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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDRES MORALES, JUAN
MIGUEL REAL, HUGO
ALCANTAR FERNANDEZ,
OSFEL ANDRADE on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

TERRA UNIVERSAL, INC.,
GEORGE SADAGHLANI, and
Does 1-10, inclusive,

Defendants.

Case No. CV10-6490 PA(SSx)

**CLASS ACTION COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

FILED
2010 AUG 31 AM 10:15
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CENTRAL DIST. OF CALIF.
SANTA ANA
BY: _____

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3 **INTRODUCTION**
4

5 1. This class action is brought by Plaintiffs Andres Morales, Juan
6 Miguel Real, Hugo Alcantar Fernandez, and Osfel Andrade (collectively
7 “Plaintiffs”) on behalf of themselves and a class of all former and current hourly
8 employees of Defendant Terra Universal, Inc. (“Terra”), and its owner and
9 operator, Defendant George Sadaghiani (“Sadaghiani”) (collectively “Defendants”).

10 2. Terra, which produces highly-specialized cleanroom and laboratory
11 equipment, has earned annual sales in the range of \$50 to \$100 million per year and
12 contracts with numerous federal government agencies, including the Army, the
13 Navy and NASA. Yet Terra’s success has been unlawfully built off the backs of an
14 immigrant workforce, whose vulnerabilities Defendants exploited to swindle them
15 out of their earned wages.
16

17 3. Defendants exploited their immigrant workforce by preying on their
18 unfamiliarity with U.S. labor law and their desperate need for work. Through
19 fraudulent compensation schemes, Defendants required their Latino and immigrant
20 workforce to toil long hours without overtime pay: for instance, requiring workers
21 to clock out at the completion of eight-hour shifts and clock back in, under a
22 “second job,” for additional hours, so as to avoid paying overtime wages and escape
23 detection by the government. And by creating a two-tiered system of rights, one for
24 those it perceived to be documented and another for those it perceived to be
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1 undocumented, Defendants created an underclass of exploitable workers. Branding
2 employees believed to be undocumented with red stickers on their personnel files,
3 Defendants discriminated against those workers by paying them far less than lawful
4 permanent residents or citizen employees and refusing them the holidays, sick days
5 and vacation days that these employees received. All the while, Defendant
6 Sadaghiani subjected the immigrant workforce to such hostile treatment that
7 employees feared demanding lawful compensation and, even, reporting serious
8 workplace injuries for fear of reprisals.
9

10
11
12 4. Accordingly, Plaintiffs, on behalf of themselves and others similarly
13 situated, and the general public, hereby complain of violations of numerous federal
14 and state employment laws for failure to pay mandated minimum and overtime
15 wages, to pay wages, to pay wages in a timely manner, and to keep and furnish
16 accurate wage statements. Plaintiffs also complain of violations of federal civil
17 rights statutes for discrimination and disparate treatment on account of their race
18 and/or alienage in depriving Plaintiffs and other class members of equal pay,
19 lawfully compensated overtime wages, benefits and raises, and subjecting them to
20 hostile treatment. They also charge Defendants with fraud and misrepresentation in
21 inducing Plaintiffs to accept unfavorable conditions of work in reliance on promises
22 and representations made by Defendants, which Defendants knew or should have
23 known were false. Finally, Plaintiffs bring claims for unfair business practices for
24 unlawful, unfair and fraudulent business practices that run counter to the public's
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1 interest in ensuring compliance with minimum labor standards for all workers.

2 **JURISDICTION**

3
4 5. The Court has original subject matter jurisdiction over this action
5 pursuant to 28 U.S.C. §§ 1331 and 1337 and Fair Labor Standards Act (“FLSA”),
6 29 U.S.C. § 216(b). The Court has supplemental jurisdiction over the state law
7
8 claims pursuant to 28 U.S.C. § 1367(a).

9 **VENUE**

10 6. Venue is proper in the Central District of California pursuant to 28
11 U.S.C. § 1391(b) because the acts, events and omissions giving rise to the action
12
13 occurred in this District.

14 **PARTIES**

15 **Plaintiffs**

16 7. Plaintiff Andres Morales is a Latino and noncitizen who resides in
17
18 Anaheim, California. He is sixty-two years old. Mr. Morales has worked for
19 Defendants from approximately August 1998 until the present day. He works as an
20
21 electronic technician on the factory floor.

22 8. Plaintiff Juan Miguel Real is a Latino and noncitizen who resides in
23
24 Garden Grove, California. He is thirty-five years old. Mr. Real worked for
25
26 Defendants from approximately December 1999 until July 2010. For the last four
27
28 years of his employment, Mr. Real worked as the manager of the sheet metal shop
on the factory floor.

9. Plaintiff Hugo Alcantar Fernandez is a Latino and noncitizen who

1 resides in Fullerton, California. He is twenty-eight years old. Mr. Fernandez
2 worked for Defendants from approximately June 2004 until February 2007 and
3 from approximately September 2007 until July 2010. Mr. Fernandez worked as a
4 polypropylene welder in the plastics shop on the factory floor.
5

6 10. Plaintiff Osfel Andrade is a Latino and noncitizen who resides in
7 Anaheim, California. He is forty-three years old. Mr. Andrade worked for
8 Defendants from December 2000 until July 2010. Most recently, Mr. Andrade
9 worked as an assistant to the supervisor of the shipping department.
10

11 11. At all relevant times, Plaintiffs are and/or were employed by
12 Defendants as defined by the FLSA, 29 U.S.C. § 203(g).
13

14 12. At all relevant times, Plaintiffs were “persons” within the meaning of
15 that term under 42 U.S.C. § 1981.
16

17 13. At all relevant times, Plaintiffs were engaged in interstate commerce
18 and/or in the production of goods for sale in interstate commerce.
19

20 **Defendants**

21 14. Defendant Terra, founded in 1976, is a leading manufacturer of
22 modular clean rooms, desiccators, abide by boxes, laminar flow and exhaust fume
23 hoods, wet processing stations, clean-room workbenches, storage systems and
24 furniture. Terra supplies over 5,000 United States and international pharmaceutical,
25 biotechnology, medical device, semiconductor, and aerospace companies, as well as
26 research entities, universities and government agencies. Between 2004 and 2009,
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1 Terra's four largest accounts with the federal government were with the U.S. Army,
2 the U.S. Navy, the U.S. Air Force, and the National Aeronautics and Space
3 Administration ("NASA"). Upon information and belief, Terra currently employs
4 over 225 employees at its main administrative and manufacturing complex in
5 Fullerton, California.
6

7
8 15. Defendant Terra is incorporated in California and its registered agent
9 resides in Laguna Niguel, California. At all times relevant to this action, Terra
10 maintained a business establishment at 800 S. Raymond Avenue, Fullerton,
11 California 92831. At all times relevant to this action, Terra may be deemed to have
12 resided in and have conducted business in the Central District of California.
13 Kenneth Harms is the Chief Operating Officer of Terra Universal, Inc. Irma
14 Interiano is the Chief Financial Officer and formerly the Human Resources
15 Executive at Terra.
16
17

18 16. Defendant George Sadaghiani is the owner and president of Terra.
19 Sadaghiani resides in Laguna Niguel, California.
20

21 17. At all times relevant to this action, Defendants and their agents
22 exercised, and/or will exercise, the authority to direct, control, and/or supervise the
23 work of Plaintiffs.
24

25 18. At all times relevant to this action, Defendants employed Plaintiffs
26 within the meaning of 29 U.S.C. § 203(g).
27

28 19. At all times relevant to this action, Defendants employed fifteen or

1 more employees.

2 20. At all times relevant to this action, Defendants were “persons” within
3 the meaning of 29 U.S.C. § 203(a), 42 U.S.C. § 2000a(e), and 42 U.S.C. § 1985;
4 and “employers” as defined by 29 U.S.C. § 203(d), 42 U.S.C. § 2000e(b), and
5 California state law.
6

7 21. The true names and capacities of defendants Does 1 through 10,
8 inclusive, are presently unknown to Plaintiffs, who therefore sue said Defendants
9 by such fictitious names. Plaintiffs will amend this complaint to set forth the true
10 names and capacities of said Defendants when they are ascertained. Plaintiffs are
11 informed and believe, and upon such information and belief allege, that at all times
12 relevant to this action, each of the fictitiously-named Defendants was an agent,
13 employee, or co-conspirator of one or more of the named Defendants, and was
14 acting within the course and scope of said agency or employment. Plaintiffs are
15 further informed and believe, and upon such information and belief allege, that each
16 of the fictitiously named Defendants aided and assisted the named Defendants in
17 committing the wrongful acts alleged herein, and that Plaintiffs’ damages, as
18 alleged herein, were proximately caused by such Defendants.
19

20 22. Plaintiffs are informed and believe, and upon such information and
21 belief allege, that Defendants, and each of them, conspired and agreed among
22 themselves to do the acts complained of herein and were, in doing such acts, acting
23 pursuant to and in furtherance of said conspiracy. Each Defendant sued herein is
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1 jointly and severally responsible and liable to Plaintiffs for the damages alleged
2 herein.

3
4 23. Whenever and wherever reference is made in this complaint to any act
5 by a Defendant or Defendants, such allegations and reference shall also be deemed
6 to mean the acts and failures to act of each Defendant acting individually, jointly,
7 and severally.

8
9 24. The conduct of Defendants and each of them, and/or their
10 agents/employees or supervisors, authorized, condoned and ratified the unlawful
11 conduct of each other.

12
13 25. Whenever and wherever reference is made to individuals who are not
14 named as a Plaintiff or Defendant in this Complaint but who, during relevant time
15 periods, were employees or agents of Defendants, such individuals at all relevant
16 times acted on behalf of Defendants within the scope of their employment.

17
18 **STATEMENT OF FACTS**

19
20 26. For many years, Defendants have systematically exploited Plaintiffs
21 and other class members. Defendants required Plaintiffs and other class members
22 to work as many as fourteen hours a day without paying them their lawful overtime
23 wages. Instead, Defendants created fraudulent overtime schemes – the “second
24 job” and the “bonus” schemes – to evade overtime wage requirements and
25 government detection, pay Plaintiffs and other class members far less than legally
26 mandated and confuse Plaintiffs and other class members as to whether Defendants
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1 were properly compensating them for their earned wages. Defendants used race
2 and alienage discrimination to further its exploitation by singling out certain groups
3 of employees, particularly those they believed to be undocumented, to deprive them
4 of their rights to equal pay and benefits as to citizen employees. In addition,
5 Defendants used false promises and misrepresentations about Plaintiffs' and other
6 class members' rights to further exploit them. Defendants' policies and practices
7 resulted in a series of schemes aimed at compelling Plaintiffs and other class
8 members to work longer hours and produce more, for less pay, all the while
9 preventing them from exercising or demanding their workplace rights.

13 **Factual Allegations Related to Wage and Hour Violations**

14 27. Defendants required Plaintiffs and other class members to work in
15 excess of eight hours per day and in excess of forty hours per week without
16 overtime pay and, in some cases, without any payment of wages.

18 28. At all times relevant to this action, Defendants operated at least two
19 different fraudulent compensation schemes to cheat Plaintiffs and other class
20 members out of overtime wages and, in some cases, any wages for hours worked:
21 the "second job" scheme and the "bonus" scheme.

22 29. Under the "second job" scheme, Defendants required Plaintiffs and
23 other class members to "clock out" after eight hours of work and immediately clock
24 back in under the "second job" category for their overtime hours. Plaintiffs and
25 other class members were either paid their hourly wage for the "second job"
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1 overtime hours or up to a few dollars above their hourly wage.

2 30. Beginning in or around 2008, Defendants replaced the “second job”
3 scheme and implemented a “bonus” scheme for workers earning \$10 per hour or
4 above. Defendants introduced the “bonus” scheme gradually.
5

6 31. In individual meetings, Defendants, individually or through their
7 agents, employees and/or representatives, informed Plaintiffs and other class
8 members that they were going to reduce their hourly wage, so that they could
9 “correctly” pay overtime. To cover the difference between the old wage and the
10 new reduced wage, Defendants told Plaintiffs and other class members that they
11 would pay them a lump-sum bonus on a biweekly basis that would compensate
12 them for the difference, so that they would not notice the reduction in pay.
13
14

15 32. Defendants, individually or through their agents, employees and/or
16 representatives, required Plaintiffs and other class members to sign a document
17 agreeing to the wage reduction and “bonus” scheme. Defendants told Plaintiffs and
18 other class members that if they did not sign the document they would be fired or
19 have their hours reduced.
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21

22 33. Defendants’ “bonus” scheme failed to pay Plaintiffs and other class
23 members at the legally-mandated rate of 150% of their regular rate of pay.
24

25 34. For Plaintiffs and other similarly situated class members, the bonus
26 never compensated them for the difference between their former salary and their
27 reduced salary, nor did Defendants lawfully pay them all of their overtime wages.
28

1 35. Defendants further used the “bonus” scheme to make deductions from
2 employees’ pay that would otherwise be unlawful. Defendants made deductions for
3 every overtime hour worked as an apparent incentive to produce more in eight
4 hours. Defendants also made deductions for workplace injuries, mistakes or
5 warnings. Upon information and belief, Defendants instructed supervisors to
6 routinely give warnings and penalties to their employees so that Defendants could
7 make deductions from their pay.
8

9
10 36. Defendants’ “bonus” scheme was deliberately designed to confuse
11 Plaintiffs and other class members so that they could not detect whether and for
12 what they were being compensated. Indeed, when Defendants paid the bonus in
13 lieu of paying overtime, they failed to report to Plaintiffs and other class members
14 the number of overtime hours worked or any other information to indicate how the
15 bonus sum was calculated.
16
17

18 37. Defendants did not compensate Plaintiffs and other class members for
19 all of their overtime hours worked.
20

21 38. Defendants’ failure to pay overtime wages to Plaintiffs and other class
22 members was willful.
23

24 39. As a result of Defendants’ unlawful conduct, Plaintiffs and other class
25 members have been and continue to be systematically deprived of the wages to
26 which they are entitled by law.
27

28 40. Plaintiffs are “non-exempt” employees, i.e., they are not exempt from

1 the overtime provisions of the FLSA or the California Labor Code. They do not
2 engage in exempt executive, administrative, or professional duties within the
3 meaning of 29 U.S.C. § 213 and 29 C.F.R. §§ 541.1, 541.2 and 541.3. Nor are they
4 paid on a salary basis within the meaning of 29 C.F.R. § 541.118. Nor do they
5 engage in “work which is primarily intellectual, managerial, or creative, and which
6 requires exercise of discretion and independent judgment,” within the meaning of
7 Wage Order Nos. 4-89, 4-98, 7-80 and 7-98.
8

9
10 **Factual Allegations Related to Discrimination**

11
12 41. Defendants maintained a policy and practice of treating Latino and/or
13 noncitizen employees differently than white and/or citizen employees on account of
14 their race or alienage.
15

16 42. Defendants deprived Latino and/or noncitizen employees equal pay
17 relative to white citizen employees who performed the same or substantially similar
18 work on account of their alienage and/or their race. In the extreme, Defendants
19 paid workers believed to be undocumented half the salaries of citizen employees
20 who performed the same or substantially similar work. Defendants also deprived
21 Plaintiffs and other class members they believed to be undocumented of pay
22 increases on account of their immigration status.
23

24
25 43. Upon information and belief, Defendants paid white citizen employees
26 overtime pay but did not pay overtime compensation to noncitizen and/or Latino
27 employees who earned \$10 per hour or above on account of their alienage and/or
28

1 their race.

2 44. Defendants also denied Plaintiffs and other class members who they
3 believed to be undocumented holidays, vacation and sick days, while providing
4 those benefits to citizen employees. Upon information and belief, Defendants
5 required Plaintiffs and other class members believed to be undocumented to work
6 additional hours of overtime in the days or weeks before a federal holiday to make
7 up for the eight hours of lost work on the holiday when the factory was closed.
8

9 45. Defendants, individually and through their agents, employees and/or
10 representatives, systematized their brazen discrimination against Plaintiffs and other
11 class members they believed to be undocumented by marking their personnel files with
12 red stickers indicating their immigration status. Defendants methodically deprived
13 Plaintiffs and other class members whom they branded with the red sticker of basic
14 employment benefits afforded to the rest of the workforce. The red sticker on the
15 personnel folder was in plain sight of employees who went to the human resources
16 office.
17

18 46. Defendant Sadaghiani also treated Plaintiffs and other class members
19 in a hostile and abusive manner on account of their race and/or alienage by
20 frequently yelling at them, cursing them, using offensive and demeaning language,
21 taunting and humiliating them in front of other workers, for any manner of reasons,
22 including asserting their workplace rights. Plaintiffs and other class members
23 frequently experienced or witnessed Defendant Sadaghiani engage in face-to-face
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1 confrontations with employees, resulting in near physical encounters.

2 47. Defendants frequently discharged, suspended without pay, or reduced
3 the hours of Plaintiffs or other class members, on account of their race and/or
4 alienage, if they became gravely ill, had a medical emergency, or required medical
5 attention; complained about workplace conditions or hours of work; or made a
6 mistake.
7
8

9 48. Defendant Sadaghiani fired employees he believed to be
10 undocumented for any reason. He frequently told Plaintiffs and other class
11 members believed to be undocumented that they were “worthless,” “good for
12 nothing” and “assholes.” When they demanded their workplace rights, he showed
13 them the door, stating that if they did not like the conditions of work, there were
14 plenty of other job applicants lining up for their jobs.
15
16

17 49. As a result of Defendant Sadaghiani’s hostile treatment, the Latino,
18 non-citizen employees and especially the employees believed to be undocumented,
19 worked in constant fear and trepidation of Defendant Sadaghiani. This fear was so
20 pervasive that Plaintiffs and other class members avoided demanding their rights,
21 including when they believed they were not being paid for hours worked, and
22 avoided reporting workplace injuries, even when they were serious.
23
24

25 50. Upon information and belief, Defendant Sadaghiani did not treat white
26 and non-Latino citizens in the hostile manner he treated the Latino, non-citizen
27 workers.
28

1 **Factual Allegations Related to Fraud and Misrepresentation**

2 51. Beginning in or around 2008, Defendants, individually and through
3 their agents, employees and/or representatives, told Plaintiffs and other class
4 members earning \$10 or above that they need to reduce their salaries in order to
5 lawfully pay them overtime and stated they would pay a “bonus” to compensate the
6 differences in salaries. Defendants induced Plaintiffs to agree to this salary
7 reduction and the “bonus” scheme in reliance on these promises. Upon information
8 and belief, Defendants never intended to fulfill these promises. Defendants did not
9 pay Plaintiffs and other class members their lawful overtime wages, nor did they
10 consistently compensate them for the difference in pay through the “bonus”
11 scheme.

12 52. During the relevant period, Defendants, individually or through their
13 agents, employees and/or representatives, told Plaintiffs and other class members
14 believed to be undocumented that on account of their immigration status, they did
15 not have equal rights under employment law, and were thus not entitled to equal
16 pay, benefits, overtime pay and vacation and sick days.

17 53. Defendants induced Plaintiffs and other class members to rely on these
18 misrepresentations in accepting adverse changes in their conditions of employment.

19 54. Defendants and their agents knew or should have known that all of
20 their workers have employment rights under federal and state laws regardless of
21 their immigration status. Defendants’ human resources specialist, Irma Interiano,
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1 has or should have expertise in employment laws and regulations.

2 55. Both federal and state governments have made it well known to
3 employers that workers – both documented and undocumented – are protected by
4 the federal and state laws that regulate wages and working conditions. *See, e.g.,*
5 DOL, *Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers,*
6 <http://www.dol.gov/whd/regs/compliance/whdfs48.htm> (last modified Apr. 2008);
7
8 California Department of Industrial Relations, *Undocumented Worker Rights,*
9 <http://www.dir.ca.gov/QAundoc.html> (last visited Aug. 28, 2010).
10

11 56. Upon information and belief, Defendants’ misrepresentations were
12 willfully made to additionally exploit Plaintiffs and other class members believed to
13 be undocumented.
14

15
16 **Factual Allegations of Class Representatives**

17 57. **Andres Morales** is a Latino and noncitizen who resides in Anaheim,
18 California. He is sixty-two years old.

19
20 58. Mr. Morales has worked for Defendants from approximately August
21 1998 until the present day. When Mr. Morales started at Terra he worked as an
22 assembler in the electronics department for \$6 an hour. Mr. Morales currently
23 works as a technician in the electronics department at \$14 per hour.
24

25 59. Throughout the course of his employment with Defendants, Mr.
26 Morales has frequently worked overtime hours without being compensated at 150%
27 of his regular wage as required by law. With the exception of an approximately
28

1 four-week period in 2007, Defendants have never lawfully paid Mr. Morales his
2 overtime hours. Instead, Defendants paid Mr. Morales' overtime hours as a
3 "second job," at first at a rate equal to his hourly salary and later at a rate of a few
4 dollars more than his hourly salary.
5

6 60. In recent years, during the approximate period of 2007 to 2009,
7 Defendants required Mr. Morales to regularly work two hours of overtime per day
8 and often required him to work on Saturdays.
9

10 61. In or around June 2009, Defendant Sadaghiani and Ms. Interiano held
11 a meeting with Mr. Morales and informed him that they were going to reduce his
12 salary and pay the difference through a bonus. They told Mr. Morales that he had
13 to sign a document agreeing to this arrangement. Mr. Morales refused to sign. And
14 Defendants retaliated against Mr. Morales by reducing his hours to six hours per
15 day. Because Mr. Morales is the only employee in the company who performs his
16 job, after approximately three months, Defendants restored his shift to eight hours
17 per day.
18
19
20

21 62. Upon information and belief, Defendants believed that Mr. Morales
22 was undocumented until approximately four years ago when he informed the
23 company that he became a lawful permanent resident.
24

25 63. Mr. Morales frequently experienced and observed Defendant
26 Sadaghiani make disparaging comments to undocumented and noncitizen, Latino
27 employees. He frequently yelled at the undocumented employees, exhorting them
28

1 to work harder or they would be fired, and telling them they were worthless.

2 64. **Juan Miguel Real** is a Latino and noncitizen who resides in Garden
3 Grove, California. He is thirty-five years old.
4

5 65. Mr. Real worked for Defendants from approximately December 1999
6 until July 2010. Mr. Real started out as an assembler in the sheet metal shop
7 making \$6.25 an hour, and rose to machine helper, assistant manager, and finally to
8 manager of the sheet metal shop in approximately 2006. As manager, Defendants
9 paid Mr. Real \$14 per hour and then, after a year, paid him \$17 per hour.
10

11 66. During his employment with Defendants, Mr. Real worked significant
12 overtime hours for which he was not lawfully compensated. He normally worked
13 from 6 a.m. until 5 p.m. or 11 hours per day. He was also required to work most
14 Saturdays for an eight hour shift.
15

16 67. Beginning approximately five years ago, Defendants began to pay Mr.
17 Real overtime according to the “second job” scheme. Defendants paid him \$2 more
18 than his hourly salary for those overtime hours, and therefore he was not paid at
19 150% of his regular rate of pay for his overtime hours. Defendants paid his
20 “second job” hours in a separate monthly paycheck.
21

22 68. In or around 2009, Defendants stopped paying Mr. Real’s overtime
23 hours under the “second job” scheme and started paying it under the “bonus”
24 scheme. The bonus only compensated Mr. Real for overtime hours at his hourly
25 rate and failed to pay him 150% of his regular rate of pay for his overtime hours.
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1 69. During a six-month period in 2009, Mr. Real clocked 120-180 hours of
2 overtime per month. During this period, Mr. Real generally worked from 6 a.m.
3 until 8 p.m., or 14 hours per day, and on Saturdays for 8 hours. Defendants paid
4 Mr. Real for these overtime hours under the “bonus” scheme.
5

6 70. In or around June 2009, Ms. Interiano called Mr. Real to her office.
7 She explained that the company would no longer provide undocumented workers
8 with vacation, sick or holiday leave or pay, and because she believed him to be
9 undocumented, he was no longer entitled to these benefits.
10

11 71. As a result of this policy, Defendants required Mr. Real and other
12 workers believed to be undocumented to work extra overtime hours in anticipation
13 of any federal holidays when the factory was closed.
14

15 72. In or around 2008, Ms. Interiano told Mr. Real that he had to fire three
16 people whom the company believed to be undocumented because there was no
17 work. Mr. Real was not permitted to fire the three people that worked least, but
18 rather was required to fire the three whom Defendants believed to be
19 undocumented.
20

21 73. When Mr. Real asked Ms. Interiano for raises for his staff, she denied
22 them to those workers whom Defendants believed to be undocumented.
23

24 74. In or around March or April 2010, Defendants lowered Mr. Real’s
25 salary to \$15 per hour.
26

27 75. Upon information and belief, Defendants paid Mr. Real less for the
28

1 same or substantially similar work than workers they believed to be documented.
2 The manager of the sheet metal shop before Mr. Real was paid \$32 per hour, while
3 Mr. Real was paid, at most during his employment, \$17 per hour. In June 2010, a
4 new welder started in his shop under Mr. Real's supervision, who made \$17 per
5 hour because he was believed to be documented, while Mr. Real made only \$15 per
6 hour.
7
8

9 76. **Hugo Alcantar Fernandez** is a Latino and noncitizen who resides in
10 Fullerton, California. He is twenty-eight years old.

11 77. Mr. Fernandez worked for Defendants from approximately June 2004
12 until February 2007 and from September 2007 until July 2010. When Mr.
13 Fernandez first started working at Terra, he worked as a detailer in the plastics shop
14 on the factory floor at a rate of \$7.50 per hour. After approximately four months,
15 Mr. Fernandez became a polypropylene welder and continued to be paid at \$7.50
16 per hour, or minimum wage.
17
18

19 78. At that time, there were five other people working as polypropylene
20 welders and performing the same job as Mr. Fernandez. Upon information and
21 belief, three were citizens who made approximately \$13 to \$14 per hour, and two
22 were legal residents who made approximately \$10 to \$12 per hour.
23
24

25 79. During his employment from 2004 to 2007, Mr. Fernandez worked a
26 shift from 6 a.m. until 2:30 p.m., but often was required to work overtime, as late as
27 5:30 p.m. to 7 p.m. or eleven and a half to thirteen hours a day. Defendants did not
28

1 lawfully compensate Mr. Fernandez for those overtime hours but rather paid him
2 under the “second job” scheme at a rate a few dollars more than his hourly rate.

3
4 80. Mr. Fernandez left Terra in February 2007 because he believed he was
5 being underpaid and Defendants refused to give him a raise.

6
7 81. Mr. Fernandez returned to work at Terra in or around September 2007
8 after Defendants called him and asked him if he would consider returning to work
9 for them. He agreed to return, but only if they paid him more. They agreed to pay
10 him \$10 per hour.

11
12 82. In September 2007, he returned to his position as a polypropylene
13 welder, and was the only person left in that position.

14
15 83. After three months, Defendants increased Mr. Fernandez’s salary to
16 \$11 per hour and one year later to \$12 per hour.

17
18 84. Because Mr. Fernandez was the only polypropylene welder in the
19 plastics shop during the period of September 2007 until July 2010, he regularly
20 worked from 6 a.m. to 6 to 7 p.m., or 12 or 13 hours per day. Defendants paid Mr.
21 Fernandez for overtime hours according to the “second job” scheme until
22 approximately the end of 2008 or early 2009 when they implemented the “bonus”
23 scheme.

24
25 85. In or around the end of 2008 or early 2009, Defendant Sadaghiani and
26 Ms. Interiano called Mr. Fernandez into the human resources office and told him
27 that they were going to reduce his salary from \$12 per hour to \$10.75 per hour and
28

1 would pay him the difference of \$1.25 per hour by paying an “efficiency bonus.”
2 They explained that the salary reduction would enable them to pay overtime wages.

3
4 86. Defendants asked that Mr. Fernandez agree to the reduction in pay and
5 the “bonus” scheme by signing a document. Mr. Fernandez told Ms. Interiano that
6 he could not agree to the reduction. Upon information and belief, Ms. Interiano
7 told Mr. Fernandez that if he did not agree and sign the document, Defendant
8 Sadaghiani would fire him or cut his hours to part-time. Mr. Fernandez knew that
9 Defendants had fired one of his colleagues in the plastics shop for refusing to sign
10 the document. Mr. Fernandez signed the document.

11
12
13 87. From this point on, Mr. Fernandez received a biweekly bonus of \$100,
14 which was equivalent to the difference between his original and reduced salaries
15 (\$1.25) multiplied by 80 hours of work. However, when Mr. Fernandez worked
16 overtime hours, which he normally did, rather than paying him for his overtime
17 hours, Defendants deducted money from his bonus for each overtime hour worked.
18 When Mr. Fernandez and his colleagues asked Ms. Interiano about the irregularities
19 in their bonus pay, she explained that the more overtime hours they worked, the
20 more money was deducted from their bonus pay.
21
22

23
24 88. As a consequence of the “bonus” scheme, Mr. Fernandez worked
25 hours of overtime for which he was not compensated at the lawful rate and for
26 which he was not compensated at all.

27
28 89. Because the “bonus” scheme was so complicated and Defendants

1 never provided an accounting for how it calculated his ever-shifting biweekly bonus
2 sum, Mr. Fernandez never understood how that sum was calculated paycheck to
3 paycheck, nor could he properly evaluate what hours of work were paid and what
4 hours were not. However, Mr. Fernandez was afraid to complain or ask questions
5 for fear that Defendant Sadaghiani would retaliate against him, as Mr. Fernandez
6 has seen him do with others.
7
8

9 90. Upon information and belief, in approximately early 2009, Mr.
10 Fernandez learned through company announcements that the company changed its
11 policy and would no longer provide employees believed to be undocumented
12 holiday, vacation or sick days.
13

14 91. **Osfel Andrade** is a Latino and noncitizen who resides in Anaheim,
15 California. He is forty-three years old.
16

17 92. Mr. Andrade worked for Defendants from approximately December
18 2000 until July 2010. Mr. Andrade started as an assembler in the electronics shop
19 on the factory floor at \$7 per hour. Approximately one year later, Mr. Andrade
20 became an assistant to the supervisor of the electronics shop and received a wage of
21 approximately \$7.50 per hour.
22

23 93. Upon information and belief, during an approximate period of 2003 to
24 2005, Mr. Andrade normally worked from 5 a.m. until 5 p.m. or 12 hours per day.
25 Defendants generally paid Mr. Andrade for his overtime hours as a “second job” at
26 a rate a few dollars higher than his hourly salary. As a result, Defendants did not
27
28

1 pay Mr. Andrade 150% of his regular rate for all overtime hours worked during that
2 period.

3
4 94. Subsequently, during an approximate period of 2005 to 2007, Mr.
5 Andrade normally worked from 7 a.m. until 5 p.m. or 10 hours per day. Defendants
6 did not pay Mr. Andrade 150% of his regular rate for all overtime hours worked
7 during that period.
8

9 95. In or around 2007, Mr. Andrade became an assistant to the supervisor
10 of the shipping department at a rate of \$11 per hour. After approximately two or
11 three weeks, Mr. Andrade became the shop leader of the shipping department
12 because all the other employees in that shop had either been fired by Defendants or
13 had left. Given the responsibilities of running the shop, Mr. Andrade requested a
14 raise commensurate with the requirements of the job. Defendants refused to pay
15 him the higher rate on account of the fact they believed he was undocumented.
16 Upon information and belief, Defendants would have paid a citizen employee in
17 that position over \$17 per hour.
18
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20

21 96. After approximately four or five months, Defendants hired an
22 American citizen to take over as supervisor of the shop, and Mr. Andrade returned
23 to the position of assistant to the supervisor. Eventually, Mr. Andrade asked the
24 new supervisor for a raise. After asking Defendants for the raise for Mr. Andrade,
25 the supervisor told Mr. Andrade that he could not have a raise because of his
26 perceived immigration status.
27
28

1 97. During the approximate period of 2007 to 2010 when Mr. Andrade
2 worked in the shipping department, he normally worked from 8 a.m. until 5 or 6
3 p.m.
4

5 98. In or around July or August 2009, Ms. Interiano held a meeting with
6 Mr. Andrade during which she told him that Defendants were lowering his salary
7 from \$11 per hour to \$10.75 per hour. Ms. Interiano told Mr. Andrade that
8 Defendants would instead pay him a biweekly bonus of approximately \$80. She
9 asked him to sign a document agreeing to the pay reduction and the “bonus”
10 scheme. She informed Mr. Andrade that if he did not sign the document,
11 Defendants would reduce his hours to six hours per day. Because Mr. Andrade
12 could not afford to work only six hours per day, Mr. Andrade signed the document.
13
14
15

16 99. From then on, Mr. Andrade was paid a bonus, but Defendants never
17 uniformly paid the bonus and rarely paid him the \$80 biweekly sum they promised
18 him. Defendants made deductions from the bonus for every hour of overtime Mr.
19 Andrade worked. Defendants never informed Mr. Andrade as to what deductions
20 were made and why the bonus amount fluctuated.
21

22 100. As a consequence of the “bonus” scheme, Mr. Andrade worked hours
23 of overtime for which he was not compensated at the lawful rate and for which he
24 was not compensated at all.
25

26 101. In or around 2009, Mr. Andrade learned from announcements made in
27 the company that Defendants changed their policy and employees believed to be
28

1 undocumented were no longer entitled to vacation, sick days and holidays. From
2 that moment on, Defendants stopped providing Mr. Andrade those benefits. So that
3 he would not have to work on holidays, Mr. Andrade had to draw on his previously
4 accrued vacation or sick days.
5

6 102. Mr. Andrade witnessed and experienced that Defendant Sadaghiani
7 acted in a very hostile manner towards the noncitizen, Latino employees,
8 particularly towards those he believed were undocumented. He yelled at and
9 intimidated employees. In response to employees' requests for lawful
10 compensation, Defendant Sadaghiani regularly remarked "I am the owner and I'll
11 do what I want."
12
13

14 **CLASS ALLEGATIONS**

15 103. Plaintiffs, as class representatives, bring claims for damages,
16 injunctive and declaratory relief on behalf of themselves and all similarly situated
17 persons pursuant to Rule 23. Plaintiffs bring class claims for actual, punitive and
18 treble damages pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), and class claims for
19 injunctive and declaratory relief pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2).
20
21

22 104. Plaintiffs, as class representatives, bring this action on their own behalf
23 and on behalf of a class comprised of all nonexempt current and former employees
24 employed at Terra in the past four years.
25

26 105. *Numerosity*. The size of the class makes a class action both necessary
27 and efficient. Plaintiffs estimate that the class consists of at least 300 current and
28

1 former employees. Members of the class are ascertainable but so numerous that
2 joinder is impracticable.

3
4 106. *Typicality.* The claims of the Plaintiffs are typical of the claims of the
5 class as a whole. Each of the Plaintiffs is and/or was employed by Defendants
6 during the relevant statutory period. As a result of Defendants' employment
7 policies and practices, Defendants have failed and continue to fail to pay each of the
8 Plaintiffs as required by law. The unlawful policies and practices that have
9 operated to deny the Plaintiffs wages, and other compensation, benefits, and
10 protections required by law are typical of the unlawful practices that have and will
11 continue to operate to deny other class members the compensation and benefits to
12 which they are entitled.
13
14

15
16 107. *Common Questions of Law and Fact.* This case poses common
17 questions of law and fact affecting the rights of all class members, including, but
18 not limited to:

- 19
20 a. Whether Defendants subjected Plaintiffs and other class
21 members to differential and/or adverse terms and conditions of
22 employment on the basis of their race and/or alienage;
23
24 b. Whether Defendants conspired for the purpose of depriving
25 Plaintiffs and other class members of their rights;
26
27 c. Whether Defendants failed to pay Plaintiffs and other class
28 members the applicable minimum wage for every compensable
hour of labor they performed;
d. Whether Defendants paid Plaintiffs and other class members
additional compensation beyond their regular wages in amounts
specified by law for all overtime hours worked;

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- e. Whether Defendants failed to pay Plaintiffs and other class members all accrued wages and compensation;
- f. Whether Defendants paid Plaintiffs and other class members their entire wages in a timely manner;
- g. Whether Defendants failed to provide Plaintiffs and other class members with accurate wage statements;
- h. Whether Defendants have engaged in unfair and unlawful business practices;
- i. Whether Defendants' conduct constituted fraud and/or negligent misrepresentation for which they are legally liable;
- j. Whether Defendants' misrepresentations to Plaintiffs and other class members were made willfully or negligently;
- k. Whether Plaintiffs and other class members reasonably relied on Defendants' fraudulent or negligent misrepresentations;
- l. The nature of damages available to Plaintiffs and other class members, including the applicability of compensatory, treble and/or punitive damages;
- m. The source and amount of Plaintiffs' and other class members' damages; and
- n. Whether and what kinds of declaratory and/or injunctive relief are appropriate.

108. *Adequacy of Class Representation.* Plaintiffs can adequately and fairly represent the interests of the class as defined above, because their individual interests are consistent with, and not antagonistic to, the interests of the class.

109. *Adequacy of Counsel for the Class.* Counsel for Plaintiffs possess the requisite resources and ability to prosecute this case as a class action and are

1 experienced labor and employment and civil rights attorneys who have successfully
2 litigated other cases involving similar issues.

3
4 110. *Propriety of Class Action Mechanism.* Class certification is
5 appropriate because Defendants have implemented a scheme that is generally
6 applicable to the class, making it appropriate to issue final injunctive relief and
7 corresponding declaratory relief with respect to the class as a whole. Class
8 certification is also appropriate because the common questions of law and fact
9 predominate over any questions affecting only individual members of the class.
10 Further, the prosecution of separate actions against Defendants by individual class
11 members would create a risk of inconsistent or varying adjudications that would
12 establish incompatible standards of conduct for Defendants. For all these and other
13 reasons, a class action is superior to other available methods for the fair and
14 efficient adjudication of the controversy set forth in this complaint.
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16
17

18 **COLLECTIVE ACTION ALLEGATIONS**

19
20 111. Plaintiffs on behalf of themselves and all other similarly situated
21 persons concurrently bring this action pursuant to the collective action provisions of
22 29 U.S.C. § 216(b) of the FLSA. Plaintiffs seek to represent a FLSA class
23 consisting of all current and former employees of Defendants during the applicable
24 liability period. The proposed FLSA class members are similarly situated in that
25 they have been subject to uniform practices by Defendants which violated the
26 FLSA, including: (a) failure to pay the minimum wage for every compensable hour
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28

1 of labor they performed, and (b) failure to pay overtime wages for overtime hours
2 of work performed.

3
4 **FIRST CAUSE OF ACTION**
5 **OVERTIME AND MINIMUM WAGE VIOLATIONS**
6 Fair Labor Standards Act (“FLSA), 29 U.S.C. § 201, *et seq.*
7 Collective Action
8 (All Defendants)

9 112. Plaintiffs reallege and incorporate by reference the allegations made
10 above.

11 113. Defendants violated 29 U.S.C. § 207 by failing to pay Plaintiffs and
12 other class members the applicable overtime wage for every compensable hour of
13 labor they performed.

14 114. Defendants violated 29 U.S.C. § 206 by failing to pay Plaintiffs and
15 other class members the applicable minimum wage for every compensable hour of
16 labor they performed.

17 115. Defendants’ failure to pay Plaintiffs and others similarly situated the
18 federally mandated minimum and overtime wages were willful violations of the
19 FLSA within the meaning of 29 U.S.C. § 255(a).
20

21 116. As a consequence of Defendants’ violations of the FLSA, Plaintiffs
22 and others similarly situated are entitled to recover their unpaid minimum and
23 overtime wages, plus an additional equal amount in liquidated damages, costs of
24 suit, and reasonable attorneys’ fees pursuant to 29 U.S.C. § 216(b).
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SECOND CAUSE OF ACTION
OVERTIME AND MINIMUM WAGE VIOLATIONS
California Labor Code §§ 510, 1194 and 1198
(All Defendants)

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117. Plaintiffs reallege and incorporate by reference the allegations made above.

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118. At all relevant times, Defendants acted under common law principles and state law as employers of Plaintiffs and other class members. Defendants hired them and exercised control over their wages, hours, and working conditions.

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119. At all relevant times, Defendants failed to conform their pay practices to the requirements of the law as follows:

120. California Labor Code §§ 510, 1194, 1198 and IWC Wage Order 1 - 2001 requires employers to pay employees, including all members of the class, additional compensation beyond their regular wages in amounts specified by law for all overtime hours worked. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid overtime compensation as required by § 1198 may recover the unpaid balance of the full amount of such wages, interest, attorneys' fees and the costs of suit. At all times relevant herein, the IWC Wage Orders were applicable to the class.

121. At relevant times, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to, failing to pay to Plaintiffs and other class members the overtime compensation to which they were and are entitled under the California Labor Code and the

1 applicable IWC Wage Orders.

2
3 **THIRD CAUSE OF ACTION**

4 **NONPAYMENT OF WAGES**

5 California Labor Code §§ 204, 210, 218.5 and 218.6
6 (All Defendants)

7 122. Plaintiffs reallege and incorporate by reference the allegations made
8 above.

9 123. Defendants required Plaintiffs and other class members to work hours
10 compensable at a regular rate of pay and/or hours compensable with overtime pay.
11 Defendants, however, have refused to pay Plaintiffs and other class members all
12 accrued wages and compensation earned by such Plaintiffs and other class members
13 within the time limits prescribed under California Labor Code § 204.

14 124. Based on Defendants' conduct as alleged herein, Defendants are liable
15 for civil penalties pursuant to California Labor Code §§ 204 and 210.
16

17
18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES IN A TIMELY MANNER**

20 California Labor Code §§ 204, 210
21 (All Defendants)

22 125. Plaintiffs reallege and incorporate by reference the allegations made
23 above.

24 126. At relevant times, Defendants failed to conform their pay practices to
25 the requirements of the law as follows:
26

27 127. Plaintiffs and other class members were not paid portions of
28 mandatory wages for overtime work, and thus were not paid their entire wages in a

1 timely manner as required by California Labor Code § 204(b)1.

2 128. Defendants willfully failed to comply with California Labor Code §
3 204(b)1, as evidenced by, *inter alia*, admissions by Defendants and their agents that
4 overtime pay was costly, that salaries had to be reduced in order to pay overtime
5 “correctly,” and instructions to “punch out” and then “punch in” under a pretextual
6 “second job” in order to “avoid” overtime charges. Accordingly, Defendants are
7 liable under California Labor Code § 210(a)(2) for “any willful or intentional
8 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
9 percent of the amount unlawfully withheld.”
10
11
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13 129. Defendants are also liable for the applicable civil penalties, provided
14 for in California Labor Code § 2699(f), for past violations of California Labor Code
15 § 204.
16

17
18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO KEEP AND FURNISH ACCURATE WAGE STATEMENTS**
20 **California Labor Code § 226**
(All Defendants)

21 130. Plaintiffs reallege and incorporate by reference the allegations made
22 above.
23

24 131. At all relevant times, Defendants failed to conform their pay practices
25 to the requirements of the law as follows:
26

27 132. During times relevant to this action, California Labor Code § 226(a)
28 required that employers, at the time of payment of wages, furnish each employee

1 with an accurate itemized statement showing gross wages earned and total hours
2 worked, among other things.

3
4 133. Section 226 further provides that “an employee suffering injury as a
5 result of a knowing and intentional failure by an employer to comply with
6 subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars
7 (\$50) for the initial pay period in which a violation occurs and one hundred dollars
8 (\$100) per employee for each violation in a subsequent pay period, not exceeding
9 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
10 of costs and reasonable attorney's fees.”
11

12
13 134. At all relevant times, Defendants failed to conform their pay practices
14 to the requirements of the law. This unlawful conduct includes, but is not limited
15 to, failing to provide Plaintiffs and other class members with an accurate itemized
16 wage statement. Instead, Defendants provided Plaintiffs and other class members
17 with inaccurate wage statements that misclassified overtime as a pretextual “second
18 job” and did not accurately state overtime hours worked, or paid them as a bonus
19 and did not report the overtime hours at all.
20
21

22 135. Defendants’ failure to maintain records of, and furnish to Plaintiffs
23 and other class members, accurate, itemized wage statements resulted in Plaintiffs
24 and other class members suffering injury, as said failures led to the nonpayment of
25 their earned compensation for overtime.
26

27
28 136. Defendants’ said failure to furnish and maintain records of accurate,

1 itemized wage statements is, and was, knowing and intentional.

2 137. Based on Defendants' conduct as alleged herein, Defendants are liable
3 for civil penalties pursuant to California Labor Code §§ 226 and 226.3.
4

5 138. Pursuant to California Labor Code § 226, subdivision (g), an
6 injunction should be issued to stop Defendants from violating its legal obligation to
7 maintain records of, and furnish to employees, itemized wage statements accurately
8 reflecting the overtime compensation owed to Plaintiffs and other class members,
9 but concealed by Defendants' "second job" or "bonus" schemes. If Defendants are
10 not enjoined from the conduct set forth above, they will continue to violate their
11 legal obligation to maintain and furnish such records. Thus, there is threatened
12 future harm and/or continuing violation, which justifies injunctive relief.
13
14

15
16 139. Plaintiffs, therefore, request the Court to issue a preliminary and
17 permanent injunction requiring Defendants to properly maintain records of, and
18 furnish to employees, itemized wage statements accurately reflecting the overtime
19 compensation owed to Plaintiffs and other class members, but concealed by
20 Defendants' "second job" and "bonus" schemes.
21

22
23 **SIXTH CAUSE OF ACTION**
24 **VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1866**
25 **42 U.S.C. § 1981**
26 **(All Defendants)**

27 140. Plaintiffs reallege and incorporate by reference the allegations made
28 above.

141. The right to full and equal benefit of all laws is guaranteed by 42

1 U.S.C. § 1981, as amended by Section 101 of the Civil Rights Act of 1991,
2 including the right to enjoy and benefit from non-discriminatory employment
3 relationships.
4

5 142. Section 1981 prohibits private discrimination based on race and
6 alienage.
7

8 143. Plaintiffs and all similarly situated class members are entitled to the
9 protections and benefits afforded by Section 1981 regardless of their immigration
10 status.
11

12 144. By subjecting Plaintiffs and all similarly situated class members to
13 discriminatory treatment based on their race and/or alienage by paying them less,
14 depriving them of holiday, vacation and sick days, failing to pay them overtime,
15 and/or subjecting them to hostile treatment, Defendants violated Plaintiffs' and all
16 similarly situated class members' rights.
17

18 145. Defendants knowingly, willfully, maliciously, intentionally, and
19 without justification acted to deprive Plaintiffs and other class members of their
20 rights.
21

22 146. As a result of Defendants' unlawful acts, Plaintiffs and other class
23 members have suffered injury to their property and/or persons.
24

25 147. Plaintiffs seek all appropriate relief, including declaratory and
26 injunctive relief, attorneys' fees, costs of this action, and damages, including
27 compensatory and punitive damages, in an amount to be determined at trial.
28

SEVENTH CAUSE OF ACTION
VIOLATIONS OF THE KU KLUX KLAN ACT OF 1871
42 U.S.C. § 1985(3)
(Defendant Sadaghiani and Does 1-10)

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2
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4 148. Plaintiffs reallege and incorporate by reference each and every
5
6 allegation made above.

7 149. Pursuant to 42 U.S.C. § 1985(3), “If two or more persons in any State
8
9 or Territory conspire. . . .for the purpose of depriving, either directly or indirectly,
10
11 any person or class of persons of the equal protection of the laws, or of the equal
12
13 privileges and immunities under the laws. . . .the party so injured or deprived may
14
15 have an action for the recovery of damages occasioned by such injury or
16
17 deprivation, against any one or more of the conspirators.”

18 150. As set forth in the preceding paragraphs Defendant Sadaghiani,
19
20 together with Ms. Interiano, Mr. Harms and other agents of Defendants, conspired,
21
22 agreed, planned and coordinated for the purpose of depriving Plaintiffs and other
23
24 class members of their rights under 42 U.S.C. § 1981 (right to make and enforce
25
26 contracts without being subjected to discrimination); the FLSA § 207(a) (right to
27
28 overtime wages); California Labor Code §§ 510, 194, and 1198 (right to overtime
wages); California Labor Code § 204 (right to timely payment of overtime wages);
and California Labor Code § 226 (right to keep and furnish accurate wage
statements).

151. Defendants were motivated by animus against Plaintiffs and all
similarly situated class members based on their Latino race and/or their alienage

1 when they conspired to deprive Plaintiffs and other class members of their rights
2 and/or acted in furtherance of a conspiracy to deprive Plaintiffs and other class
3 members of their rights.
4

5 152. Defendants knowingly, willfully, maliciously, intentionally, and
6 without justification planned and acted to deprive Plaintiffs and other class
7 members of their rights.
8

9 153. As a result of the unlawful acts of Defendant Sadaghiani and Does 1-
10 10, Plaintiffs and other class members have suffered damages in the form of lost
11 wages and benefits.
12

13 154. Plaintiffs seek all appropriate relief, including declaratory and
14 injunctive relief, attorneys' fees, costs of this action, and damages, including
15 compensatory and punitive damages, in an amount to be determined at trial.
16

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR BUSINESS PRACTICES**

19 California Business and Professions Code § 17200, *et seq.*

20 (All Defendants)

21 155. Plaintiffs reallege and incorporate by reference the allegations made
22 above.
23

24 156. This claim is brought by Plaintiffs on behalf of themselves, members
25 of the class, and the general public, pursuant to Business and Professions Code §
26 17200, *et seq.*
27

28 157. Business and Professions Code § 17200, *et seq.* prohibits unlawful,

1 unfair, and fraudulent business practices. Plaintiffs seek to enforce important rights
2 affecting the public interest within the meaning of California Code of Civil
3 Procedure § 1021.5.
4

5 158. Plaintiffs are “persons” within the meaning of Business and
6 Professions Code § 17204, with standing to bring this suit for injunctive relief,
7 restitution, disgorgement, and other appropriate equitable relief on behalf of all
8 similarly-situated employees and on behalf of the general public.
9

10 159. The FLSA announces the public policy of this country to ensure
11 minimum wage and overtime payments. 29 U.S.C. § 202. It provides, in relevant
12 part, that the existence of labor conditions detrimental to the maintenance of the
13 minimum standard of living necessary for health, efficiency, and general well-being
14 of workers constitutes an unfair method of competition.
15
16

17 160. California Labor Code § 90.5(a) sets forth the public policy of this
18 State to enforce minimum labor standards vigorously, to ensure that employees are
19 not required or permitted to work under substandard and unlawful conditions, and
20 to protect employers who comply with the law from those who attempt to gain a
21 competitive advantage by failing to comply with minimum labor standards.
22
23

24 161. The Civil Rights Act of 1866, 42 U.S.C. § 1981, sets forth that no
25 person shall be discriminated against on the basis of race or alienage in their
26 employment.
27

28 162. The Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), sets forth that no

1 person shall be deprived of the equal protection of the laws based on their race
2 and/or membership in a protected class.

3
4 163. Through the conduct alleged in this Complaint, Defendants have acted
5 contrary to these public policies and statutes, and have thus engaged in unlawful
6 and unfair business practices in violation of California Business and Professions
7 Code §§ 17200-208. At all relevant times, Defendants have engaged in unfair and
8 unlawful business practices that include, but are not limited to, the following:
9

- 10 a. Failing to pay the Plaintiffs and other class members equal to
11 citizen employees who performed the same or substantially
12 similar jobs on the basis of race and/or alienage;
- 13 b. Depriving Plaintiffs and other class members of raises and
14 vacation, sick day and holiday benefits on the basis of race
15 and/or alienage;
- 16 c. Failing to pay the Plaintiffs and other class members the wages
17 required by state and federal law in violation of 29 U.S.C. §§
18 206 and 207, California Labor Code §§ 1194, 1198 and
applicable I.W.C. wage orders;
- 19 d. Failing to provide Plaintiffs and other class members with
20 accurate itemized wage statements as required by California
21 Labor Code § 226;
- 22 e. Misrepresenting to Plaintiffs and other class members their
23 legal rights in order to induce them to work under unlawful
24 conditions;
- 25 f. Additional unfair and unlawful practices that Plaintiffs reserve
26 the right to identify as further investigation and discovery
warrants.

27 164. As a direct result of their unfair and unlawful conduct, Defendants
28 have reaped benefits and illegal profits at the expense of the Plaintiffs and other

1 class members. Through the unfair business practices alleged in this Complaint,
2 Defendants have received, and continue to receive, funds that rightfully belong to
3 the Plaintiffs and other class members, they have produced and continue to produce
4 further profits with those funds, and they therefore have been, and continue to be,
5 unjustly enriched. Through the unfair business practices alleged in this Complaint,
6 moreover, Defendants have received, and continue to receive the benefit of
7 employing a steady workforce under unlawful conditions, and have thereby
8 achieved, and continue to achieve, an unfair competitive advantage over their
9 legitimate business competitors, all at the expense of the Plaintiffs and other class
10 members.
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14 165. Accordingly, under California Business and Professions Code §
15 17203, Plaintiffs seek restitution of all unpaid wages owed to themselves and other
16 class members, in amounts to be proven at trial, as well as disgorgement of all
17 profits that Defendants have enjoyed as a result of their unfair and unlawful
18 business practices.
19
20

21 166. Plaintiffs also seek injunctive relief to prevent Defendants from
22 continuing to engage in the unfair business practices alleged in this Complaint.
23 Defendants, and persons acting in concert with them, have done, are now doing,
24 and will continue to do or cause to be done, the above-described unlawful acts
25 unless restrained and enjoined by this Court. Unless the relief prayed for below is
26 granted, a multiplicity of actions will result. Plaintiffs have no plain, speedy, or
27
28

1 adequate remedy at law, in that it is difficult to measure the amount of monetary
2 damages that would compensate Plaintiffs or the general public for Defendants'
3 wrongful acts. Further, pecuniary compensation alone would not afford adequate
4 and complete relief. The above-described acts will cause great and irreparable
5 damage to Plaintiffs and the general public if injunctive relief is not granted.
6

7
8 **NINTH CAUSE OF ACTION**
9 **FRAUD AND MISREPRESENTATION**
10 California Civil Code § 1709 and common law
11 (All Defendants)

12 167. Plaintiffs reallege and incorporate by reference the allegations made
13 above.

14 168. Defendants, individually or through their agents, employees and/or
15 representatives, knowingly and/or negligently made materially false and untrue
16 statements and representations to the Plaintiffs and class members that they would
17 lawfully pay them overtime and a bonus to compensate for the difference in salary
18 in order to induce them to agree to a salary reduction and the “bonus” scheme.
19 Plaintiffs Fernandez, Andrade and other similarly situated class members relied on
20 these promises in agreeing to the salary reduction and “bonus” scheme. Upon
21 information and belief, the true purpose of Defendants false representations was to
22 induce Plaintiffs and class members to accept inferior wages and a compensation
23 scheme that would scam them out of additional wages. Defendants failed to pay
24 Plaintiffs their overtime wages and bonus in accordance with their promises.
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1 169. In addition, Defendants, individually or through their agents,
2 employees and/or representatives, knowingly and/or negligently made materially
3 false and untrue statements and representations to the Plaintiffs and class members
4 about their employment rights under U.S. law in order to induce them to work
5 under unlawful and discriminatory conditions, including inducing them to work for
6 less pay than their co-workers who were not perceived to be undocumented, to
7 work overtime hours without overtime pay, and to work without vacation, sick day
8 and holiday benefits.
9

10
11 170. As set forth in preceding paragraphs, Defendants knowingly or
12 negligently told Plaintiffs and other class members that they were not entitled to
13 lawful and non-discriminatory conditions of work because of their immigration
14 status. The representations made by Defendants to Plaintiffs and other class
15 members were false and Defendants had no reasonable basis for believing them to
16 be true. On information and belief, the true purpose of making these false
17 representations was to induce Plaintiffs to accept inferior compensation.
18
19

20
21 171. Plaintiffs and other class members relied on those representations
22 because they believed them to be true. Plaintiffs' and other class members' reliance
23 on the representations and promises was justified because at all relevant times
24 herein, Defendants had superior knowledge of U.S. law.
25

26 172. As a direct and proximate result of Defendants' unlawful conduct,
27 Plaintiffs and other class members have suffered and will continue to suffer
28

1 economic damages, including, but not limited to, loss of income, loss of job
2 opportunities, loss of future income and emotional distress. Defendants have
3 damaged Plaintiffs and other class members as the result of their fraudulent conduct
4 as aforesaid, and are liable to Plaintiffs and other class members for general and
5 compensatory damages in an amount to be proven at trial.
6

7
8 173. As a direct and proximate result of Defendants' conduct as alleged in
9 this Complaint, Plaintiffs and other class members have lost wages and other
10 benefits in the amounts to be proven at trial. On behalf of themselves and other
11 class members, Plaintiffs seek recovery of such wages and benefits.
12

13 174. In committing the wrongful acts and failures to act described above,
14 Defendants knew their actions were unlawful, and committed such acts either
15 maliciously, fraudulently, and oppressively with an improper motive amounting to
16 malice, and/or in conscious disregard of Plaintiffs' and other class members' rights.
17 By reason of said conduct, Plaintiffs are entitled to recover punitive damages from
18 Defendants.
19
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully pray that this Court award relief
23 as follows:
24

- 25 1. An order certifying this case as a class action and appointing Plaintiffs
26 and their counsel to represent the proposed class;
- 27 2. Unpaid wages, and statutory penalties, according to proof;
28

1 3. Liquidated damages pursuant to 29 U.S.C. § 216(b) for failure to pay
2 overtime wages;

3
4 4. Preliminary and permanent injunctions enjoining and restraining
5 Defendants from continuing the unfair and unlawful business practices set forth
6 above and requiring the establishment of appropriate and effective means to prevent
7 future violations;

8
9 5. Restitution of all compensation due, including but not limited to
10 unpaid wages, as a result of Defendants' unlawful and unfair business practices,
11 according to proof;

12
13 6. Declaratory relief;

14 7. Punitive damages;

15 8. Reasonable attorneys' fees and costs;

16 9. Interest;

17 10. Such other and further relief as the Court deems just and proper.
18
19

20 **JURY TRIAL DEMAND**

21 Plaintiffs hereby demand a jury trial on all issues so triable.

22 DATED: August 30, 2010

23 Respectfully submitted,

24 HADSELL STORMER KEENY
25 RICHARDSON & RENICK, LLP

26 ACLU of SOUTHERN CALIFORNIA

27 By  _____
28 Jennifer Pasquarella, Esq.
 Attorneys for Plaintiffs