Briggs Traditional directly employed two or three workers (the same two or three) who worked principally on the farm, though they also laid sod off the farm. Except for the two or three H-2A workers who principally worked on the farm, the H-2A workers "pretty much exclusively" worked at the sod installation sites. (Mainard Depo. at 107:15-23). Defendants' employees routinely installed sod in Missouri and Kansas, and nearly all the sod installed in Kansas was transported across the state line from Missouri.

Defendant Briggs Turf is a Missouri corporation that operates farms and harvests sod for purchase and wholesale and retail sale. Briggs Turf is owned by Defendant

Larry Briggs. Briggs Turf principally grows sod[2] in the Kansas City, Missouri area. It does not install sod "in any way, shape, or form." (Larry Briggs Depo. 86:6-22). Briggs Turf also sold seed, which it purchased from a seed producer for resale, to companies such as Home Depot and BC Hardscapes. As of December 2021, Briggs Turf directly employed four or five sod harvesters or cutters (non-H-2A workers) who worked on the farm. Capen Briggs has no ownership interest in Briggs Turf; however, he is an employee on Briggs Turf's payroll.

Kenosha is a Missouri company that maintains the same office address as Briggs Traditional and Briggs Turf. Larry Briggs and Capen Briggs are the sole members of Kenosha. Kenosha rents property to Briggs Traditional for the purpose of growing sod. It also owns the Knight Road Farm and the location of Briggs Traditional's Office.

Naudi-D Investments is a Missouri company owned by Capen Briggs. Naudi-D owns the property where the H-2A employees reside. Defendants contend that Naudi-D and Kenosha have no direct employees.

2. Defendants' Relationships

Defendants claim Briggs Turf and Briggs Traditional are totally separate entities. During the relevant time, however, employees of Briggs Turf and Briggs Traditional worked out of the same office space which is owned by Kenosha. Defendants Briggs Turf and Briggs Traditional used and shared (1) office supplies; (2) computers; (3) QuickBooks server (splitting the monthly bill on the account); (4) a website, see http://lcbriggsturffarm.net/ (last viewed August 6, 2024) and a LinkedIn page, see

[2] Once sod is grown, it is ready to harvest and can remain that way for years until there is a buyer, so long as it is properly mowed and maintained. After it is purchased, it is machine harvested, loaded onto trucks (by non-H-2A workers), and delivered to the property where it will be installed.

https://www.linkedin.com/company/briggs-traditional-turf-farm/about (last viewed August 6, 2024); and (5) filing cabinets and company paperwork. Additionally, Briggs Traditional and Briggs Turf shared employees, including Office Manager Elizabeth Francie Mainard,[3] who has been employed by Briggs Traditional since January 2019. Ms. Mainard testified that her wages were paid by Briggs Traditional (Ex. 30, 14:23-15:3), and only rarely would Larry Briggs give her any kind of direction. During the relevant time, Ms. Mainard maintained an email address for both Briggs Traditional and Briggs Turf, although she testified that she did not really use the Briggs Turf email. Naudi-D and Kenosha, LLC also maintain the same office address as Briggs Traditional and Briggs Turf.

On occasions, Capen Briggs directed employees of Briggs Turf. Capen Briggs also assisted Larry Briggs with running the business operations of Briggs Turf. Kenosha (of which Capen Briggs is a member) owned fields in which Briggs Traditional grew sod. Briggs Traditional also leased and harvested sod from the fields owned by Briggs Turf. A few times per year, Briggs Turf hauled loads of sod to worksites where Plaintiffs and other H-2A workers were working for them to install. Plaintiffs and other H-2A workers also performed work for Briggs Turf, such as grading soil and removing fence panels, and then Briggs Traditional would bill Briggs Turf for that work.

On or about January 1, 2015, Capen Briggs and Larry Briggs signed a "Lease Agreement" on behalf of Briggs Traditional and Briggs Turf, respectively, by which "Lessor" Briggs Traditional would lease certain farm properties to "Lessee" Briggs Turf for the purpose of growing and harvesting sod. Larry Briggs, however, testified that this

[3] The Court notes that Ms. Mainard's last name is spelled "Mainerd" by Plaintiffs on several occasions. However, the Court notes that she signed her name "Mainard" in her declaration dated January 24, 2023 (Doc. No. 122-1), and the Court will use that spelling throughout this Order.

Lease Agreement was filled out incorrectly, and that Briggs Traditional leased farms from Briggs Turf. The properties leased to Briggs Traditional were not owned by Briggs Turf, however; instead, they were owned by the Briggs Family Trust (which is not a party to this lawsuit and which is also owned by Larry Briggs). The "Lease Agreement" did not specify the amount of rent to be paid. Instead, Larry Briggs testified that the amount to be paid depended on the yardage that was leased (Ex. 29, 30:15-18), and Capen Briggs testified that the amount to be paid was based on seed costs and labor costs (Ex. 28, 86:14-23). The lease agreement indicated that it could be extended indefinitely by mutual agreement of the parties each year. There was nothing in writing showing how Capen Briggs and Larry Briggs would decide how to split the lease payments; instead, it would just be split "somehow . . . between the two companies." Capen Briggs Depo. 87:18-88:7.

In 2018 and 2019, Kenosha owned the Defendants' shared office and a house, where Felix Rodriguez (Operations Manager of Briggs Traditional) lived. Kenosha thereafter acquired some farm properties in 2020. Briggs Traditional and Briggs Turf harvested sod from the farm owned by Kenosha, which in turn is owned by Larry Briggs and Capen Briggs. Except for the land owned by Kenosha, Larry Briggs owns all the land from which Briggs Traditional and Briggs Turf harvest and utilize sod. Naudi-D owns the bunkhouse where the H-2A workers lived when they worked for Defendants. From 2017 through the present, Briggs Traditional paid rent to Naudi-D at varying rates, and sometimes not at all. The lease agreement between Briggs Traditional and Naudi-D wasn't signed until January 1, 2023, almost six years after the Briggs Traditional's rental of the bunk house ostensibly began. Defendants charged Plaintiffs 25 dollars per week for a few months in 2018 to live in the bunkhouse. The rent was collected by Briggs

Traditional. In the 2018 Job Orders and Labor Certification Applications, however, Capen Briggs affirmed that he would provide free housing for all employees.

During the relevant time, for each rent payment that Briggs Traditional made to Kenosha with respect to office space, Capen Briggs signed a check on behalf of Briggs Traditional, which he then passed off to Ms. Mainard to deposit into Kenosha's bank account. Ms. Mainard was also responsible for drafting checks on behalf of Briggs Traditional for rental payments towards the house owned by Naudi-D that Plaintiffs and other H-2A lived in while working for Defendants; thereafter, the checks were signed by Capen Briggs, and then deposited into Naudi-D's bank account by Ms. Mainard.

When dealing with third-party contractors or customers, Briggs Turf and Briggs Traditional determined which company would be doing the work by determining who had contacts with each third-party contractor. If the customer worked with Briggs Turf, Briggs Turf would pay Briggs Traditional for the work completed by the H-2A employees. Capen Briggs, as Operating Manager, handled the contracting at Briggs Turf and communicated and dealt with all customers who contracted with Briggs Turf. During the relevant time period, Ms. Mainard answered phone calls and performed other actions on behalf of Briggs Turf, including communicating with Briggs Turf's customers. (Mainard Depo. 25:13–27:6, Exh. 43).[4]

3. Defendants' Relationships with Third Parties

[4] Defendants attempt to deny this statement by saying that "Mainard only answered phone calls and would direct them to Briggs Turf personnel. All other actions taken by Mainard were at the direction of Capen Briggs as the Operations Manager of Briggs Turf." Doc. No. 120, p. 20, citing Defendants' Ex. 1, p. 3, ¶ 19. As the Court reads this, though, it is no denial at all; Plaintiffs assert that Ms. Mainard acted on behalf of Briggs Turf at relevant times during this lawsuit, and Defendants' denial confirms that statement. The Court further finds Ms. Mainard's service as a 30(b)(6) representative for both Briggs Turf and Briggs Traditional gives further credence to Plaintiffs' argument that Ms. Mainard shared corporate duties with both defendants.

Landscaping companies, as well as owners of commercial, residential, and government properties, entered directly into contracts with Briggs Turf and Briggs Traditional, for the purchase and installation of sod. Briggs Turf and Briggs Traditional contracted with each of these companies to variously (1) grade land[5]; (2) prepare land for sod installation (to include raking, levelling, and preparing the ground for sod installation, net and seed); (3) provide sod; (4) install sod; and (5) spread grass seed. Jesse Michael Meadows, the President of Rolling Meadows Landscaping (one of the companies that contracted with Briggs Turf and Briggs Traditional), testified that he normally uses his own landscaping crews to lay sod, but has Defendants' crews lay sod if his crew is not available. Mr. Meadows testified that Defendants' sod installation at residential properties was integral to landscaping projects, and residential construction projects, the Certificate of Occupancy typically cannot be issued until the sod was laid.

4. The H-2A Program

In 2016, Briggs Traditional hired employees on H-2B visas. Briggs Traditional paid the H-2B visa holders overtime premiums for every hour they worked over forty hours in a workweek. The H-2B workers engaged in the same job duties as Plaintiffs and the class members have done since 2018. In the H-2B visa application, Capen Briggs described Briggs Traditional as "a landscape contractor which specializes in laying sod. We offer residential and commercial installation and maintenance including seeding and sodding golf courses, sports field and other major scale installations," a description that remains accurate to the day, except that it does not state that Briggs Traditional also grows sod.

[5] In declarations, Defendants Capen and Larry Briggs deny that they would have graded land for any contract or project. See Defendants' Ex. 1, p. 2 ¶9.

In 2017, the H-2B visa cap was reached before the Defendants submitted their visa petitions. Therefore, Defendants had to call people in Texas and all over the U.S. to try to find enough workers. Following the 2017 work year, Defendant Briggs Traditional engaged MAS Labor H2A, LLC to evaluate its labor needs and to provide potential H-2A workers to work for Briggs Traditional.[6] Francie Mainard acknowledged that she mailed documents and payments to Mas H-2A as part of the H-2A visa application process. In 2018, Defendants began hiring workers under the H-2A program. Capen Briggs signed the state and federal government documents for these programs, which set forth the terms and conditions of Plaintiffs' and other H-2A workers' employment, including the wage rates, the type of work, and the work hours.

In each of the next four years (2018, 2019, 2020, and 2021), Capen Briggs submitted Job Orders to Missouri's Department of Economic Development ("MDED") and Applications for Temporary Employment Certification to the USDOL. For each of these, Capen Briggs also signed on behalf of Briggs Traditional an "Employer's Certification." The 2018 Job Order listed six (6) work sites, each of which were sod farms, and not locations where sod was installed.[7] The 2019 and 2020 Job Orders listed five work sites, which again were sod farms. During the 2018, 2019, and 2020 seasons, Plaintiffs and the H-2A workers (other than the two or three workers who worked on the

[6] Defendants Capen Briggs and Briggs Traditional state that they relied upon MAS Labor H2A,LLC's representations that any H-2A worker's they hired would not be entitled to receive overtime compensation. Doc. No. 120, Ex. 2 to Defendants' Suggestions in Opposition, p. 3, ¶¶ 22 & 24. Plaintiffs, in response, however, argue that Defendants misrepresented the location and nature of Plaintiffs' work to MAS Labor H2A, LLC, as reflected in the submissions made to the government by MAS Laber H2A, LLC. The Court finds that at the very least questions of fact remain as to what representations were made by Defendants to MAS Labor H2A and whether Defendants were entitled to rely upon any advice given by MAS Labor H2A to them (none of which appears in admissible form in the evidence supplied to the Court).

[7] Most of the worksites listed in Defendants' Job Orders and Labor Certification applications were farms owned by Larry Briggs's family trust or Kenosha, LLC and operated by Briggs Turf.

farm) generally did not work on the sod farms, and instead worked as sod installers at locations throughout Missouri and Kansas. In 2021, the work locations listed on the Job Orders were different from previous years. Capen Briggs testified that that he was going through audits with Missouri state and federal officials and they wanted to know to know more specific information so the locations were changed this particular year. Capen Briggs Depo., 147: 7 – 14. Capen Briggs testified that the work performed by the H-2A workers did not change between 2020 and 2021. Capen Briggs Depo., 148:2-4.

5. Plaintiffs' Job Duties, Compensation, and Hours Worked

Plaintiffs reported to Capen Briggs and Felix Rodriguez. Plaintiffs and other H-2A workers were typically employed from March or April to approximately mid-December, of each year. While employed for Defendants, Plaintiffs and other H-2A workers lived in a house that was formerly owned by Larry Briggs and Briggs Family Trust, and currently owned by Naudi-D Investments, which is owned by Capen Briggs.[8] For a few months in 2018, Defendants required Plaintiffs Rios-Gutiérrez and Martínez-Méndez, along with all other H-2A visa holders, to pay $25 per week as rent to live in the worker housing. Employees made these rent payments in cash to a man named Arturo, whom the Defendants put in charge of the worker housing.

The Defendants drove the H-2A workers from the employer housing to the remote worksite, at times stopping at the shop to pick up equipment and distribute workers onto the crews (this depended in part on the availability of transportation). Plaintiffs and other H-2A workers were primarily engaged in duties related to installing sod and spreading grass seed (on properties that Briggs Traditional and Briggs Turf did not own or lease) and preparing the soil for the sodding and seeding.

[8] Briggs Traditional rented the house, where Plaintiffs and other H-2A workers lived, from Naudi-D.

The process of installing sod included soil preparation, which involves raking, shoveling, soil conditioning, sod cutting, edging, spreading topsoil and other dirt, removing rocks, trash, and other debris, and oftentimes tearing out existing grass. Additionally, Plaintiffs' job duties included prepping soil for seeding, including hydroseeding, by driving a skid steer to grade soil; occasionally digging holes in preparation for tree planting[9]; using a backpack blower, broom, and/or hose to remove dirt from concrete and/or to clean up after completing a job; installing sod pins to prevent sod from sliding; and watering sod. Plaintiffs' work included either spreading grass seed or preparing a property for spreading grass seed four or five days per month. Generally, Plaintiffs would perform this seeding-related work once per workweek, though it was sometimes more, and some workweeks Plaintiffs did not do seeding-related work at all.[10]

The Defendants kept track of the Plaintiffs' daily work on "Daily Report" sheets, and these are the only sources of information about the work an employee did on a particular day. These handwritten sheets usually only had the employees' first names. Therefore, one Daily Report may have more than one "José." Some Daily Reports show sod that was laid, but others merely describe the work as, for example, "Grading," without indicating whether the grading is for a seeding project or a sodding project and, if it is for sodding, whether Defendants provided the sod. Other timesheets are partially illegible. Defendants indicate that Francie Mainard would provide timesheets to Felix Rodriguez to hand out to drivers, who in turn wrote in the names of the workers and got

[9] Defendants argue that the only time that any H-2A workers ever dug holes for trees was in the Spring of 2018.

[10] Defendants note that a worker named Arturo, who was paid overtime, was the main employee who handled seeding for Briggs Traditional during the relevant time.

the workers to sign off on their hours. The timesheets were then provided back to Felix Rodriguez for approval and then to Francie Mainard to enter for payroll.

For the duration of Plaintiffs' employment with the Defendants, the named Plaintiffs indicated they never performed any activities on Defendants' farms related to the Defendants' sod cultivation, growing, or harvesting operations. (Avendaño-Martinez Decl. at ¶ 14; Martínez-Méndez Decl. at ¶ 17; Rodríguez-Anaya Decl. at ¶ 14; Mendoza-Servín Decl. at ¶ 14; Ríos-Gutiérrez Decl. at ¶ 17). Other than H-2A workers Plaintiffs knew as Mario, Anselmo, and Julio, Plaintiffs never knew of any H-2A worker who performed any activities on Defendants' farms related to the Defendants' sod cultivation, growing, or harvesting operations. Mario, Anselmo, and Julio on occasion also worked with Plaintiffs away from the farm performing jobs related to installing sod and spreading grass seed. Defendants, however, indicate that "at certain points in time" (which points are unspecified and certainly not clear from the Defendants' filings), "almost the entire H-2A group of workers and non H-2A employees worked on the farms picking up rocks, sticks, helping grade or fill washouts to return the fields to an [acceptable grade], as well as installing wooden pins and plastic netting that has to be installed after the seeding process. The H-2A workers would also help clean up sod scrap after cutting sod, mowing and weed eating farm ditches and fence rows. Doc. No. 120, Ex. 1, p. 2, ¶ 5. Plaintiffs, on the other hand, indicate that they worked at the Defendants' shop only a few days each season, on the days when government inspectors came to the farm. Defendants argue that this was not done to "fool" inspectors, but rather because the government auditors had to interview each H-2A employee and instead of not allowing them to work Briggs Traditional had them work in the shop. See Doc. No. 120, Ex. 1, p. 3, ¶ 21.

A few times per season, Capen Briggs had Plaintiffs do mowing, gardening, and maintenance work at the house where he lived. For instance, the June 10, 2019, Daily Report shows that Plaintiff Avendaño-Martinez did weeding work at Capen's house and the shop, working 57 hours that week. The August 8, 2020, Daily Report shows that Plaintiff Martínez-Méndez did work at Capen's house, ultimately working 43.567 hours that week. The August 10, 2019, Daily Report shows that Plaintiff Rodríguez-Anaya did weeding work and cleaned the deck at Capen's house, working 43.67 hours that week. The August 8, 2020, Daily Report shows that Plaintiff Mendoza-Servín did work at Capen's house, working 47 hours that week. The August 7, 2019, Daily Report shows that Plaintiff Ríos-Gutiérrez did work at Capen's house, working 60.333 hours that week.[11]

Most of the projects Plaintiffs worked on were at large commercial, government, or residential complexes. Plaintiffs would perform this work, as described above, according to the specifications and plans the developers or general contractors provided to the Defendants. Daily, Plaintiffs and other H-2A workers used backpack blowers, brooms, and/or hoses to remove dirt from concrete and/or to clean up after completing a job. Plaintiffs and other H-2A workers also installed sod pins and watered the sod.

No Defendant grew seed, Zoysia (a warm season grass), Bermuda grass, or pure bluegrass on any of their farms. Defendants purchased the seed from an outside supplier; thus, when Plaintiffs spread this seed on off-farm properties, none of the work was related to any of Defendants' farms. Similarly with respect to sod, Defendants

[11] In their response to every fact listed in this paragraph, Defendants admit the facts as stated, but argue that "this work was done at the Plaintiffs' option so that they could get paid for the hours they worked." Doc. No. 120, Ex. 1, p. 3, ¶ 22. The Court does not understand how this statement means that Plaintiffs are not entitled to overtime for hours worked performing what is clearly not agricultural work; if employers could classify as exempt every type of work performed as the workers' "option," the federal and state wage and hour laws would be meaningless.

purchased the Zoysia, bluegrass, and Bermuda grass from outside suppliers (or it was supplied by the general contractor); thus, when Plaintiffs and other H-2A workers installed those types of sod on off-farm properties, none of that sod was produced by any of Defendants' farms. In addition to those varieties of sod that were not produced on Defendants' farms, on numerous occasions Plaintiffs and other H-2A workers installed sod the general contractor provided, and which was not grown on any property owned or leased by one or more of the Defendants.

Plaintiffs assert that their job duties and those of the other H-2A workers' did not include tilling, discing, cultivating, and putting seed into the ground to prepare Defendant Briggs Turf's fields for growing sod, netting, mowing the sod fields, and harvesting, as these duties were completed by Defendant Larry Briggs, Defendant Larry Briggs's brother, John Briggs, and/or other field employees, who were all local employees of Defendant Briggs Turf. (Larry Briggs Depo. 17:15–18:17, 19:11–12, 19:17–20:8, 20:19–21:6, 24:2–6, 24:10–16, 34:25–35:17, 39:6–8, 42:3–6, 47:1–8, 80:21–81:25). Defendants deny this statement in part because "at certain points in time almost the entire H-2A group of workers . . . were working on farms picking up rocks, sticks, helping grade or fill washouts to return the fields to expectable grade, as well as installing wooden pins and plastic netting that has to be installed after the seeding process." See Doc. No. 120, Ex. 1, p. 2, ¶ 5.[12] Plaintiffs and other H-2A workers did not cultivate and harvest the sod; however, Defendants argue that the workers "planted

[12] Notably, Defendants do not point to exactly which of the H-2A employees did these jobs or when these jobs were done. Moreover, this statement occurs only in a declaration drafted by Defendant Capen Briggs after close of discovery. Although Plaintiffs argue generally that all contents of Defendants' declarations ought to be stricken, the Court has considered the statements made in the declarations and has given them the weight they deserve.

sod," apparently by setting it out at customers' lots. See Capen Briggs Depo. 104:1–7; 120: 3–7, Exh. 26.

Plaintiffs and other H-2A workers worked more than forty hours in certain workweeks. Plaintiffs and other H-2A workers were not paid an overtime rate of one-and-one-half their regular rate of pay for any hours worked over forty, unless they were working on a union job site. Plaintiffs and other H-2A workers kept track of their work hours using a time sheet and/or a timeclock machine, which hours were then reviewed by Felix Rodriguez and Francie Mainard. At the end of each workday, Plaintiffs and other H-2A workers' timesheets were entered into T-sheets, a software used for tracking time worked. The government set Plaintiffs' and other H-2A workers' rate of pay.

At all relevant times, Defendants employed local, U.S. citizen workers who performed the same work as Plaintiffs and other H-2A workers. Defendants paid their local, U.S. citizen employees overtime for performing the exact same work as the H-2A workers. Mainard Depo. 150:4-15 (Doc. 117-30). Defendants argue that they did not pay overtime to the Plaintiffs or class members not based upon their race but rather upon their H2-A status. See Capen Briggs Declaration, Doc. No. 120, Ex. 2, p. 3, ¶ 25. Briggs Traditional did not deduct FICA or FUTA federal taxes from Plaintiffs and other H-2A workers' wages, and as an employer, did not pay the employer portion of those social security, Medicare, and unemployment taxes. Capen Briggs and Briggs Traditional assert that they believed that Plaintiffs and class members were not entitled to receive overtime wages based on information provided to Capen and Briggs

Traditional by MAS Labor H2A, LLC. See Doc. No. 120, Capen Briggs Declaration, Exhibit 2, p. 3, ¶ 23.[13]

B. Standard

Summary judgment is appropriate if the movant demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The facts and inferences are viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–90, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). The moving party must carry the burden of establishing both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. Matsushita, 475 U.S. at 586–90.

A nonmoving party must establish more than "the mere existence of a scintilla of evidence" in support of its position. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

> The nonmovant must do more than simply show that there is some metaphysical doubt as to the material facts, and must come forward with specific facts showing that there is a genuine issue for trial. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.

Torgerson v. City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (citations and quotations omitted).

C. Analysis

Defendants seek summary judgment on all claims made against them. Plaintiffs, meanwhile, seek partial summary judgment on certain claims made against Defendants

[13] Plaintiffs argue that Defendants' beliefs are irrelevant, and there is no information in the record showing what Defendants told MAS Labor H2A, LLC, nor what advice was provided by MAS Labor H2A, LLC.

Briggs Traditional and Capen Briggs (namely, the failure to pay overtime wages under the FLSA and the state laws of Missouri and Kansas, for disparate treatment in violation of 42 U.S.C. § 1981, and for the filing of false information returns in violation of 26 U.S.C. § 7424). The Court will analyze each count of Plaintiffs' operative complaint.

1. Count I – Fair Labor Standards Act

Both sides argue that they are entitled to summary judgment on Plaintiffs' claims of violations of the Fair Labor Standards Act.[14] In short, the parties disagree as to whether the work performed by Plaintiffs is agricultural work or landscaping work; if it is agricultural work, it is exempt from overtime compensation. See 29 U.S.C. § 213(a)(6); 29 U.S.C. § 213(b)(12); 29 U.S.C. § 213(b)(13). The Fair Labor Standards Act ("FLSA") requires that covered employers pay employees overtime, unless those workers are exempt. See 29 U.S.C. §§ 207(a) and 213(b).

The FLSA defines "Agriculture" as including:

> farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

[14] Plaintiffs suggest that there is no dispute as to (1) the Plaintiffs' and other class members' regular rate of pay, which is confirmed by payroll records; (2) Plaintiffs' and other class members' hours worked (which are set forth in payroll records); and (3) the fact that Defendants did not pay overtime at time and a half during work weeks when Plaintiffs and class members worked more than forty hours (except when they were working at union worksites). Plaintiffs therefore suggest that the Court may be able to award damages based on briefing rather than a full trial. The Court, however, is not yet convinced that the parties' disputes can be resolved in this manner, particularly considering that the Court believes some questions of material fact remain.

29 U.S.C. § 203(f). Subsection (f) includes farming in both a primary and a secondary sense. Bayside Enterprises, Inc. v. N.L.R.B., 429 U.S. 298, 300 (1977) (citing Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S 755, 762-763 (1949)). The primary meaning includes specific practices such as cultivation and tillage of the soil. Id. The secondary meaning is broader, and includes practices performed either by a farmer or on a farm, incidental to or in conjunction with farming operations. Id.

Whether on-a-farm practices are "an incident to or in conjunction with such farming operations" is necessarily a fact intensive inquiry. See 29 C.F.R. § 780.144 (2020) ("The line ... is not susceptible of precise definition."); 29 C.F.R. § 780.145 (2020) (a practice's character "must be determined by examination and evaluation of all the relevant facts and circumstances in the light of the pertinent language and intent of the Act"). Whether an exemption to the FLSA overtime provisions applies, however, is a burden that lies with the employer and any such exemption must be construed narrowly. See Perez-Benites v. Candy Brand, LLC, No. 1:07-CV-1048, 2011 WL 1978414, at *12 (W.D. Ark. May 20, 2011); Specht v. City of Sioux Falls, 639 F.3d 814, 820 (8th Cir. 2011). Further, "[w]here exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt." 29 C.F.R. § 784.116 (citing Tobin v. Blue Channel Corp., 198 F. 2d 245 (4th Cir. 1952); Walling v. Public Quick Freezing and Cold Storage Co., 62 F. Supp. 924 (S.D. Fla. 1945)).[15] Under the FLSA, the statute of limitations is two years, except that for a cause of action arising out of a willful violation it is three years. See 29 U.S.C. § 255(a).

[15] Thus, if the time records are so poorly kept that the fact finder cannot segregate exempt work from unexempt work, the employee will be entitled to overtime for all hours worked.

As an initial matter, the parties agree that both Briggs Traditional and Capen Briggs jointly employed the Plaintiffs within the meaning of the FLSA. See Perez-Benites, 2011 WL 1978414, at *5. Additionally, Defendants seek an order finding that the statute of limitations for Plaintiffs claims is two years and that therefore Plaintiffs may only seek relief beginning in 2019 (two years prior to the filing of this lawsuit); however, Defendants omitted from their motion for summary judgment any evidence or argument demonstrating that their actions were not willful, and therefore the Court believes that willfulness is a question of fact for the jury to resolve. See 29 U.S.C. § 255(a); Boyle v. Barber & Sons, Co., 03-0574-CV-W-FJG, 2005 WL 6561489, at *4 (W.D. Mo. Mar. 4, 2005). Accordingly, the Court will **DENY** Defendants' motion for summary judgment insofar as it requests limiting the statute of limitations to two years.

Defendants also assert that since the Plaintiffs were in the United States on H-2A visas, that means that all the work performed by them must constitute agriculture and therefore they are exempt from any overtime requirements. However, as discussed by Plaintiffs, it is the type of work, rather than the type of visa, that determines the existence of an exemption. See Luna Vanegas v. Signet Builders, Inc., 46 F.4th 636, 645 (7th Cir. 2022), cert. denied, 144 S.Ct. 71 (2023). Accordingly, to the extent Defendants rely on the type of visa to argue that Plaintiffs performed agricultural work, Defendants' motion is summarily **DENIED.** The Court now analyzes the type of work performed by Plaintiffs.

a. Primary Agriculture

Plaintiffs assert that they and nearly all the other H-2A workers were not engaged in the production side of farming sod at all; they did not cultivate, grow or harvest sod on Defendants' farms, and therefore were not employed in primary agriculture. See 29

C.F.R. §§ 780.105(b), 780.117(a), 780 118(a), and 780.101. Instead, Plaintiffs note almost all their job duties were not performed on farmland, but rather were performed on non-farm properties of customers who contracted with Briggs Turf and Briggs Traditional. The location of these work duties eliminates the availability of the agricultural exemption for primary agriculture. 29 C.F.R. § 780.110.

In response, Defendants argue that Plaintiffs "at certain times" performed work on farms for Briggs Traditional. In support of these facts, Defendants cite to only the declarations of Capen and Larry Briggs, produced after close of discovery. This is not adequate evidence demonstrating that the Defendants are entitled to use the primary agricultural exemption, when the Defendants have not shown through the "Daily Time Sheet" documents or other documents created contemporaneously with Plaintiffs' work that Plaintiffs were working exclusively on Defendants' farms during a specific workweek. See Specht v. City of Sioux Falls, 639 F.3d 814, 820 (8th Cir. 2011); 29 C.F.R. §§ 780.10, 784.116. The Court, therefore, finds that Defendants have failed to demonstrate that Plaintiffs performed primary agriculture.

b. Secondary Agriculture

Plaintiffs argue that they were not engaged in secondary agriculture, either. They raise three separate arguments: (1) regardless of the source of the sod or seed, the work Plaintiffs performed (laying, cutting and pinning sod, spreading of seed and straw, and preparing properties for sodding and seeding) was landscaping or incidental to landscaping and not performed incidental or in conjunction with agricultural operations; (2) during certain workweeks, the sod and seed used by Plaintiffs in the work was not grown on the Defendants' farms and therefore there is no question that the work was in any way related to Defendants' farming operations; and (3) during certain workweeks,

Plaintiffs performed landscaping work at Defendant Capen Briggs home, which is clearly not agricultural work. Plaintiffs note that Defendants poor recordkeeping also leads to the conclusion that Defendants cannot meet their burden to show that Plaintiffs performed exclusively agricultural work on any workweek during any point of the applicable time periods.

i. Activities performed away from Defendants' farms

Plaintiffs argue that, although whether installation of a farmer's own sod on non-farm property constitutes secondary agriculture is question of first impression, analogous law shows that the location of the work and the nature of the work means it is not secondary agriculture.

(a) Location of work

Plaintiffs first note that the location of the work (on non-farm properties) is typically found to be non-agricultural. See Ramirez v. Statewide Harvesting & Hauling, LLC, 997 F.3d 1356, 1360 (11th Cir. 2021) (finding "even work that begins on a farm but is mostly performed away from a farm ordinarily falls outside the exemption"), Holly Farms, 517 U.S. at 395-96 ("employer conceded that truck drivers who transported chickens and crews between farms and processing plant did not perform activities on a farm"); Chapman v. Durkin, 214 F.2d 360, 363 (5th Cir. 1954) ("holding that hauling fruit away from a farm "cannot be said to be work performed ... on a farm"). "While 'an employer's business may include both agricultural and nonagricultural activities,' those employees employed solely in the nonagricultural portion of the business are not classified as 'agricultural.'" Tijerina-Salazar v. Venegas, No. PE:19-CV-00074-DC, 2022 WL 1927007, at *10 (W.D. Tex. June 3, 2022) (quoting Bayside Enters., Inc. v. NLRB, 429 U.S. 298, 301 (1977)).

Here, Plaintiffs' work was largely on residential, commercial, and government properties not owned or leased by Defendants. Therefore, with limited exceptions, Plaintiffs were participating in the "nonagricultural portion of the business," (Tijerina-Salazar, 2022 WL 1927007 at *10) and therefore should not be considered agricultural workers. In response, however, Defendants argue that Ramirez recognizes that in limited circumstances certain work performed neither by a farmer nor on a farm can fall under the secondary definition of agriculture, if those activities have "significance and purpose only in making it possible for the [farming] activity to take place." See Ramirez, 997 F.3d at 1360 (citing Wertz v. Osceola Farms, 372 F.2d 584 (5th Cir. 1967)). Plaintiffs note in reply, however, that the exceptions identified in Ramirez are for activities which have the sole purpose of making farm work possible, such as (a) transporting workers to a farm for harvesting activities (Osceola Farms, 327 F.2d at 589), and (b) providing cooks and attendants at labor camps close to the sugar cane fields because it would not be possible to place the labor camps inside the fields (Brennan v. Sugar Cane Growers Coop. of Fla., 486 F.2d 1006, 1011 (5th Cir. 1972)). Neither of these exceptions apply here, where Plaintiffs and other H-2A workers were merely installing sod on non-farm properties, an activity that does not make growing sod possible. The Court finds that the location of the work weighs against finding Plaintiffs' work to be secondary agriculture.

(b) Work incidental to farming operations

Second, Plaintiffs note that the work performed by Plaintiffs and other H-2A workers was not incident or in conjunction with Defendants' farming operations; rather, laying sod is incident to landscaping operations. Sod installation is only mentioned once in the USDOL agricultural exemption regulations, in a subsection that distinguishes

nursery employees as those who may plant trees as part of the subordinate marketing operations of the nursery (secondary agriculture) vs. those who plant trees as incident "not to . . . farming operations, but to landscaping operations *which include principally the laying of sod* and the construction of pools, walks, drives, and the like." 29 C.F.R. § 780.206, subpart (b), emphasis added. Thus, the only mention of laying of sod in the USDOL regulations is a treatment of that work as landscaping, not agriculture. Plaintiffs explain that this treatment makes sense, as once the sod has been grown and it is purchased, it is then machine harvested and loaded on trucks by non-H-2A workers, who deliver it to the property where it is installed. The work performed by the H-2A workers in this case then begins, and consists of (1) removing clods, rocks, leaves and litter in the installation property; (2) leveling out divots; (3) tilling and raking the soil; (4) unrolling large rolls of turf/sod; (5) cutting the sod around landscaping features; (6) inserting pins to anchor the sod; (7) using backpack blowers to clean dirt and debris from non-sodded landscape features; and (8) watering the sod.

Similarly, when spreading grass seed on residential, government, or commercial properties, the workers prepare topsoil and the spread grass seed. Plaintiffs argue that this work sometimes took weeks to complete and cannot be considered merely incident to the farming operations; instead, landscaping was Plaintiffs' work. Plaintiffs also note that Defendant Briggs Traditional continues to describe itself as a landscape contractor; in its job order for H-2B workers in 2016, Briggs Traditional described itself as a "landscape contractor which specializes in laying sod." When asked in his deposition whether that description remains an accurate description of Briggs Traditional, Capen Briggs acknowledged that it is, except it omits an indication that Briggs Traditional also grows sod. Additionally, the shared website of Briggs Traditional and Briggs Turf

describes the work provided by Briggs Traditional as "Installation, Prep & Maintenance Services." See lcbriggsturffarm.net (last viewed August 20, 2024).

In response, Defendants argue that 29 C.F.R. § 780.206 is focused on planting and lawn mowing, and therefore does not apply to farming. Defendants then attempt to argue, without citing to any statutes, regulations, or facts other than their own conclusory declarations, that the work performed by their H-2A workers was all incident to Briggs' Traditional's farming of sod. The Court, however, finds that the work performed by Plaintiffs does not appear to be incidental to farming, particularly considering that most of the work was performed not on any of Defendants' farms but instead at client's residential, commercial, or government properties. These premises, by definition, are not farms, and the work performed there is not farming. As discussed by Plaintiffs, work that is "separately organized [from the farmer's primary operations] as an independent productive activity" is not secondary agriculture. Ramirez v. Statewide Harvesting & Hauling, LLC, 997 F.3d 1356, 1362 (11th Cir. 2021).

(c) Business Activity Distinct from Farming

Additionally, in determining whether Plaintiffs are engaged in secondary agriculture, the Court turns to the USDOL regulations to determine whether the work is a distinct business activity from the farmer's agricultural operations:

> [T]he total situation will control. Due weight should be given to any available criteria which may indicate whether performance of such a practice may properly be considered an incident to farming within the intent of the Act. Thus, the general relationship, if any, of the practice to farming as evidenced by common understanding, competitive factors, and the prevalence of its performance by farmers (see § 780.146), and similar pertinent matters should be considered. Other factors to be considered in determining whether a practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant

> and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities.

29 C.F.R. § 780.145 (citing (Maneja v. Waialua, 349 U.S. 254 (1955); Mitchell v. Budd, 350 U.S. 473 (1956); 29 C.F.R. §§ 780.146, 148-158, and 205-214).

When examining the factors listed in 29 C.F.R. § 780.145, Plaintiffs indicate that industry data suggests that sod farmers sell their products to outside entities such as landscape contractors, developers, and golf courses. See Nat'l Quarterly Sod Report (U.S. Dep't of Agric. Sept 18, 2023), https://downloads.usda.library.cornell.edu/usda-esmis/files/s7526x72x/sj13bm06h/dv141969r/AMS_2930.PDF (last viewed Aug. 27, 2024). Additionally, other factors support considering the work to be non-agricultural, including (1) amount of payroll for each type of work, (2) number of employees, and (3) the amount of time spent on various activities. 29 C.F.R. § 780.145. Plaintiffs further note that Defendants' "ordinary farm employees," rarely if ever installed sod and spread seed, and there was very little interchange of workers between the farms and the off-farm sod and seed work. See 29 C.F.R. § 780.145.[16]

In response, Defendants quibble about the number of workers discussed in Plaintiffs' opening papers, but they do not successfully demonstrate that questions of material fact remain as to the general argument raised by Plaintiffs: that all but two or

[16] Plaintiffs note that they occasionally worked at the Defendants' shop; however, they indicate that this work typically occurred when government inspections were being done (and Plaintiffs suggest that Defendants wanted to make it appear that the H-2A workers were performing work at the farm). Regardless of the Defendants' motivation for having the Plaintiffs work at the shop during the government inspections, the Court finds that this periodic work does not detract from Plaintiffs' argument that their primary work was landscaping, not agriculture.

three, out of approximately 20+ H-2A workers hired every year, primarily worked not on the farms, but rather installing sod or spreading grass on non-farm properties. To the extent that any question remains about which workers were working on farm properties versus non-farm properties, these questions can be answered through examining payroll records (and, to the extent that Defendants' payroll records are unclear, the Court again notes "[w]here exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt." 29 C.F.R. § 784.116).

Accordingly, the Court finds that the primary work performed by Plaintiffs and the H-2A workers amounts to business activity that is distinct from farming (and not secondary agriculture).

(d) Work occurred after "delivery to market"

Plaintiffs further note that secondary agriculture does not include work performed after delivery to market. 29 U.S.C. § 203(f). Given that the Plaintiffs and other H-2A workers did not transport the sod, and instead performed laying of sod at residential, government, and commercial properties, Plaintiffs argue that the work performed by Plaintiffs could not be considered delivery to market. The parties and the Court were unable to find caselaw directly on point as to whether the delivery and installation of sod could be considered "delivery to market." However, the consensus of courts and the USDOL is that "delivery to market ends with the delivery of the commodities at the receiving platform of such a farmer's market." 29 C.F.R. § 780.154 (citing Mitchell v. Budd 350 U.S. 473, 481 (1956)). Moreover, the USDOL regulation regarding delivery operations refers to these as "delivery trips." 29 C.F.R. § 780.152. Under Section

780.154, the term "farmer's market" [17] means "[t]he the distributing agency, cooperative marketing agency, wholesaler or processor to which the farmer delivers his products." Id. Plaintiffs then argue that delivery to market of Defendants' product (the sod) ended when the sod was deposited at the various sites where Plaintiffs performed their work for Defendants. See Budd, 350 U.S. at 481 (finding that delivery of tobacco to market ended when the tobacco arrived at the employer's bulking plant, not after the employees completed their work at the bulking plant, which the Supreme Court found to be more akin to manufacturing than agricultural work).

Plaintiffs also note that while no cases exist examining USDOL standards for when delivery to market is complete for sod, there is a case examining the Internal Revenue Code's definition of agricultural labor wherein the Court found that installation of sod is not delivery to market. See In re Richlawn Turf Farms, Inc., 26 B.R. 206, 209 (Bankr. D. Colo. 1982) (examining 29 U.S.C. § 3121(g)(4)(B), and finding, "Since the installers lay the sod after it has been delivered to the customers, their work is a service performed in connection with the sod after its delivery to a terminal market. Therefore, the installers are not performing agricultural labor when they install sod."). Therefore, for all the above reasons, Plaintiffs indicate that their work was performed after delivery to market, and thus their work should not be categorized as incidental to agriculture.

In response, Defendants argue that Richlawn should not be used to inform the Court as to the meaning of delivery to market, as Richlawn examines only the Internal Revenue Code, and not the FLSA. The Court, however, finds that the analysis in

[17] In their response, Defendants seemingly confuse this definition of "farmer's market" with the colloquial definition of "farmer's market" as a small-scale operation where farmers gather to sell produce directly to consumers. The Court, of course, looks to the definition found in the USDOL regulations.

Richlawn, while not binding, is instructive. Certainly, Defendants' use of "delivery to market" to encompass laying of sod stretches its meaning beyond comprehension; to adopt Defendants' position would mean that employees who never set foot on farms, nor did any related farm work, nor transported farm commodities to their end location, could still be considered as delivering a product to market if all they did was spend days or weeks grading and preparing non-farm properties for installation of sod and seed, then laying and cutting sod, pinning the sod, and spreading seed Defendants did not grow. The Court agrees with Plaintiffs' position that under no reasonable interpretation of the relevant statutes is this work "delivery to market." Plaintiffs' motion is **GRANTED** insofar as they request a finding that Plaintiffs' typical work is not secondary agriculture.

ii. Activities performed with sod and seed not grown on Defendants' farms

Besides arguing the installation of sod grown on Defendants' farms is not primary or secondary agriculture, Plaintiffs note that during multiple workweeks each season, they performed off-farm work installing sod and spreading seed that was not grown by Defendants. Plaintiffs note that installation of products not grown by Defendants cannot be found to be work performed incident to or in conjunction with farming operations. See 29 U.S.C. § 203(f); Holly Farms, 517 U.S. at 402 (hauling poultry produced by independent growers is nonexempt); Perez-Benites, 2011 WL 1978414, at *12 (packing outside tomatoes is nonexempt); Adkins v. Mid-American Growers, Inc., 167 F.3d 355, 357-58 (7th Cir. 1999) (nursery work handling plants purchased for resale from outside growers is nonexempt). Plaintiffs further note that Defendants' shoddy recordkeeping means that Defendants cannot meet their burden of establishing that the agriculture exemption applies (Specht, 639 F.3d 814 at 820), and "[w]here exempt and nonexempt

work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt." 29 C.F.R. § 784.116.

The Court has found no support for Defendants' theory that installation of sod or seed not grown on Defendants' farms could be considered agricultural work. Therefore, summary judgment is **GRANTED** in Plaintiffs favor on any work performed on off-farm properties using non-farm seed or sod.

iii. Landscaping work performed at Capen Briggs's home

Plaintiffs also assert that they are entitled to overtime during any workweek where the mowed or performed other work activities at Capen Briggs's house. Although such work occurred only a few times per season, Plaintiffs note that performance of such non-agricultural tasks provides the basis for receiving overtime payments during those workweeks. See Adkins v. Mid-American Growers, Inc., 167 F.3d 355, 359 (7th Cir. 1999) (finding that the mowing of the lawn of the owner's house was "clearly nonexempt activity" because the primary purpose was not agriculture, but rather "to make the president's home attractive"); Centeno-Bernuy v. Becker Farms, 564. F. Supp. 2d 166, 178 (W.D.N.Y. 2008) (same). Defendants' excuse that Plaintiffs were not entitled to overtime for this work because they "did so at their option" is not a legally supported theory. If Plaintiffs could waive overtime requirements by performing work at their option, the entire system established by the Fair Labor Standards Act would have no meaningful protections at all. Plaintiffs motion for summary judgment, therefore, is **GRANTED** as to any workweeks where Plaintiffs and other H-2A workers performed landscaping work at Capen Briggs's home.

c. Rent paid by Plaintiffs to use housing facilities

It is undisputed that Defendants required Plaintiffs to pay twenty-five dollars per week to live in Defendants' housing for certain weeks in 2018. This violates H-2A regulations, which direct employers to provide housing free of charge. See 8 U.S.C. § 1188(c)(4); 20 C.F.R. § 655.122(d)(1). Thus, under the FLSA, "[t]he cost of housing that [Defendants] provided to the workers hired through the H–2A program was a mandatory business expense, and [Defendants] cannot 'shift part of [their] business expense to the employees.'" Ramos-Barrientos v. Bland, 661 F.3d 587, 597 (11th Cir. 2011) (quoting Mayhue's Super Liquor Stores, Inc. v. Hodgson, 464 F.2d 1196, 1198 (5th Cir. 1972)). Plaintiffs therefore argue that when they were required to pay rent to Defendants in 2018, that constituted an illegal kickback that cut into their regular rate of pay (and therefore their overtime wages when they worked over forty hours in a workweek). See Arriaga, 305 F.3d at 1237, n. 10 (citing 29 C.F.R. § 531.35). Plaintiffs therefore argue they are entitled of reimbursement of the rent payment made during any overtime week.

In response, Defendants argue that the 2-year statute of limitations applies, and therefore Plaintiffs' claims are barred. However, the Court has already found that at the very least questions of material fact remain as to whether Defendants' violations of the FLSA were willful making the 3-year statute of limitations potentially applicable to Plaintiffs' claims.

Therefore, the Court finds that Plaintiffs' motion for summary judgment on this issue should be **DENIED WITHOUT PREJUDICE**, as Plaintiffs' claims as to improper rent payments charged to Plaintiffs will remain for trial after a determination has been made on willfulness.

d. Liquidated Damages

Plaintiffs request an order finding them entitled to liquidated damages for unpaid FLSA overtime wages. Defendants argue that Plaintiffs are not entitled to liquidated damages in that Defendants had a good faith and reasonable belief that they had not violated the FLSA.

Under the FLSA, 29 U.S.C. § 216(b), in addition to an award of unpaid overtime compensation, employers may be required to pay an additional equal amount in liquidated damages.

> Liquidated damages are not punitive, but rather are "intended in part to compensate employees for delay in payment of wages owed under the FLSA." … An award of liquidated damages is mandatory under 29 U.S.C. § 216(b) absent an employer's showing of good faith and reasonable grounds for the belief that it was not in violation of the FLSA… If the employer fails to come forward with plain and substantial evidence to satisfy both the good faith and reasonableness requirements, the court must award liquidated damages…The employer's burden is "a difficult one, with double damages being the norm and single damages being the exception."

Perez-Benitez, 2011 WL 1978414, at *16 (internal citations omitted). Further, "lack of knowledge is not enough to establish good faith." Id. at *17 (citing Chao v. Barbeque Ventures, 574 F.3d 938, 941 (8th Cir. 2008)). Plaintiffs argue that the undisputed facts, which include paying prior H-2B workers and U.S. citizen workers overtime for the same work performed by the Plaintiffs and other class members, demonstrate that Defendants do not have a good faith and reasonable ground for believing that they did not violate the FLSA.

In response, Defendants Capen Briggs and Briggs Traditional argue that they relied on representations made by MAS Labor H2A, LLC that any H-2A worker contracted to work for Briggs Traditional would not be entitled to receive overtime compensation for the type of work they were being assigned to perform for Briggs

Traditional. Capen Briggs further indicates in his declaration (made after close of discovery) that he and Briggs Traditional relied upon MAS Labor H2A, LLC's indication to them that they were allowed to use H-2A workers when installing sod. Defendants argue, therefore, that their actions were reasonable and done in good faith, and at the very least questions of material fact remain as to this issue.

At this time, the Court finds that questions of material fact remain as to whether Defendants can demonstrate good faith and a reasonable belief that they complied with the FLSA. The Court notes, however, that it may reconsider this issue upon motion by Plaintiffs, particularly when considering motions in limine prior to any trial, as the evidence in support of Defendants' position appears to be minimal at best.

Accordingly, with respect to Count I, Defendants' motion for summary judgment is **DENIED**, and Plaintiffs' motion for summary judgment is **GRANTED IN PART** insofar as it requests a finding against Defendants Capen Briggs and Briggs Traditional that Plaintiffs' typical work is not primary or secondary agriculture and therefore Plaintiffs are non-exempt and ought to have been paid overtime (in amounts to be calculated after further briefing or trial), and **DENIED IN PART** insofar as questions of material fact remain as to (a) willfulness of Defendants' behavior so as to trigger a 3-year statute of limitations; and (b) whether Plaintiffs are entitled to liquidated damages.

2. Count II – Missouri Overtime Law

Defendants move for summary judgment as to all Plaintiffs' Missouri overtime claims, whereas Plaintiffs move for summary judgment as to their Missouri Overtime claims against Capen Briggs and Briggs Traditional.

Defendants argue that the Missouri Minimum Wage Law ("MMWL") is generally interpreted in accordance with the FLSA. Karnes v. Happy Trails RV Park, LLC, 361

F.Supp.3d 921, 927 (W.D. Mo. 2019). Defendants then argue that the agriculture exemption applies to the Missouri wage claims as it also does under the FLSA. Because the Court has already found that Plaintiffs are in large part non-exempt as agriculture workers, Defendants motion for summary judgment must be **DENIED**. Defendants also argue that the statute of limitations for MMWL claims is two years (like the FLSA's statute of limitations for non-willful claims). However, as discussed in Plaintiffs' moving papers, under R.S.Mo. § 290.527 the statute of limitations for all claims for underpayment of wages pursuant to sections 290.500 to 290.530 is three years. Given that Missouri's overtime statute, R.S.Mo. § 290.505, is within the range of Missouri statutory actions covered by Section 290.527, the Court agrees with Plaintiffs that the statute of limitations for their claims is three years, not two.

Accordingly, Defendants' motion for summary judgment is **DENIED**. Plaintiffs' motion for summary judgment is **GRANTED** as to Defendants Capen Briggs and Briggs Traditional insofar as it requests (1) a finding that Plaintiffs' work activities generally do not qualify for the agricultural exemption from overtime, as discussed above in relation to the FLSA, and (2) a finding that a three-year statute of limitations applies. Questions remain as to the amount of damages awardable to Plaintiffs for their MMWL claims. Additionally, questions of fact remain as to whether any defendant other than Capen Briggs and Briggs Traditional could be found liable under Count II.

3. Count III – Kansas Overtime Law

Defendants move for judgment as a matter of law as to all claims under the Kansas Wage Payment Act ("KWPA"). Plaintiffs request summary judgment on liability as to their claims against Defendants Capen Briggs and Briggs Traditional.

Defendants cite to cases that they believe mean that an "employer" under the KWPA cannot be an employer who is subject to the provisions of the FLSA. Dollison v. Osborne County, 241 Kan. 374, 381, 737 P.2d 43 (1987); Brown v. Ford Storage and Moving Co., Inc., 43 Kan. App. 2d 304, 312, 224 P.3d 593 (2010). The cases cited by Defendants, however, analyze the Kansas Minimum Wage and Maximum Hours Law ("KMWMHL"), K.S.A. § 44-1201, et seq., which specifically exempts from coverage any employers who are covered by the FLSA. Plaintiffs' case, however, is brought under the KWPA (K.S.A. § 44-313(a)), and Plaintiffs suggest that Kansas allows the FLSA to be enforced through the KWPA. Elkins v. Showcase, Inc., 237 Kan. 720 (1985); Rukavitsyn v. Sokolov Dental Laboratories, Inc., No. 2:12–cv 02253–JAR, 2012 WL 3066578 (D. Kan. July 27, 2012); Tarcha v. Rockhurst Continuing Education Center, No. 11–2487–KHV, 2012 WL 1998782 (D. Kan. June 4, 2012); Veale v. Sprint Corp., No. Civ. A. 95-2379-GTV, 1997 WL 49114 (D. Kan. Feb. 3, 1997).

The cases cited by Plaintiffs, however, appear to be significantly questioned by a more recent line of Kansas federal decisions. See Blair v. TransAm Trucking Inc., 309 F.Supp.3d 977, 988-93 (D. Kan. 2018) (finding the KWPA does not support a claim for unpaid overtime or minimum wages); Spears v. Mid-America Waffles, Inc., No. 11-2273-CM, 2011 WL 6304126, *4-5 (D. Kan. Dec. 16, 2011) (finding that any claim for failure to pay minimum wages falls under the KMWMHL, not the KWPA, and since plaintiffs are covered by the FLSA they cannot proceed under the KMWMHL); Wheaton v. Hinz JJ, LLC, No. 14-2223-RDR, 2014 WL 5311310, *1-2 (D. Kan. Oct. 16, 2014) (holding that a plaintiff may only assert a claim under the FLSA for minimum wage violations, as Kansas law allows such violations to be pursued under the KMWMHL alone, and the KMWMHL specifically exempts FLSA employers); Larson v. FGX International, Inc., No.

14:2277-JTM, 2015 WL 1034334 (D. Kan. March 10, 2015) (holding that the KWPA is not a proper mechanism for asserting overtime claims); McGowan v. Genesis Health Clubs Management, Inc. Case No. 17-2419-DDC-KGS, 2018 WL 572052 (D. Kan. Jan. 26, 2018) (holding that Kansas law precludes state statutory claims to recover overtime wages against FLSA-covered employers); Linde v. Envision Healthcare Corp., Case No. 2:20-cv-02661-HLT-TJJ, 2021 WL 3089214 (D. Kan. July 22, 2021) (dismissing KWPA overtime claims as unsupported where a more targeted state law (the KMWMHL) specifically excludes such claims against FLSA-covered employers); Charbonneau v. Mortgage Lenders of America, LLC, Case No. 2:18-cv-2062-HLT-ADM, 2020 WL 3545624 (D. Kan. June 20, 2020) (same).

The Court believes that it should follow the more recent line of Kansas cases. Therefore, since Defendants are FLSA-covered employers, Plaintiffs' claims under the KWPA must be dismissed. Defendants' motion for summary judgment on Count III is **GRANTED**; Plaintiffs' motion for summary judgment on Count III is **DENIED.**

4. Count IV – RICO, 18 U.S.C. §§ 1961-1968

Defendants request that the Court dismiss all RICO claims made against them, while Plaintiffs suggest that questions of material fact remain precluding final judgment on the RICO claims. Defendants note that Plaintiffs have specifically alleged that Defendants committed: (1) Mail Fraud in violation of 18 U.S.C. § 1341; (2) Wire Fraud in violation of 18 U.S.C. § 1343; and (3) Fraud in Foreign Labor Contracting in violation of 18 U.S.C. § 1351.

Defendants argue that the allegations made by Plaintiffs that Defendants conspired to make material representations to MDED and USDOL regarding (1) the nature of Plaintiffs' work, (2) the hours they would work, and (3) the wages they would

receive, are insufficient to state a claim for violations of Section 1341. Defendants argue that good faith is a defense to these counts. Steiger v. U.S., 373 F.2d 133, 135 (10th Cir. 1967). Defendants then indicate that because they engaged MAS Labor H2A, LLC to evaluate their labor needs and provide workers to them, and they relied on MAS Labor H2A, LLC's representations that their H-2A workers would not be entitled to receive overtime compensation, they cannot be held liable. Defendants argue that there is no evidence that they acted knowingly and with intent to defraud in the hiring and payment of Plaintiffs and other class members. Instead, Defendants argue that their subjective good faith, which they demonstrate through only their self-serving declarations, means that they are entitled to summary judgment on Plaintiffs' RICO claims.

In response, Plaintiffs argue that questions of material fact preclude summary judgment. For all three of these statutory claims, Plaintiffs argue that the fraud component is proven by showing that Defendants "intended to defraud [their] victim and that [their] communications were reasonably calculated to deceive persons of ordinary prudence and comprehension." United States v. Louper-Morris, 672 F.3d 539, 556 (8th Cir. 2012) (quoting United States v. Williams, 527 F.3d 1235, 1245 (11th Cir.2008). Reliance by the Plaintiffs is not an element of Plaintiffs' RICO claims. See Bridge v. Phoenix Bond & Indemnity Co., 553 U.S. 639, 647-650 (2008). Additionally, no direct showing of intent is needed; instead, intent "can be inferred from the facts and circumstances surrounding a defendant's actions." Louper-Morris, 672 F.3d at 556 (quoting United States v. Flynn, 196 F.3d 927, 929 (8th Cir. 1999).

Here, Plaintiffs point to the following facts, which, when taken in the light most favorable to Plaintiffs, could demonstrate an intent to defraud: (1) False statements in

Defendants' temporary labor certification applications (Form ETA 9142A); (2) False statements in Defendants' job offers (ETA Form 790); (3) Defendants' accurate representation of the location and nature of guestworker employment in 2016 (when H-2B visas were used) as opposed to the misrepresentations made in 2018 and beyond (when H-2B visas were used); and (4) Capen Briggs' acknowledgment that he knew the statements in 2018 and beyond regarding the location and nature of the work were inaccurate.

Plaintiffs also note that Defendants' justification for their actions is that MAS Labor H-2A advised them in using the H-2A visa process. However, no conclusive evidence has been provided as to what advice MAS Labor H-2A provided to Defendants, and it is unclear from the record whether Defendants provided accurate information to MAS Labor H-2A when seeking to use the H-2A visa process. Additionally, to the extent that Defendants wish to make a good faith defense, Plaintiffs indicate that such a defense would be better presented at trial (particularly where, as here, no evidence of good faith has emerged, other than Defendants' self-serving declarations). Otherwise, Plaintiffs argue that they have met the other elements of the RICO statutes, namely that Francie Mainard used mail and electronic communications to transmit information to MAS Labor H-2A, which when taken in a light most favorable to Plaintiffs, could demonstrate that Defendants transmitted such information as incident to a scheme to defraud. See United States v. Frank, 354 F.3d 910, 918 (8th Cir. 2004). These same documents can be used to demonstrate scheme to commit fraud in foreign labor contracting pursuant to 18 U.S.C. § 1351(a).

The Court agrees with Plaintiffs that questions of material fact remain precluding summary judgment. Defendants' motion for summary judgment, therefore, is **DENIED** as to Count IV.

5. Count V – Filing of False Information Returns, 26 U.S.C. § 7434

Defendants move for judgment as a matter of law on Plaintiffs' fifth cause of action, whereas Plaintiffs move for summary judgment on liability as well as a calculation of statutory penalties as to Defendants Capen Briggs and Briggs Traditional.

26 U.S.C. § 7434 provides, in relevant part: "If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return." 26 U.S.C. § 7434(a). Mere negligence does not establish a violation of this statute. Doherty v. Turner Broadcasting Systems, Inc., 72 F.4th 324, 329-330 (D.C. Cir. 2023). Instead, Defendants can only be held liable for reckless (or more intentional) behavior. Recklessness has been defined as an action entailing "an unjustifiably high risk of harm that is either known or so obvious that it should be known." Id. at 330 (quoting Safeco Ins. Co. of America v. Burr. 551 U.S. 47 (2007). "Section 7434 certainly does not hold defendants liable for mere error in filing information returns." Doherty, 72 F.4th at 330.

Defendants indicate that the contents of their income tax returns were based on Capen Briggs' and Briggs Traditional's belief that Plaintiffs and class members were not entitled to overtime wages based on information provided by MAS Labor H-2A, LLC. Defendants argue that, if anything, their tax returns were negligently filed, and not fraudulently filed. Defendants, again, only provide their own self-serving declarations in support of their beliefs, and do not provide any correspondence to or from MAS Labor

H-2A, LLC. Defendants suggest that they could find no case law finding that the laying of sod does not constitute secondary agriculture, and therefore if there is no clear law, it would be improper to hold Briggs Traditional and Capen Briggs liable for filing false information returns. The Court notes, however, that sometimes the reason no case law exists on a particular subject is because the position being taken by one side is so off-base that no one has argued it previously. Given the facts in this case, the Court cannot find that Defendants' actions were made with a less-than-reckless state of mind. Defendants' motion for summary judgment is **DENIED.** At the same time, given that the Court believes that state of mind is typically an issue for a jury, questions of fact remain for trial as to why Defendants classified Plaintiffs as they did. The Court notes, however, that its analysis of this issue might change depending on pretrial rulings on evidentiary issues (such as on motions in limine). The Court, therefore, will **DENY** Plaintiffs' motion for summary judgment at this time, but may reconsider based on future evidentiary rulings.

6. Count VI – Violation of 42 U.S.C. § 1981

Defendants move for judgment as a matter of law on Plaintiffs' sixth cause of action, whereas Plaintiffs move for summary judgment on liability as to Defendants Capen Briggs and Briggs Traditional. Plaintiffs allege in their Second Amended Complaint that "Defendants imposed discriminatory terms and conditions of employment on Plaintiffs and other H-2A workers – specifically failing to pay required overtime premiums -- to which U.S citizen employees were not similarly subjected." Doc. No. 41, p. 45. Section 1981, as amended in 1991, is entitled "Equal rights under the law" and provides:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Defendants argue that they did not violate any of Plaintiffs' rights. Instead, Defendants posit that "While § 1981 prohibits racial discrimination in all phases and incidents of a contractual relationship, the statute does not provide a general cause of action for race discrimination." Yang v. Robert Half International, Inc., 79 F.4th 949, 962 (8th Cir. 2023) (citing Gregory v. Dillard's Inc., 565 F.3d 464, 468 (8th Cir. 2009)). Defendants then argue that Plaintiffs have set forth no evidence of race discrimination, admitting instead that Briggs Traditional did not pay overtime to Plaintiffs based on their H-2A status, not on their race.

Defendants misunderstand Plaintiffs' claims, however. Plaintiffs' claims are not based on race discrimination; rather, their claims are based on alienage discrimination. As set forth in the operative complaint, as well as in Plaintiffs' motion for summary judgment, Plaintiffs and other class members claim that they were paid differently than U.S. citizens despite performing the exact same work (for which the U.S. citizens were paid overtime). Courts have long found that section 1981 applies to alienage discrimination. See Graham v. Richardson, 403 U.S. 365, 377 (1971); Gen. Bldg. Contractors Ass'n., Inc. v. Pennsylvania, 458 U.S. 375, 386–87 (1982); Sagana v. Tenorio, 384 F.3d 731, 738 (9th Cir. 2004), as amended (Oct. 18, 2004); Rodriguez v. Procter & Gamble Co., 465 F. Supp. 3d 1301, 1320 (S.D. Fla. 2020). Thus, Defendants' motion for summary judgment must be denied.

Plaintiffs note that to prevail on a claim under Section 1981, they must show that: (1) they are members of a protected class who were subject to discrimination based on their membership in the class; (2) defendants acted with discriminatory intent; (3) plaintiffs engaged in an activity protected by the statute; and (4) defendants' conduct abridged a right enumerated in § 1981(a). Gregory v. Dillard's, Inc., 565 F.3d 464, 469, 470 (8th Cir. 2009). Plaintiffs must also demonstrate that "but for" alienage, they "would not have suffered the loss of a legally protected right." Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media, 589 U.S. 327, 341 (2020). Discrimination may be shown through direct or circumstantial evidence. See Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997).

Plaintiffs argue that they can show all the required elements and meet the "but for" standard. First, they are members of a protected class (Mexican nationals working in the United States of H-2A visas). Second, Defendants acted with discriminatory intent in that they intentionally treated Plaintiffs less favorably than U.S. citizens. Third, Plaintiffs engaged in protected activity by working for Defendants (i.e., entered a basic contract for services). Fourth, Defendants abridged a right enumerated in Section 1981 by denying overtime compensation to the non-citizen Plaintiffs, while paying overtime to U.S. citizens doing the same work.

In response, Defendants admit that they did not pay overtime to Plaintiffs and members of the class based on their H-2A status. See Doc. No. 120, p. 61. This admission is direct evidence that Defendants discriminated against Plaintiffs based on their H-2A status; in other words, Defendants have admitted that they violated Section 1981. In addition to this admission, Defendants make a few arguments against Plaintiffs' motion for summary judgment, all of which are unavailing. First, Defendants argue that

Plaintiff has not shown that it meets the burden shifting analysis of McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). However, McDonnell-Douglas only applies in cases where the evidence of discrimination is circumstantial; here, the evidence is direct and admitted. See Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997). Defendants also argue that even if their decision was in error, it did not violate Section 1981; however, just because Defendants say they did not violate Section 1981 does not make it so. Defendants admit to paying U.S. citizen workers overtime for the same work performed by its H-2A workers, who were denied overtime. Given these admissions and the state of the law, Plaintiffs' motion for summary judgment must be **GRANTED** as to Count VI against Defendants Capen Briggs and Briggs Traditional. Damages on this count will be determined at a later date.

7. Count VII – Alter Ego Claims

Defendants argue that Plaintiffs' seventh cause of action should be dismissed. In Count VII, Plaintiffs allege that all named defendants are alter egos of one another and therefore are all liable for the claims made by Plaintiffs. See Doc. No. 41, pp. 45-46. **"**A corporation acts as another's alter ego if the corporation is (1) controlled by another to the extent it has independent existence in form only and (2) used as a subterfuge to defeat public convenience, justify wrong, or perpetuate a fraud." Johnson Trustee of Operating Engineers Local #49 Health and Welfare Fund v. Charps Welding & Fabricating, Inc.**,** 950 F.3d 510, 520 (8th Cir. 2020) (citing Greater Kansas City Kansas City Laborers Pension Fund v. Superior Gen. Contractors, Inc., 104 F.23d 1050, 1055 (8th Cir. 1997)). To determine whether one corporation has acted as another's alter ego, courts look to: the ownership and creation of both corporations, the management of the corporations, the physical location of corporate offices, and the transfer of assets,

contracts, and employees between the corporations. See Operating Engineers Local No. 101 Pension Fund v. K.C. Excavating & Grading, Inc., 2002 WL 1492103, at *6 (W.D.Mo. March 11, 2002); Edward D. Gevers Heating & Air Conditioning Co. v. R. Webbe Corp., 885 S.W.2d 771, 774 (Mo.Ct.App.1994).

Under Missouri law, in certain circumstances a court may disregard a corporate entity and hold its owner(s) personally liable for corporate debts. 66, Inc. v. Crestwood Commons Redevelopment Corp., 998 S.W.2d 32, 40 (Mo.1999); Mobius Management Systems, Inc. v. West Physician Search, L.L.C., 175 S.W.3d 186, 188-89 (Mo.App.2005); Owner-Operator Independent Drivers Assoc. v. Ledar Transport, 2004 WL 5249148 (W.D.Mo. December 30, 2004). In order to "pierce the corporate veil" a plaintiff must show: 1) control that amounts to complete domination of finances, policy and business practice with respect to the transaction, such that the corporate entity had no separate mind, will, or existence of its own; and 2) that control used by the corporation to commit fraud or wrongdoing in violation of the plaintiffs' legal rights; and 3) the control and breach of duty proximately caused the Plaintiffs' injury. 998 S.W.2d at 40.

Defendants argue that the corporate veil should not be pierced to hold any Defendant, other than Briggs Traditional, potentially liable for Plaintiffs' various causes of action. Defendants, therefore, argue that Capen Briggs, Larry Briggs, Naudi-D, Kenosha, and Briggs Turf should all be entitled to judgment as a matter of law on Count VII of Plaintiffs' Second Amended Complaint. Defendants generally argue that none of the Plaintiffs have been employed by any individual or entity other than Briggs Traditional and that all the defendants maintain separate bank accounts and finances such that they should not be considered alter egos of each other.

In response, however, Plaintiffs argue that questions of material facts preclude summary judgment on their alter ego claims. Plaintiffs note that Defendants' only support for their motion are the self-serving declarations of Capen Briggs and Larry Briggs. Plaintiffs argue that the evidence produced in discovery, however, shows that the Defendants were so intertwined with one another that they had an independent existence in form only, and that the corporate entities were used as a subterfuge to justify a wrong or perpetuate a fraud. In re B.J. McAdams, Inc., 66 F.3d 931, 937 (8th Cir. 1995). In particular, Plaintiffs note that (1) while Briggs Turf does not own land (which is owned by the Briggs family revocable trust), Briggs Turf leases land to Briggs Traditional; (2) the lease agreement between Briggs Turf and Briggs Traditional has the lessor and lessee reversed, and the amount of money paid to Briggs Turf by Briggs Traditional varied such that lease payments would somehow be split between the two companies; (3) the corporate defendants share an office; (4) Briggs Turf and Briggs Traditional jointly market their sod and installation services; (5) Kenosha and Naudi-D serve as holding companies for Larry and Capen Briggs' residential and commercial properties, and Briggs Traditional paid Naudi-D at various rates or not at all (and did not sign a lease agreement until January 1, 2023, despite Naudi-D being paid by Briggs Traditional to house the H-2A workers); (6) Kenosha acquired farm properties in 2020, but Defendants have not produced in discovery leases, receipts, transaction reports or other documents for rents paid; and (7) with respect to Kenosha's ownership of the shared office, Defendants provided no evidence that any other defendant paid rent to Kenosha for use of that shared office space. Plaintiffs further argue that Defendant Capen Briggs used the business entities as instrumentalities of fraud in that he misrepresented the work locations for the H-2A workers in the Job Orders and Labor

Certification applications, making it appear that the H-2A workers would be employed on farms, and using false worksites which were farms owned by Larry Briggs's family trust or Kenosha, LLC and operated by Briggs Turf.

For all the reasons discussed by Plaintiffs in their response, the Court finds that questions of material fact remain as to whether Defendants can be considered alter egos of one another such that the corporate veil may be pierced. Defendants' motion for summary judgment on Count VII is **DENIED.**

III. Conclusion

Therefore, for the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment against Defendants Briggs Traditional Turf Farm, Inc. and Lawrence Capen Briggs (Doc. No. 116) is **GRANTED IN PART** as to (a) a finding on Count I that Plaintiffs' typical work does not qualify for the agriculture exemption under the FLSA and Plaintiffs are entitled to an amount of overtime to be determined later; (b) a finding on Count II that Plaintiffs' work activities generally do not qualify for the agricultural exemption from overtime; (c) a finding that a three-year statute of limitations applies to MMWL claims in Count II; and (d) a finding that Defendants Briggs Traditional and Capen Briggs violated Section 1981 in Count VI. Plaintiff's Motion for Partial Summary Judgment (Doc. No. 116) is **DENIED IN PART** as to (a) whether a two-year or three-year statute of limitations applies to Plaintiffs' FLSA claims in Count I; (b) entitlement to liquidated damages in Count I; (c) Count III (Kansas overtime law); and (d) Count V, as questions of fact remain for trial regarding Defendants' state of mind.

Defendants' Motion for Summary Judgment (Doc. No. 114) is **GRANTED IN PART** as to Count III (Kansas overtime law) and **DENIED IN PART** in all other relevant aspects. Count III of Plaintiffs' complaint is **DISMISSED.**

The parties are **ORDERED** to meet and confer on or before **SEPTEMBER 20, 2024**, to discuss trial dates and a schedule for all remaining pretrial filings. If the parties believe additional briefing regarding damages would be helpful to narrow the issues for trial, they should discuss deadlines for that briefing as well. The parties shall file a joint status report setting forth their proposals on or before **SEPTEMBER 27, 2024.** Thereafter, the Court will set this case for further proceedings.

IT IS SO ORDERED.

Date: September 3, 2024
Kansas City, Missouri

/s/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge