

1 Randy Renick (SBN 179652)
rrr@hskrr.com
2 Cornelia Dai (SBN 207435)
cdai@hskrr.com
3 HADSELL STORMER KEENY
RICHARDSON & RENICK, LLP
4 128 North Fair Oaks Avenue
Pasadena, California 91103-3645
5 Telephone: (626) 585-9600
Facsimile: (626) 577-7079
6

Ahilan Arulanantham (SBN 237841)
7 hvillagra@aclu-sc.org
Jennifer Pasquarella (SBN 263241)
8 jpasquarella@aclu-sc.org
Michael Kaufman (SBN 254575)
9 mkaufman@aclu-sc.org
10 ACLU FOUNDATION OF SOUTHERN
CALIFORNIA
11 1313 W 8th St
Los Angeles, CA 90017
Telephone: (213) 977-9500
12 Facsimile: (213) 977-5297

13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ANDRES MORALES, JUAN MIGUEL
17 REAL and OSFEL ANDRADE on behalf
of themselves and all others similarly
18 situated,

19 Plaintiffs,

20 v.

21
22 TERRA UNIVERSAL, INC., GEORGE
SADAGHIANI, and Does 1-10, inclusive,
23

24 Defendants.
25

Case No.: CV 10-06490 PA (SSx)

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

JURY TRIAL DEMANDED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

INTRODUCTION

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

2. Terra, which produces highly-specialized cleanroom and laboratory equipment, has earned annual sales in the range of \$50 to \$100 million per year and contracts with numerous federal government agencies, including the Army, the Navy and NASA.

3. Defendants required their workforce to toil long hours without overtime pay: for instance, requiring workers to clock out at the completion of eight-hour shifts and clock back in, under a “second job,” for additional hours, so as to avoid paying overtime wages and escape detection by the government.

4. Accordingly, Plaintiffs, on behalf of themselves and others similarly situated, and the general public, hereby complain of violations of numerous federal and state employment laws for failure to pay mandated minimum and overtime wages, to pay wages, to pay wages in a timely manner, and to keep and furnish accurate wage statements. Additionally, Plaintiffs bring claims for unfair business practices for unlawful, unfair and fraudulent business practices that run counter to the public’s interest in ensuring compliance with minimum labor standards for all workers.

23
24
25
26
27
28

JURISDICTION

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

1
2 **VENUE**

3 6. Venue is proper in the Central District of California pursuant to 28 U.S.C.
4 § 1391(b) because the acts, events and omissions giving rise to the action occurred in
5 this District.

6 **PARTIES**

7 7. Plaintiff Andres Morales resides in Anaheim, California. He is sixty-two
8 years old. Mr. Morales has worked for Defendants from approximately August 1998
9 until the present day. He works as an electronic technician on the factory floor.

10 8. Plaintiff Juan Miguel Real resides in Garden Grove, California. He is
11 thirty-five years old. Mr. Real worked for Defendants from approximately December
12 1999 until July 2010. For the last four years of his employment, Mr. Real worked as the
13 manager of the sheet metal shop on the factory floor.

14 9. Plaintiff Osfel Andrade resides in Anaheim, California. He is forty-three
15 years old. Mr. Andrade worked for Defendants from December 2000 until July 2010.
16 Most recently, Mr. Andrade worked as an assistant to the supervisor of the shipping
17 department.

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

20 11. At all relevant times, Plaintiffs were “persons” within the meaning of that
21 term under 42 U.S.C. § 1981.

22 12. At all relevant times, Plaintiffs were engaged in interstate commerce and/or
23 in the production of goods for sale in interstate commerce.

24 13. Defendant Terra, founded in 1976, is a leading manufacturer of modular
25 clean rooms, desiccators, abide by boxes, laminar flow and exhaust fume hoods, wet
26 processing stations, clean-room workbenches, storage systems and furniture. Terra
27 supplies over 5,000 United States and international pharmaceutical, biotechnology,
28 medical device, semiconductor, and aerospace companies, as well as research entities,
universities and government agencies. Between 2004 and 2009, Terra’s four largest

1 accounts with the federal government were with the U.S. Army, the U.S. Navy, the U.S.
2 Air Force, and the National Aeronautics and Space Administration (“NASA”). Upon
3 information and belief, Terra currently employs over 225 employees at its main
4 administrative and manufacturing complex in Fullerton, California.

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

12 15. Defendant George Sadaghiani is the owner and president of Terra.
13 Sadaghiani resides in Laguna Niguel, California.

14 16. At all times relevant to this action, Defendants and their agents exercised,
15 and/or will exercise, the authority to direct, control, and/or supervise the work of
16 Plaintiffs.

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

19 18. At all times relevant to this action, Defendants employed fifteen or more
20 employees.

21 19. At all times relevant to this action, Defendants were “persons” within the
22 meaning of 29 U.S.C. § 203(a), 42 U.S.C. § 2000a(e), and 42 U.S.C. § 1985; and
23 “employers” as defined by 29 U.S.C. § 203(d), 42 U.S.C. § 2000e(b), and California
24 state law.

25 20. The true names and capacities of defendants Does 1 through 10, inclusive,
26 are presently unknown to Plaintiffs, who therefore sue said Defendants by such
27 fictitious names. Plaintiffs will amend this complaint to set forth the true names and
28 capacities of said Defendants when they are ascertained. Plaintiffs are informed and

1 believe, and upon such information and belief allege, that at all times relevant to this
2 action, each of the fictitiously-named Defendants was an agent, employee, or co-
3 conspirator of one or more of the named Defendants, and was acting within the course
4 and scope of said agency or employment. Plaintiffs are further informed and believe,
5 and upon such information and belief allege, that each of the fictitiously named
6 Defendants aided and assisted the named Defendants in committing the wrongful acts
7 alleged herein, and that Plaintiffs’ damages, as alleged herein, were proximately caused
8 by such Defendants.

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

14 22. Whenever and wherever reference is made in this complaint to any act by a
15 Defendant or Defendants, such allegations and reference shall also be deemed to mean
16 the acts and failures to act of each Defendant acting individually, jointly, and severally.

17 23. The conduct of Defendants and each of them, and/or their
18 agents/employees or supervisors, authorized, condoned and ratified the unlawful
19 conduct of each other.

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

24 **STATEMENT OF FACTS**

25
26 25. For many years, Defendants have systematically exploited Plaintiffs and
27 other class members. Defendants required Plaintiffs and other class members to work
28 as many as fourteen hours a day without paying them their lawful overtime wages.

1 Instead, Defendants created fraudulent overtime schemes – the “second job” and the
2 “bonus” schemes – to evade overtime wage requirements and government detection,
3 pay Plaintiffs and other class members far less than legally mandated and confuse
4 Plaintiffs and other class members as to whether Defendants were properly
5 compensating them for their earned wages. Defendants’ policies and practices resulted
6 in a series of schemes aimed at compelling Plaintiffs and other class members to work
7 longer hours and produce more, for less pay, all the while preventing them from
8 exercising or demanding their workplace rights.

9 26. Defendants required Plaintiffs and other class members to work in excess
10 of eight hours per day and in excess of forty hours per week without overtime pay and,
11 in some cases, without any payment of wages.

12 27. At all times relevant to this action, Defendants operated at least two
13 different fraudulent compensation schemes to cheat Plaintiffs and other class members
14 out of overtime wages and, in some cases, any wages for hours worked: the “second
15 job” scheme and the “bonus” scheme.

16 28. Under the “second job” scheme, Defendants required Plaintiffs and other
17 class members to “clock out” after eight hours of work and immediately clock back in
18 under the “second job” category for their overtime hours. Plaintiffs and other class
19 members were either paid their hourly wage for the “second job” overtime hours or up
20 to a few dollars above their hourly wage.

21 29. Beginning in or around 2008, Defendants replaced the “second job”
22 scheme and implemented a “bonus” scheme for workers earning \$10 per hour or above.
23 Defendants introduced the “bonus” scheme gradually.

24 30. In individual meetings, Defendants, individually or through their agents,
25 employees and/or representatives, informed Plaintiffs and other class members that they
26 were going to reduce their hourly wage, so that they could “correctly” pay overtime. To
27 cover the difference between the old wage and the new reduced wage, Defendants told
28 Plaintiffs and other class members that they would pay them a lump-sum bonus on a

1 biweekly basis that would compensate them for the difference, so that they would not
2 notice the reduction in pay.

3 31. Defendants, individually or through their agents, employees and/or
4 representatives, required Plaintiffs and other class members to sign a document agreeing
5 to the wage reduction and “bonus” scheme. Defendants told Plaintiffs and other class
6 members that if they did not sign the document they would be fired or have their hours
7 reduced.

8 32. Defendants’ “bonus” scheme failed to pay Plaintiffs and other class
9 members at the legally-mandated rate of 150% of their regular rate of pay.

10 33. For Plaintiffs and other similarly situated class members, the bonus never
11 compensated them for the difference between their former salary and their reduced
12 salary, nor did Defendants lawfully pay them all of their overtime wages.

13 34. Defendants further used the “bonus” scheme to make deductions from
14 employees’ pay that would otherwise be unlawful. Defendants made deductions for
15 every overtime hour worked as an apparent incentive to produce more in eight hours.
16 Defendants also made deductions for workplace injuries, mistakes or warnings. Upon
17 information and belief, Defendants instructed supervisors to routinely give warnings and
18 penalties to their employees so that Defendants could make deductions from their pay.

19 35. Defendants’ “bonus” scheme was deliberately designed to confuse
20 Plaintiffs and other class members so that they could not detect whether and for what
21 they were being compensated. Indeed, when Defendants paid the bonus in lieu of
22 paying overtime, they failed to report to Plaintiffs and other class members the number
23 of overtime hours worked or any other information to indicate how the bonus sum was
24 calculated.

25 36. Defendants did not compensate Plaintiffs and other class members for all
26 of their overtime hours worked.

27 37. Defendants’ failure to pay overtime wages to Plaintiffs and other class
28 members was willful.

1 38. As a result of Defendants' unlawful conduct, Plaintiffs and other class
2 members have been and continue to be systematically deprived of the wages to which
3 they are entitled by law.

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

12 **Factual Allegations of Class Representatives**

13 40. Andres Morales resides in Anaheim, California. He is sixty-two years old.

14 41. Mr. Morales has worked for Defendants from approximately August 1998
15 until the present day. When Mr. Morales started at Terra he worked as an assembler in
16 the electronics department for \$6 an hour. Mr. Morales currently works as a technician
17 in the electronics department at \$14 per hour.

18 42. Throughout the course of his employment with Defendants, Mr. Morales
19 has frequently worked overtime hours without being compensated at 150% of his
20 regular wage as required by law. With the exception of an approximately four-week
21 period in 2007, Defendants have never lawfully paid Mr. Morales his overtime hours.
22 Instead, Defendants paid Mr. Morales' overtime hours as a "second job," at first at a
23 rate equal to his hourly salary and later at a rate of a few dollars more than his hourly
24 salary.

25 43. In recent years, during the approximate period of 2007 to 2009, Defendants
26 required Mr. Morales to regularly work two hours of overtime per day and often
27 required him to work on Saturdays.

28 44. In or around June 2009, Defendant Sadaghiani and Ms. Interiano held a

1 meeting with Mr. Morales and informed him that they were going to reduce his salary
2 and pay the difference through a bonus. They told Mr. Morales that he had to sign a
3 document agreeing to this arrangement. Mr. Morales refused to sign. And Defendants
4 retaliated against Mr. Morales by reducing his hours to six hours per day. Because Mr.
5 Morales is the only employee in the company who performs his job, after approximately
6 three months, Defendants restored his shift to eight hours per day.

7 45. Juan Miguel Real resides in Garden Grove, California. He is thirty-five
8 years old.

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

14 47. During his employment with Defendants, Mr. Real worked significant
15 overtime hours for which he was not lawfully compensated. He normally worked from
16 6 a.m. until 5 p.m. or 11 hours per day. He was also required to work most Saturdays
17 for an eight hour shift.

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

23 49. In or around 2009, Defendants stopped paying Mr. Real's overtime hours
24 under the "second job" scheme and started paying it under the "bonus" scheme. The
25 bonus only compensated Mr. Real for overtime hours at his hourly rate and failed to pay
26 him 150% of his regular rate of pay for his overtime hours.

27 50. During a six-month period in 2009, Mr. Real clocked 120-180 hours of
28 overtime per month. During this period, Mr. Real generally worked from 6 a.m. until 8

1 p.m., or 14 hours per day, and on Saturdays for 8 hours. Defendants paid Mr. Real for
2 these overtime hours under the “bonus” scheme.

3 51. Osfel Andrade resides in Anaheim, California. He is forty-three years old.

4 52. Mr. Andrade worked for Defendants from approximately December 2000
5 until July 2010. Mr. Andrade started as an assembler in the electronics shop on the
6 factory floor at \$7 per hour. Approximately one year later, Mr. Andrade became an
7 assistant to the supervisor of the electronics shop and received a wage of approximately
8 \$7.50 per hour.

9 53. Upon information and belief, during an approximate period of 2003 to
10 2005, Mr. Andrade normally worked from 5 a.m. until 5 p.m. or 12 hours per day.
11 Defendants generally paid Mr. Andrade for his overtime hours as a “second job” at a
12 rate a few dollars higher than his hourly salary. As a result, Defendants did not pay Mr.
13 Andrade 150% of his regular rate for all overtime hours worked during that period.

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

17 55. In or around 2007, Mr. Andrade became an assistant to the supervisor of
18 the shipping department at a rate of \$11 per hour. After approximately two or three
19 weeks, Mr. Andrade became the shop leader of the shipping department because all the
20 other employees in that shop had either been fired by Defendants or had left.

21 56. After approximately four or five months, Mr. Andrade returned to the
22 position of assistant to the supervisor.

23 57. During the approximate period of 2007 to 2010 when Mr. Andrade worked
24 in the shipping department, he normally worked from 8 a.m. until 5 or 6 p.m.

25 58. In or around July or August 2009, Ms. Interiano held a meeting with Mr.
26 Andrade during which she told him that Defendants were lowering his salary from \$11
27 per hour to \$10.75 per hour. Ms. Interiano told Mr. Andrade that Defendants would
28 instead pay him a biweekly bonus of approximately \$80. She asked him to sign a

1 document agreeing to the pay reduction and the “bonus” scheme. She informed Mr.
2 Andrade that if he did not sign the document, Defendants would reduce his hours to six
3 hours per day. Because Mr. Andrade could not afford to work only six hours per day,
4 Mr. Andrade signed the document.

5 59. From then on, Mr. Andrade was paid a bonus, but Defendants never
6 uniformly paid the bonus and rarely paid him the \$80 biweekly sum they promised him.
7 Defendants made deductions from the bonus for every hour of overtime Mr. Andrade
8 worked. Defendants never informed Mr. Andrade as to what deductions were made and
9 why the bonus amount fluctuated.

10 CLASS ALLEGATIONS

11 60. Plaintiffs, as class representatives, bring claims for damages, injunctive and
12 declaratory relief on behalf of themselves and all similarly situated persons pursuant to
13 Rule 23. Plaintiffs bring class claims for actual, punitive and treble damages pursuant
14 to Fed. R. Civ. P. 23(a) and 23(b)(3), and class claims for injunctive and declaratory
15 relief pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2).

16 61. Plaintiffs, as class representatives, bring this action on their own behalf and
17 on behalf of a class comprised of all nonexempt current and former employees
18 employed at Terra in the past four years.

19 62. *Numerosity.* The size of the class makes a class action both necessary and
20 efficient. Plaintiffs estimate that the class consists of at least 300 current and former
21 employees. Members of the class are ascertainable but so numerous that joinder is
22 impracticable.

23 63. *Typicality.* The claims of the Plaintiffs are typical of the claims of the class
24 as a whole. Each of the Plaintiffs is and/or was employed by Defendants during the
25 relevant statutory period. As a result of Defendants’ employment policies and practices,
26 Defendants have failed and continue to fail to pay each of the Plaintiffs as required by
27 law. The unlawful policies and practices that have operated to deny the Plaintiffs
28 wages, and other compensation, benefits, and protections required by law are typical of

1 the unlawful practices that have and will continue to operate to deny other class
2 members the compensation and benefits to which they are entitled.

3 64. *Common Questions of Law and Fact.* This case poses common questions of
4 law and fact affecting the rights of all class members, including, but not limited to:

- 5 a. Whether Defendants failed to pay Plaintiffs and other class members
6 the applicable minimum wage for every compensable hour of labor
7 they performed;
- 8 b. Whether Defendants paid Plaintiffs and other class members
9 additional compensation beyond their regular wages in amounts
10 specified by law for all overtime hours worked;
- 11 c. Whether Defendants failed to pay Plaintiffs and other class members
12 all accrued wages and compensation;
- 13 d. Whether Defendants paid Plaintiffs and other class members their
14 entire wages in a timely manner;
- 15 e. Whether Defendants failed to provide Plaintiffs and other class
16 members with accurate wage statements;
- 17 f. Whether Defendants have engaged in unfair and unlawful business
18 practices;
- 19 g. The nature of damages available to Plaintiffs and other class
20 members, including the applicability of compensatory or statutory
21 damages;
- 22 h. The source and amount of Plaintiffs' and other class members'
23 damages; and
- 24 i. Whether and what kinds of declaratory and/or injunctive relief are
25 appropriate.

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

1 66. *Adequacy of Counsel for the Class.* Counsel for Plaintiffs possess the
2 requisite resources and ability to prosecute this case as a class action and are
3 experienced labor and employment and civil rights attorneys who have successfully
4 litigated other cases involving similar issues.

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

15 **COLLECTIVE ACTION ALLEGATIONS**

16
17 68. Plaintiffs on behalf of themselves and all other similarly situated persons
18 concurrently bring this action pursuant to the collective action provisions of 29 U.S.C. §
19 216(b) of the FLSA. Plaintiffs seek to represent a FLSA class consisting of all current
20 and former employees of Defendants during the applicable liability period. The
21 proposed FLSA class members are similarly situated in that they have been subject to
22 uniform practices by Defendants which violated the FLSA, including: (a) failure to pay
23 the minimum wage for every compensable hour of labor they performed, and (b) failure
24 to pay overtime wages for overtime hours of work performed.

FIRST CAUSE OF ACTION

OVERTIME AND MINIMUM WAGE VIOLATIONS

Fair Labor Standards Act (“FLSA), 29 U.S.C. § 201, *et seq.*

Collective Action

(All Defendants)

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

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

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

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

73. As a consequence of Defendants’ violations of the FLSA, Plaintiffs and others similarly situated are entitled to recover their unpaid minimum and overtime wages, plus an additional equal amount in liquidated damages, costs of suit, and reasonable attorneys’ fees pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

OVERTIME AND MINIMUM WAGE VIOLATIONS

California Labor Code §§ 510, 1194 and 1198

(Terra Universal, Inc.)

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

75. At all relevant times, Defendants acted under common law principles and state law as employers of Plaintiffs and other class members. Defendants hired them

1 and exercised control over their wages, hours, and working conditions.

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **NONPAYMENT OF WAGES**

19 California Labor Code §§ 204, 210, 218.5 and 218.6

20 (Terra Universal, Inc.)

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

23 80. Defendants required Plaintiffs and other class members to work hours
24 compensable at a regular rate of pay and/or hours compensable with overtime pay.
25 Defendants, however, have refused to pay Plaintiffs and other class members all accrued
26 wages and compensation earned by such Plaintiffs and other class members within the
27 time limits prescribed under California Labor Code § 204.

28 81. Based on Defendants' conduct as alleged herein, Defendants are liable for

1 civil penalties pursuant to California Labor Code §§ 204 and 210.
2

3 **FOURTH CAUSE OF ACTION**

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

5 California Labor Code §§ 204, 210

6 (Terra Universal, Inc.)

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

8 83. At relevant times, Defendants failed to conform their pay practices to the
9 requirements of the law as follows:

10 84. Plaintiffs and other class members were not paid portions of mandatory
11 wages for overtime work, and thus were not paid their entire wages in a timely manner
12 as required by California Labor Code § 204(b)1.

13 85. Defendants willfully failed to comply with California Labor Code §
14 204(b)1, as evidenced by, inter alia, admissions by Defendants and their agents that
15 overtime pay was costly, that salaries had to be reduced in order to pay overtime
16 “correctly,” and instructions to “punch out” and then “punch in” under a pretextual
17 “second job” in order to “avoid” overtime charges. Accordingly, Defendants are liable
18 under California Labor Code § 210(a)(2) for “any willful or intentional violation, two
19 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
20 amount unlawfully withheld.”

21 86. Defendants are also liable for the applicable civil penalties, provided for in
22 California Labor Code § 2699(f), for past violations of California Labor Code § 204.
23

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO KEEP AND FURNISH ACCURATE WAGE STATEMENTS**

26 California Labor Code § 226

27 (Terra Universal, Inc.)
28

1 87. Plaintiffs reallege and incorporate by reference the allegations made above.

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

4 89. During times relevant to this action, California Labor Code § 226(a)
5 required that employers, at the time of payment of wages, furnish each employee with
6 an accurate itemized statement showing gross wages earned and total hours worked,
7 among other things.

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

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

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

26 93. Defendants’ said failure to furnish and maintain records of accurate,
27 itemized wage statements is, and was, knowing and intentional.

28 94. Based on Defendants’ conduct as alleged herein, Defendants are liable for

1 civil penalties pursuant to California Labor Code §§ 226 and 226.3.

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

10 96. Plaintiffs, therefore, request the Court to issue a preliminary and permanent
11 injunction requiring Defendants to properly maintain records of, and furnish to
12 employees, itemized wage statements accurately reflecting the overtime compensation
13 owed to Plaintiffs and other class members, but concealed by Defendants’ “second job”
14 and “bonus” schemes.

15 **SIXTH CAUSE OF ACTION**

16 **UNFAIR BUSINESS PRACTICES**

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

18 (All Defendants)

19
20 97. Plaintiffs reallege and incorporate by reference the allegations made
21 above.

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

25 99. Business and Professions Code § 17200, *et seq.* prohibits unlawful, unfair,
26 and fraudulent business practices. Plaintiffs seek to enforce important rights affecting
27 the public interest within the meaning of California Code of Civil Procedure § 1021.5.

28 100. Plaintiffs are “persons” within the meaning of Business and Professions

1 Code § 17204, with standing to bring this suit for injunctive relief, restitution,
2 disgorgement, and other appropriate equitable relief on behalf of all similarly-situated
3 employees and on behalf of the general public.

4 101. The FLSA announces the public policy of this country to ensure minimum
5 wage and overtime payments. 29 U.S.C. § 202. It provides, in relevant part, that the
6 existence of labor conditions detrimental to the maintenance of the minimum standard
7 of living necessary for health, efficiency, and general well-being of workers constitutes
8 an unfair method of competition.

9 102. California Labor Code § 90.5(a) sets forth the public policy of this State to
10 enforce minimum labor standards vigorously, to ensure that employees are not required
11 or permitted to work under substandard and unlawful conditions, and to protect
12 employers who comply with the law from those who attempt to gain a competitive
13 advantage by failing to comply with minimum labor standards.

14 103. Through the conduct alleged in this Complaint, Defendants have acted
15 contrary to these public policies and statutes, and have thus engaged in unlawful and
16 unfair business practices in violation of California Business and Professions Code §§
17 17200-208. At all relevant times, Defendants have engaged in unfair and unlawful
18 business practices that include, but are not limited to, the following:

- 19 a. Failing to pay the Plaintiffs and other class members the wages
20 required by state and federal law in violation of 29 U.S.C. §§ 206 and 207,
21 California Labor Code §§ 1194, 1198 and applicable I.W.C. wage orders;
22 b. Failing to provide Plaintiffs and other class members with accurate
23 itemized wage statements as required by California Labor Code § 226;
24 c. Additional unfair and unlawful practices that Plaintiffs reserve the
25 right to identify as further investigation and discovery warrants.

26 104. As a direct result of their unfair and unlawful conduct, Defendants have
27 reaped benefits and illegal profits at the expense of the Plaintiffs and other class
28 members. Through the unfair business practices alleged in this Complaint, Defendants

1 have received, and continue to receive, funds that rightfully belong to the Plaintiffs and
2 other class members, they have produced and continue to produce further profits with
3 those funds, and they therefore have been, and continue to be, unjustly enriched.

4 Through the unfair business practices alleged in this Complaint, moreover, Defendants
5 have received, and continue to receive the benefit of employing a steady workforce
6 under unlawful conditions, and have thereby achieved, and continue to achieve, an
7 unfair competitive advantage over their legitimate business competitors, all at the
8 expense of the Plaintiffs and other class members.

9 105. Accordingly, under California Business and Professions Code § 17203,
10 Plaintiffs seek restitution of all unpaid wages owed to themselves and other class
11 members, in amounts to be proven at trial, as well as disgorgement of all profits that
12 Defendants have enjoyed as a result of their unfair and unlawful business practices.

13 106. Plaintiffs also seek injunctive relief to prevent Defendants from continuing
14 to engage in the unfair business practices alleged in this Complaint. Defendants, and
15 persons acting in concert with them, have done, are now doing, and will continue to do
16 or cause to be done, the above-described unlawful acts unless restrained and enjoined by
17 this Court. Unless the relief prayed for below is granted, a multiplicity of actions will
18 result. Plaintiffs have no plain, speedy, or adequate remedy at law, in that it is difficult
19 to measure the amount of monetary damages that would compensate Plaintiffs or the
20 general public for Defendants' wrongful acts. Further, pecuniary compensation alone
21 would not afford adequate and complete relief. The above-described acts will cause
22 great and irreparable damage to Plaintiffs and the general public if injunctive relief is
23 not granted.

PRAYER FOR RELIEF

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

1. An order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the proposed class;
2. Unpaid wages and statutory penalties, according to proof;
3. Liquidated damages pursuant to 29 U.S.C. § 216(b) for failure to pay overtime wages;
4. Preliminary and permanent injunctions enjoining and restraining Defendants from continuing the unfair and unlawful business practices set forth above and requiring the establishment of appropriate and effective means to prevent future violations;
5. Restitution of all compensation due, including but not limited to unpaid wages, as a result of Defendants' unlawful and unfair business practices, according to proof;
6. Declaratory relief;
7. Reasonable attorneys' fees and costs;
8. Interest;
9. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

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


DATED: March 24, 2011

Respectfully submitted,

HADSELL STORMER KEENY
RICHARDSON & RENICK, LLP

ACLU of SOUTHERN CALIFORNIA

By


Randy Renick, Esq.
Attorneys for Plaintiffs