

**STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

OSTROM MUSHROOM FARMS, LLC,

Defendant.

NO.

COMPLAINT

I. INTRODUCTION

1.1. The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Alfredo González Benítez and Emily C. Nelson, Assistant Attorneys General, brings this action against Ostrom Mushroom Farms, LLC (Ostrom) to enforce the Consumer Protection Act, RCW 19.86.020, and the Washington Law Against Discrimination. RCW 49.60.030 and RCW 49.60.180.

II. JURISDICTION AND VENUE

2.1. This court has jurisdiction over this matter pursuant to RCW 19.86.080, RCW 49.60.030(2), and RCW 2.08.010.

2.2. Pursuant to RCW 4.12.020(3) and RCW 4.12.025, venue properly lies in Yakima County, Washington as the violations alleged in this Complaint were committed in whole or in

1 part in Yakima County, Ostrom’s principal place of business is in Yakima County, and Ostrom
2 transacts business in Yakima County.

3 **III. THE PARTIES**

4 3.1. Plaintiff is the State of Washington.

5 3.2. The Attorney General is authorized to commence this action pursuant to
6 RCW 19.86.080(1), RCW 19.86.140, and RCW 43.10.030(1).

7 3.3. Defendant Ostrom is a for profit corporation that grows, harvests, packages, and
8 ships mushrooms. Ostrom’s principal office is located at 1111 Midvale Road in Sunnyside,
9 Yakima County, Washington.

10 3.4. At all relevant times, Ostrom has been a corporation registered in Washington.

11 3.5. At all relevant times, Ostrom has done business in Washington, and has had 15
12 or more employees.

13 3.6. At all relevant times, Ostrom has been an “employer” within the meaning of
14 RCW 49.60.040(11).

15 3.7. At all relevant times, Ostrom has been engaged in “trade” or “commerce” within
16 the meaning of RCW 19.86.010(2).

17 **IV. FACTUAL ALLEGATIONS**

18 **A. Ostrom’s Business Operations**

19 4.1. Ostrom established its mushroom production facility in Sunnyside, Washington
20 in 2019 with the promise of bringing 200 year-round, non-seasonal jobs to the Sunnyside area.

21 4.2. Ostrom grows, harvests, packages, and ships between eight million to nine
22 million pounds of mushrooms per year from its 43-acre Sunnyside location.

23 4.3. At its Sunnyside facility, Ostrom grows a variety of mushrooms—including
24 white, crimini, and portabella mushrooms—in 48 climate-controlled growing rooms.
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1 4.4. Ostrom employs mushroom harvesters, who are also known as “pickers.”
2 Working in small groups, pickers select, pick, and grade the mushrooms growing in their
3 assigned growing room.

4 4.5. According to Ostrom’s job specification document for the “picker” position,
5 prospective employees must have “sufficient training and experience to demonstrate the
6 knowledge and abilities [in selecting, picking, and grading mushrooms].”¹

7 4.6. Ostrom sets a minimum hourly rate of production (i.e., pounds of mushrooms
8 harvested by each picker per hour). Ostrom represents to prospective workers that it pays a bonus
9 to pickers who exceed Ostrom’s production minimum.

10 4.7. A picker’s job duties also include other non-picking work, including disposing of
11 garbage and cleaning the mushroom beds.

12 4.8. Between January 2021 and May 2022, Ostrom employed approximately 180
13 pickers hired from the local community (“domestic pickers”).

14 4.9. Between January 2021 and May 2022, over half of Ostrom’s workforce of
15 domestic pickers were female.

16 4.10. Between opening its Sunnyside facility and until approximately June 4, 2021,
17 Ostrom typically published a picker’s production yield on a board on the production floor. This
18 allowed all employees the ability to see their production yields and understand whether they
19 were meeting minimum production goals and where they stood with respect to their peers.

20 **B. Ostrom Applies to Use the H-2A Temporary Agricultural Worker Program and**
21 **Begins Displacing Domestic Pickers**

22 4.11. The H-2A Temporary Agricultural Worker Program is a federal immigration
23 program by which certain employers may apply for and recruit foreign non-immigrant workers
24 for seasonal agricultural work.

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¹ See Exhibit 1 - Job Description.

1 4.12. Eligibility for the program requires employers to prove that the job openings
2 cannot be filled by domestic workers. As part of making that demonstration, an employer must
3 submit a Form ETA-790 Agricultural Clearance Order (“Clearance Order”) for approval by the
4 state workforce agency. In Washington, the state workforce agency is the Employment Security
5 Department.

6 4.13. Employers are required to provide a copy of the Clearance Order to all domestic
7 workers performing the same type of work as H-2A foreign guestworkers so that domestic
8 workers know the pay rate and work experience required of the H-2A foreign guestworkers.

9 4.14. When an employer is approved to participate in the H-2A Temporary Agricultural
10 Worker Program, it must advertise and offer domestic workers no less than the same benefits,
11 wages, and working conditions that the employer will provide to H-2A foreign guestworkers.

12 4.15. In early 2021, Ostrom hired H2Visa Solutions to apply for the H-2A Temporary
13 Agricultural Worker Program and to recruit workers from Mexico on Ostrom’s behalf. Ostrom’s
14 first application to use the H-2A Temporary Agricultural Worker Program was denied.

15 4.16. Around this same time, Ostrom increased the production minimum for domestic
16 pickers from 62.22 to 68 pounds per hour, and ended its practice of publishing or otherwise
17 sharing workers’ production yields.

18 4.17. Starting in mid-2021, Ostrom managers began calling domestic pickers into one-
19 on-one meetings in which the domestic pickers were told they were not meeting production
20 minimums, and would be receiving a warning along with a three-day, unpaid suspension if their
21 performance did not improve. The pickers were told they would be fired if they did not meet the
22 production minimum within a week of returning from the three-day suspension.

23 4.18. Managers also told domestic pickers that the production minimum would have to
24 average out each week to at least 68 pounds per hour even in circumstances where domestic
25 pickers worked extended periods of time doing work that is not picking, such as cleaning
26 growing rooms, or disposing of garbage.

1 4.19. Because Ostrom ended its practice of publishing or otherwise sharing workers'
2 yields, domestic pickers did not know their respective production yield amount, or the rate by
3 which they were falling short.

4 4.20. Nevertheless, Ostrom began issuing written warnings and unpaid suspensions to
5 its domestic pickers for failing to meet production minimums.

6 4.21. Domestic pickers who received warnings and unpaid suspensions for production
7 minimums were frequently terminated from employment close-in-time to the date of their
8 warning.

9 4.22. Female domestic pickers received these warnings and unpaid suspensions more
10 frequently than their male counterparts and were therefore terminated at a higher rate than their
11 male counterparts.

12 4.23. Several female pickers resigned from their jobs at Ostrom after the company
13 instituted these changes. At least some female pickers believed that Ostrom instituted these
14 changes in order to have a reason to suspend and terminate workers who they wanted to force
15 out.

16 4.24. Meanwhile, Ostrom submitted a second application to use the H-2A Temporary
17 Agricultural Worker Program, citing a lack of domestic workers available to work at its
18 Sunnyside facility. That application was approved on November 16, 2021, and authorized
19 Ostrom to recruit up to 70 H-2A foreign guestworkers for the period beginning December 15,
20 2021, through August 15, 2022.

21 4.25. Between early 2021, when Ostrom first contracted with H2Visa Solutions, until
22 May 2022, the company terminated approximately 79% of its domestic pickers and 85% of its
23 female pickers.

1 **C. Ostrom Uses Discriminatory Hiring Criteria and Deceives Domestic Workers**
2 **About the Terms and Availability of Employment**

3 4.26. In April 2022, Ostrom or Ostrom's recruiting agent published a job advertisement
4 on Facebook.com. The advertisement seeks "only males" for a job at Ostrom that begins the next
5 day.²

6 4.27. Also in April 2022, Ostrom hired 65 H-2A foreign guestworkers that began
7 working at Ostrom's Sunnyside facility. Of these, 63 H-2A foreign guestworkers were male.

8 4.28. Ostrom's November 16, 2021, Clearance Order, states that the picker wage is
9 \$17.41 per hour and the qualifications require a minimum of "[three] months of verifiable
10 experience in agriculture."

11 4.29. Prior to the H-2A foreign guestworkers' arrival, domestic pickers earned a wage
12 rate lower than \$17.41 per hour.

13 4.30. Ostrom did not provide a copy of the Clearance Order to domestic pickers or
14 otherwise inform them that they were entitled to the higher wage rate offered to H-2A foreign
15 guestworkers.

16 4.31. Once the H-2A foreign guestworkers arrived in Sunnyside and began working,
17 Ostrom continued to pay certain domestic workers a wage rate lower than that offered to the H-
18 2A foreign guestworkers.

19 4.32. Many of the H-2A foreign guestworkers that Ostrom hired did not meet the
20 requirement of having a minimum of three months verifiable experience in agriculture.

21 4.33. During the H-2A recruitment period, Ostrom rejected domestic workers' job
22 applications on the grounds that the domestic workers did not have agricultural experience. Some
23 of the domestic workers whom Ostrom rejected for lack of agricultural experience listed at least
24 three months of agricultural experience on their applications.

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² See Exhibit 2 – Facebook Job Advertisement.

1 4.34. From April 2022 to the present, Ostrom hired a total of four female domestic
2 workers for picker positions, and at least 65 overwhelmingly male H-2A foreign guestworkers
3 for picker positions.

4 4.35. Ostrom's discrimination caused economic and non-economic harm to domestic
5 workers, and constituted the willful and malicious infliction of injury.

6 **D. Ostrom Retaliates Against Domestic Workers Advocating for Their Rights**

7 4.36. On June 22, 2022, a group of domestic workers attempted to meet with Ostrom's
8 management to share their concerns regarding workplace conditions at Ostrom's Sunnyside
9 facility, including concerns about discrimination on the basis of citizenship status, immigration
10 status, and/or sex. Since June 22, 2022, domestic workers have continued to present their
11 concerns to Ostrom's management during meetings and in writing.

12 4.37. Workers who participated in efforts to advocate for fair and non-discriminatory
13 workplace conditions have faced retaliation at the hands of Ostrom managers. This retaliation
14 has included, but is not limited to:

15 4.37.1. A harvesting room manager physically assaulting a female worker with
16 a metal cart immediately after she returned to her shift from a meeting with
17 Ostrom's management about work conditions;

18 4.37.2. A manager issuing a warning to an employee accused of bringing a
19 weapon to work, who had not;

20 4.37.3. A manager issuing a warning to an employee who was purportedly
21 unable to prevent dirt from falling off the broken piece of machinery he was
22 operating; and

23 4.37.4. A manager issuing a warning to an employee for an unexcused absence,
24 even though the employee had called his absence into Ostrom's phone line in
25 accordance with Ostrom's attendance policy.
26

1 employment, because of citizenship or immigration status. RCW 49.60.030(1)(a) and
2 RCW 49.60.180(1)-(3).

3 5.7. By its actions described above, Ostrom discriminated against actual and
4 prospective domestic workers because of the domestic workers' citizenship or immigration
5 status, in violation of RCW 49.60.030(1)(a) and RCW 49.60.180(1)-(3).

6 **THIRD CAUSE OF ACTION**

7 **(Violation of the Washington Law Against Discrimination—Sex Discrimination)**

8 5.8. Under the Washington Law Against Discrimination, it is an unfair practice for an
9 employer to refuse to hire any person, to discharge or bar any person from employment, or to
10 otherwise discriminate against any person in compensation, or in other terms or conditions of
11 employment, because of sex. RCW 49.60.030(1)(a); RCW 49.60.180(1)-(3).

12 5.9. By its actions described above, Ostrom discriminated against its actual and
13 prospective female workers because of sex, in violation of RCW 49.60.030(1)(a) and RCW
14 49.60.180(1)-(3).

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of the Washington Law Against Discrimination—Retaliation)**

17 5.10. Under the Washington Law Against Discrimination, it is an unfair practice for an
18 employer to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment
19 of, or on account of their having exercised or enjoyed, their rights granted or protected under the
20 WLAD because of citizenship status, immigration status, and/or sex. RCW 49.60.030(1)(a);
21 RCW 49.60.210(1).

22 5.11. By the actions described above, Ostrom has coerced, intimidated, threatened, or
23 interfered with its employees in the exercise or enjoyment of, or on account of their having
24 exercised or enjoyed, their rights granted or protected under the WLAD because of citizenship
25 status, immigration status, and/or sex, in violation of RCW 49.60.030(1)(a) and RCW 49.60.210.
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1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, State of Washington, prays that the Court:

3 6.1 Adjudge and decree that Ostrom has engaged in the conduct complained of
4 herein.

5 6.2 Adjudge and decree that Ostrom's conduct violates the CPA, RCW 19.86.020.

6 6.3 Adjudge and decree that Ostrom's conduct violates the WLAD,
7 RCW 49.60.030(1)(a), RCW 49.60.180(1)-(3), and RCW 49.60.210

8 6.4 Issue a permanent injunction enjoining and restraining Ostrom and its
9 representatives, successors, assigns, officers, agents, servants, employees, and all other person
10 acting or claiming to act for, on behalf of, or in active concert or participation with Ostrom from
11 engaging in the unlawful conduct complained herein.

12 6.5 Enter such orders for restitution as necessary to restore to any person an interest
13 in any moneys or property, real or personal, which may have been acquired by means of an act
14 prohibited by the CPA, pursuant to RCW 19.86.080(2).

15 6.6 Impose a civil penalty of up to \$7,500 for each and every violation of the CPA
16 pursuant to RCW 19.86.140.

17 6.7 Impose an enhanced civil penalty of \$5,000 for each violation of the CPA that
18 targets or impacts specific individuals or communities based on demographic characteristics,
19 including citizenship status, immigration status, and sex, pursuant to RCW 19.86.140.

20 6.8 Award damages or other appropriate monetary relief to each person aggrieved by
21 Ostrom's discriminatory conduct, in an amount to be proven at trial.

22 6.9 Award the State the costs of suit including reasonable attorneys' fees.

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1 DATED this 17th day of August 2022.

2 ROBERT W. FERGUSON
3 Attorney General

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5 _____
6 ALFREDO GONZÁLEZ BENÍTEZ, WSBA #54364
7 EMILY C. NELSON WSBA #48440
8 Assistant Attorneys General
9 Wing Luke Civil Rights Division
10 Office of the Attorney General
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12 Seattle, WA 98104
13 (206) 464-7744
14 alfredo.gonzalezbenitez@atg.wa.gov
15 emily.nelson@atg.wa.gov

16 *Attorneys for Plaintiff State of Washington*

EXHIBIT 1



Job Title: Harvester
FLSA Status: Agriculture
Reports To: Harvesting Supervisor

Job Code: 50602
Department: Picking
Last Rev. Date: 04/24/2022

Pick, Sort and Grade mushrooms at a minimum of 68 lbs an hour. The Picker must be trained with a complete understanding of techniques required to achieve quality standards. (Process: Quality first-One touch harvest-Gentle Pick)

PRIMARY RESPONSIBILITIES:

SELECTING, CUTTING & SORTING:

- Selection – Start from the edge of the tray and work inward to the middle.
- Pick three mushrooms individually with a slight twist, pull up, and bring to your cutting position.
- Hold the mushrooms in your non-cutting hand so that the stems are horizontal to the floor.
- The proper harvesting technique following the "One-Touch" method, quality grading, simultaneous cleaning of the beds, efficiency, and worker hygiene.
- Cut the stem straight across, approximately the 1/2 length as the cap. Turn your hands at the same time to speed up the cutting process. Practice will perfect this technique.
- After cutting, sort by grade and size.
- **Note:** *If you are cutting mushrooms from the opposite direction from where you are standing, please make sure you are cutting the stems into the garbage cans.*

GRADING AND SIZING:

- An "A" grade mushroom has a round, tight cap to the stem interface with no gaps or holes separating the two. There is no damage to the cap including damage created by the picker such as fingernail marks, bruises, knife cuts, etc. An "A" grade mushroom may have slight stretching at the cap/stem, but no soft tissue. Often times, the bottom of a mushroom will have a flower or rose pattern to it. If the flower or rose pattern is tight, it is an "A" grade mushroom.
- A "B" grade mushroom is any mushroom that is damaged. If a mushroom is broken, extremely stretched at the cap/stem interface, is open like an umbrella, has no stem or has a wet stem, it is a "B" grade mushroom.
- A template will be issued to assist new employees with learning the proper sizes.
- Large mushrooms are any mushroom that is 1 5/8 inch in diameter and larger. Mushrooms over 2 1/2 inches are considered Jumbo or Stuffer size. In the event that you pick this size mushroom, you may want to cut the

Jumbo/Stuffer directly into a box and use an extra basket for medium and large mushrooms.

- Medium mushrooms are between 1 1/4 inch and 1 3/4 inch. Place this size mushroom into the appropriate box.
- Petite mushrooms are 1 inch and smaller. Place this size mushroom into the appropriate box or basket.

GARBAGE:

- Garbage cans will be inspected and if any sellable product has been improperly discarded you will receive a picking violation.
- Must use small garbage can for disposal of all mushrooms butts and empty it as it gets full. *(don't let it overflow onto the floor)*
- Must make sure that garbage is empty before taking a break. *(this is a Workplace Safety and HACCP issue.)*

BED CARE AND CLEANING:

- Always start picking each tray from the outside edge, and work your way towards the center of the tray. This helps to minimize the amount of soil and debris that might fall onto mushrooms yet to be picked.
- As you pick, you will from time to time, knock over mushrooms with your hand or shirtsleeve. When this happens, simply pick up the knocked over mushroom(s), cut, grade and sort it as you go as you would any other mushroom.
- When each tray is picked, before moving to the next tray, follow these steps:
- Do a quick visual of the tray, looking for knocked over mushrooms and stems.
- Remove all stems to the garbage can, and pick up and cut any knocked over mushrooms.
- Cleaning the beds as you pick will help to reduce disease from spreading, will promote a healthier next break, and will reduce the need to return to the room to clean the beds. NOTE: If a room begins to show signs of having bacterial slime, these mushrooms are never to be removed and thrown away while picking both the A and B grade. After all the A & B grade product has been picked in a room known to have bacterial slime, the pickers must change into a new pair of gloves. The pickers then go back through the room to remove infected product from the beds, and then dispose of the infected product into their garbage cans. Gloves must be changed after touching infected product.
- Do not place boxes (empty or full) or baskets on the bed even if there are no mushrooms to be seen. This causes the boxes to become dirty on the underside, which can fall into stacked boxes. The boxes can damage small pins just by touching them. This action reduces the overall yield potential of any given crop.
- Cleaning the Beds: During training, all picker trainees are instructed and trained to clear the beds in the correct way. Over cleaning of the beds can lead to severe yield loss, whereas not cleaning the beds properly can lead to disease outbreaks.
- Raking or scraping the beds is prohibited. The damage done by raking or scraping is irreversible. Raking or scraping the beds will result in a picking violation.
- SOB rooms must be stripped completely.

REQUIREMENTS, EDUCATION & EXPERIENCE:

Any combination equivalent to: sufficient training and experience to demonstrate the knowledge and abilities listed above.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the primary functions of this job. While performing the duties of this job, the employee is frequently required to sit; use hands to finger, handle, or feel; reach with hands and arms; and talk; or hear. The employee is occasionally required to stand and walk. The employee must occasionally lift and/or move up to 30 pounds. Specific vision abilities required by this job include close vision, distance vision and ability to adjust focus.

Reasonable accommodations may be made to enable people with disabilities to perform the essential functions of the picker's job.

WORK ENVIRONMENT:

This position requires work in typical farm environment and includes conditions such as the following: cold, heat, wet, humid, fumes, odors, dusts, gases, trip hazards, sharp objects, heavy objects.

HACCP:

Ostrom's is a food production facility operating within a defined food safety program (HACCP). All employees are required to maintain essential basic hygiene protocols as established within the departments. It is our objective and mandate to provide our current and future customers with food products grown, packed and distributed under sanitary, wholesome and safe conditions.

Our Mission: Ostrom Mushroom Farms will succeed in being the mushroom supplier of choice in the markets we serve by meeting the needs of our customers through continuous improvement of our work processes, products, and services.

Core Values: At Ostrom, we value our employees and recognize their contributions to our success. As a result, and in support of our guiding principles, we are committed to providing a quality benefits package.

Our Benefits Package: Health, Dental and Vision Insurance, Life Insurance and Accidental Death & Dismemberment. Paid Holidays / Paid Time Off. We are committed to equal employment opportunity.

It is our policy to recruit, hire, train and promote individuals without regard to race, color, creed, religion, disability, gender, ethnic or national origin, or veteran status.



This job specification should not be construed to imply that these requirements are the exclusive standards of the position. Incumbents will follow any other instructions, and perform any other related duties, as may be required by their supervisor.

I have read and understand the job description and agree to abide by its contents.

Signature: _____

Date: _____

employee

Signature: _____

Date: _____

Human resources

EXHIBIT 2

facebook



Your Feed

Favorites

Recent

**cambalache Yakima**
Wa alrededores

[Redacted] · 2h · [Public]

Solicito personal Para la bodega del
ongro en Sunnyside solo personal
masculino el trabajo es Para enpesar
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solo llamadas



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**STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

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OSTROM MUSHROOM FARMS, LLC,

Defendant.

No.

GENERAL RULE 17(a)(2)
DECLARATION

I, Jesse Todd, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I am a WA Registered Process Server in Yakima County, No. 253. My business address, telephone number, facsimile number, and email address are as follows: Apex Legal Services, 13300 Bothell Everett Hwy, #303-674, Mill Creek, WA 98102; office telephone: (855) 356-0875; fax number: (425) 272-4278; email address: eric@apexlgl.com. I make this Declaration based on my own personal knowledge. I am over the age of eighteen and competent to testify to the facts stated herein.

2. This Declaration is filed in accordance with GR 17(a)(2).

3. On August 16, 2022, I received the Complaint from Legal Assistant Anna M.

1 Alfonso of the Civil Rights Division of the Attorney General's Office. I have examined this
2 document, which consists of twenty (20) pages including this Declaration.

3 4. The foregoing document is a complete and legible facsimile transmitted original
4 signed by Assistant Attorney Alfredo González Benítez.

5
6 DATED this 17th day of August 2022 in Yakima, Washington.

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9 _____
10 JESSE TODD
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