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7 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

8 STATE OF WASHINGTON,  
9  
Plaintiff,

CIVIL ACTION NO.

10 v.

COMPLAINT

11 HORNING BROTHERS, L.L.C.,  
12 and HERMILO CRUZ, in his  
individual capacity and as a  
13 member of the marital  
community of HERMILO CRUZ  
14 and CLAUDIA SANCHEZ,

DEMAND FOR JURY TRIAL

15 Defendants.

16 **I. INTRODUCTION**

17 1. The State of Washington (“State”), by and through its undersigned  
18 attorneys, brings this action against Horning Brothers, L.L.C. (“Horning  
19 Brothers”), and Hermilo Cruz to enforce Title VII of the Civil Rights Act of  
20 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e–2000e-17, and the  
21 Washington Law Against Discrimination (“WLAD”), Wash. Rev. Code  
22 §§ 49.60.010–49.60.505.

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**II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the State’s Title VII claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3). The Court has supplemental jurisdiction to adjudicate the State’s WLAD claims pursuant to 28 U.S.C. § 1367(a). The events, parties, witnesses, and injuries that form the basis of the Title VII claims are the same or related to the events, parties, witnesses, and injuries that form the basis of the WLAD claims.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and 42 U.S.C. § 2000e-5(f)(3) because the employment practices alleged to be unlawful were committed within the Eastern District of Washington.

4. On December 14, 2016, the State filed an administrative charge of employment discrimination with the U.S. Equal Employment Opportunity Commission. On January 31, 2017, the U.S. Equal Employment Opportunity Commission issued a notice of right to sue, attached hereto as Exhibit A. This action was timely filed thereafter. The State has fulfilled all administrative prerequisites to filing this action as required by 42 U.S.C. § 2000e-5.

5. The State has the statutory authority to bring this action pursuant to 42 U.S.C. § 2000e-5(f)(1), Wash. Rev. Code § 43.10.030(1), and through its authority as *parens patriae*.

**III. PARTIES**

6. The Attorney General is the chief legal adviser to the State. The

1 Attorney General's powers and duties include acting in federal court on matters  
2 of public concern.

3 7. The State has declared that discriminatory employment practices  
4 are a matter of public concern that threaten the rights and proper privileges of  
5 the inhabitants of the State and menace the institutions and foundations of a free  
6 democratic State. The elimination and prevention of discrimination is an  
7 exercise of the State's police power for the protection of the public welfare,  
8 health, and peace of the people. *See* Wash. Rev. Code § 49.60.010.

9 8. The State's interest in protecting the health, safety, and well-being  
10 of its residents, including protecting its residents from the harmful effects of  
11 present and future discrimination that may impact their physical or economic  
12 health, is a quasi-sovereign interest.

13 9. The State also has an interest in ensuring that its residents are not  
14 excluded from the benefits that flow from participation in the federal system,  
15 including the prohibitions on employment discrimination provided under  
16 federal law.

17 10. The State's interest in preventing and remedying unlawful  
18 discrimination extends to past and current discrimination victims, future  
19 victims, individuals who suffer indirect injuries, and members of the general  
20 public.

21 11. Between 2012 and 2016, Washington workers performed more  
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1 than 29,000,000 hours of work sorting and packing fresh vegetables. In Grant  
2 County, workers performed more than 3,000,000 hours of vegetable sorting and  
3 packing during that period.

4 12. The number of agricultural workers in Washington is growing. In  
5 2012, there was an annual average of 88,782 agricultural jobs. In 2015, the last  
6 year for which data are currently available, the annual average was 96,167 jobs.  
7 Approximately 28% of Washington agricultural workers are female.

8 13. In Washington, sexual harassment of female farmworkers is an  
9 occupational hazard that profoundly impacts women's ability to work safely  
10 and productively in the field of agriculture.

11 14. Horning Brothers is an agricultural company engaged in commerce  
12 including the growing, harvesting, sorting, packing, and transporting of  
13 vegetables. Horning Brothers' principal office is located at 14095 West  
14 Baseline Road in Quincy, Grant County, Washington.

15 15. At all relevant times, Horning Brothers has been a corporation  
16 doing business in Washington State and having 15 or more employees.

17 16. At all relevant times, Horning Brothers has been engaged in an  
18 industry affecting commerce within the meaning of 42 U.S.C. §§ 2000e(g)–(h).

19 17. Horning Brothers is an “employer” for purposes of 42 U.S.C.  
20 § 2000e(b) and Wash. Rev. Code § 49.60.040(11).

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1 18. Hermilo Cruz and Claudia Sanchez are a marital community  
2 residing in Grant County, Washington.

3 19. At all relevant times, Horning Brothers employed Hermilo Cruz as  
4 the Supervisor of its onion packing shed.

5 20. As Supervisor, Hermilo Cruz oversees operations at the onion  
6 packing shed and has the authority to hire employees, set work hours, make job  
7 assignments, and determine who will be offered work the following season.

8 21. As Supervisor, Hermilo Cruz acts in the scope of his duties and in  
9 the interest of Horning Brothers.

10 **IV. ALLEGATIONS**

11 22. Horning Brothers operates an onion packing shed located at 14095  
12 West Baseline Road in Quincy, Washington. During the onion packing season,  
13 dozens of employees work transporting onions, unloading trucks, sorting onions  
14 on the packing line, bagging onions, dumping garbage, and hauling bagged  
15 onions to the receiving area.

16 23. From at least 2012 to the present, Horning Brothers and Hermilo  
17 Cruz employed a policy or practice of hiring only women to sort onions on the  
18 onion packing line and limiting women to positions on the onion packing line.

19 24. From at least 2012 to the present, Horning Brothers and Hermilo  
20 Cruz subjected female employees of the onion packing shed to unlawful  
21 discrimination on the basis of sex, including quid pro quo sexual harassment  
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1 and/or severe, pervasive, and unwelcome sexual conduct that gave rise to a  
2 hostile work environment. The sexual conduct was carried out by Hermilo  
3 Cruz. The conduct includes, but is not limited to:

- 4 a. Requesting dates and sex;
- 5 b. Requesting intimate photographs;
- 6 c. Making unwelcome comments about female employees'  
7 appearance or bodies, including their buttocks and breasts;
- 8 d. Making overt, sexual gestures toward female employees,  
9 including licking his lips and grabbing his groin area;
- 10 e. Making unwelcome requests to touch female employees,  
11 including on their buttocks and breasts;
- 12 f. Groping or touching female employees without their  
13 permission, including on their arms, back, thighs, hips,  
14 buttocks, and breasts; giving them unwanted hugs and  
15 kisses; and rubbing his groin or other body parts against  
16 them; and
- 17 g. Requiring or attempting to require that employees have sex  
18 with him in order to secure continued employment.

19 25. Horning Brothers knew or should have known that Hermilo Cruz  
20 was engaging in the conduct alleged herein. Nonetheless, Horning Brothers  
21 failed to take reasonably prompt and adequate corrective action.

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1           26. The conduct alleged herein was objectively and subjectively  
2 intolerable and resulted in the constructive discharge of several employees.

3           27. Horning Brothers and Hermilo Cruz reprimanded, disciplined,  
4 discharged, expelled, failed to rehire, took adverse employment action, or  
5 otherwise discriminated against employees who rejected Hermilo Cruz's  
6 advances or who complained to others, including to the owners of Horning  
7 Brothers, about Hermilo Cruz's behavior. These actions would dissuade a  
8 reasonable person from engaging in protected activity.

9           28. The conduct of Horning Brothers and Hermilo Cruz was  
10 intentional, willful, and/or taken in reckless disregard for the rights of others.

11           29. Washington residents who are employees, prospective employees,  
12 past employees, and persons associated with them have been injured by  
13 Horning Brothers' and Hermilo Cruz's discriminatory conduct. Such persons  
14 may have suffered pecuniary and nonpecuniary injuries as a result of the  
15 unlawful conduct alleged herein.

16                                   **V. FIRST CAUSE OF ACTION**  
17                                   **(Violation of Title VII – Discriminatory Hiring Practices)**

18           30. The State realleges and incorporates by reference the allegations  
19 set forth in each of the preceding paragraphs of this Complaint.

20           31. Through their actions described above, Horning Brothers and  
21 Hermilo Cruz have failed to hire, refused to hire, discharged, or otherwise  
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1 discriminated against workers because of sex, in violation of 42 U.S.C. §  
2 2000e-2(a)(1).

3 **VI. SECOND CAUSE OF ACTION**  
4 **(Violation of Title VII – Segregated Employment Practices)**

5 32. The State realleges and incorporates by reference the allegations  
6 set forth in each of the preceding paragraphs of this Complaint.

7 33. Through their actions described above, Horning Brothers and  
8 Hermilo Cruz have limited, segregated, or classified employees or applicants  
9 for employment in a way which deprives or tends to deprive individuals of  
10 employment opportunities or otherwise adversely affects employment status  
11 because of sex, in violation of 42 U.S.C. § 2000e-2(a)(2).

12 **VII. THIRD CAUSE OF ACTION**  
13 **(Violation of Title VII – Sexual Harassment)**

14 34. The State realleges and incorporates by reference the allegations  
15 set forth in each of the preceding paragraphs of this Complaint.

16 35. Through their actions described above, Horning Brothers and  
17 Hermilo Cruz have discriminated against female workers with respect to the  
18 compensation, terms, conditions, or privileges of employment because of sex,  
19 in violation of 42 U.S.C. § 2000e-2(a)(1).

20 **VIII. FOURTH CAUSE OF ACTION**  
21 **(Violation of Title VII – Retaliation)**

22 36. The State realleges and incorporates by reference the allegations  
set forth in each of the preceding paragraphs of this Complaint.



1 37. Through their actions described above, Horning Brothers and  
2 Hermilo Cruz have discriminated against employees for opposing unlawful or  
3 discriminatory employment practices, in violation of 42 U.S.C. § 2000e-3(a).

4 **IX. FIFTH CAUSE OF ACTION**  
5 **(Violation of the WLAD – Discriminatory Hiring Practices)**

6 38. The State realleges and incorporates by reference the allegations  
7 set forth in each of the preceding paragraphs of this Complaint.

8 39. Through their actions described above, Horning Brothers and  
9 Hermilo Cruz have refused to hire, discharged, or otherwise discriminated  
10 against workers because of sex, in violation of Wash. Rev. Code  
11 §49.60.030(1)(a) and Wash. Rev. Code § 49.60.180(1)–(3).

12 **X. SIXTH CAUSE OF ACTION**  
13 **(Violation of the WLAD – Sexual Harassment)**

14 40. The Sate realleges and incorporates by reference the allegations set  
15 forth in each of the preceding paragraphs of this Complaint.

16 41. Through their actions described above, Horning Brothers and  
17 Hermilo Cruz have discriminated against female workers in compensation or in  
18 other terms or conditions of employment because of sex, in violation of Wash.  
19 Rev. Code § 49.60.030(1)(a) and Wash. Rev. Code § 49.60.180(2)–(3).

20 **XI. SEVENTH CAUSE OF ACTION**  
21 **(Violation of the WLAD – Retaliation)**

22 42. The State realleges and incorporates by reference the allegations  
set forth in each of the preceding paragraphs of this Complaint.

1 43. Through their actions described above, Horning Brothers and  
2 Hermilo Cruz have discharged, expelled, or otherwise discriminated against  
3 individuals who have opposed unfair or discriminatory employment practices,  
4 in violation of Wash. Rev. Code § 49.60.210(1).

5 **XII. EIGHTH CAUSE OF ACTION**  
6 **(Violation of the WLAD – Aiding and Abetting)**

7 44. The State realleges and incorporates by reference the allegations  
8 set forth in each of the preceding paragraphs of this Complaint.

9 45. Through their actions described above, Horning Brothers and  
10 Hermilo Cruz have aided, abetted, encouraged, or incited the commission of an  
11 unfair employment practice, or attempted to obstruct or prevent any other  
12 person from complying with nondiscrimination requirements, in violation of  
13 Wash. Rev. Code § 49.60.220.

14 **XIII. PRAYER FOR RELIEF**

15 46. Wherefore, the State of Washington prays that the Court:

- 16 a. Declare that the discriminatory practices of Horning  
17 Brothers and Hermilo Cruz violate Title VII and the WLAD;  
18 b. Enjoin Horning Brothers and Hermilo Cruz from  
19 discriminating on the basis of sex in any aspect of  
20 employment or retaliating against employees who complain  
21 of discriminatory or unfair employment practices;  
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- c. Award damages or other appropriate monetary relief to each person aggrieved by Horning Brothers’ and Hermilo Cruz’s discriminatory conduct, in an amount to be proven at trial;
- d. Award the State the costs of suit including reasonable attorneys’ fees; and
- e. Award such additional relief as the interests of justice may require.

DATED this 25th day of April, 2017.

Respectfully submitted,

*s/ Colleen M. Melody*  
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