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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION

14 JOSE HERNANDEZ, individually and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.
18

19 LEO BALAKIAN, ANTHONY
20 BALAKIAN AND VINCE BALAKIAN,

21 Defendants.
22

CASE NO.: 1:06-cv-1383

JURY TRIAL DEMANDED

CLASS ACTION

FIRST AMENDED COMPLAINT

23 **I. NATURE OF ACTION**

24 1. This is a class action brought on behalf of all legal hourly-paid workers,
25 who have been employed by Fruit Patch, Inc. of Reedley, California.
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1 Mr. Hernandez contends that the defendants (hereafter “the Balakians”) have
2 depressed his wages as an agricultural worker at Fruit Patch, Inc. by knowingly
3 employing vast numbers of illegal immigrants there for the express purpose of
4 depressing the market price for unskilled labor. (This is referred to as “the Illegal
5 Immigrant Hiring Scheme” or “the Scheme”.)
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7
8 2. The Illegal Immigrant Hiring Scheme violates the Racketeer Influenced
9 and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* It is perpetrated
10 every day, as an integral part of the Balakian’s regular manner of staffing Fruit Patch,
11 and will continue unabated, victimizing every legal worker, until halted by judicial
12 intervention.
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14 **II. PARTIES, JURISDICTION & VENUE**

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16 3. Plaintiff Jose Hernandez is a citizen of California. He was legally
17 authorized to be employed in the U.S. when he was employed by Fruit Patch, Inc., as
18 an hourly paid farmworker. Fruit Patch, Inc. is owned and operated by the Balakians.
19 Mr. Hernandez’s wages as an agricultural worker for Fruit Patch, Inc. were set by the
20 Balakians at a level which was depressed as a direct result of the Illegal Immigrant
21 Hiring Scheme they perpetrated.
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1 4. Leo Balakian and his sons, Anthony and Vince Balakian, are citizens of
2 California. They have conspired to operate Fruit Patch, Inc. through a pattern of
3 racketeering activity, the Illegal Immigrant Hiring Scheme.
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5 5. This Court has subject matter jurisdiction of this case as a federal
6 question, pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c).
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8 6. Venue is proper in this District because the illegal acts giving rise to this
9 case occurred in this district and all parties reside here.
10

11 **III. CLASS ALLEGATIONS**

12 7. This action is brought and may be maintained as a class action pursuant
13 to FED. R. CIV. P. 23(b)(3). Mr. Hernandez brings this action on behalf of himself and
14 all other persons legally authorized to be employed in the U.S. who have been
15 employed by Fruit Patch, Inc. in the last four years (hereafter the “Class” or “Class
16 members”) as hourly or piece rate unskilled laborers.
17

18 8. The Class is so numerous that joinder of all Class members is
19 impracticable. The actual number can be ascertained through discovery of the various
20 entities’ records.
21

22 9. Among the questions of fact and law that are common to the Class are:

23 a. Whether the Defendants have been and are currently engaged in
24 the Illegal Immigrant Hiring Scheme in order to depress wages;
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1 b. To what extent the Illegal Immigrant Hiring Scheme has caused
2 Class members' wages to be depressed; and

3
4 c. Whether the Illegal Immigrant Hiring Scheme violates the
5 Immigration and Nationality Act and RICO.

6 10. Plaintiff's claims are typical of those of the members of the Class
7 inasmuch as their alleged damages were directly and proximately caused by the Illegal
8 Immigrant Hiring Scheme. Plaintiff seeks no relief that is antagonistic or adverse to
9 other Class members.
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12 11. Plaintiff is committed to the vigorous prosecution of this action and has
13 retained counsel who are competent in the prosecution of RICO cases generally, and
14 this legal theory in particular. Accordingly, Plaintiff and their counsel will fairly and
15 adequately protect and represent the interests of the Class.
16

17 12. Questions of law or fact that are common to the members of the Class are
18 substantially similar and predominate over any questions affecting only individual
19 Class members, and a class action is the only appropriate method for the fair and
20 efficient adjudication of this controversy for the following reasons, among others:
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22 a. The individual amounts of damages involved, while not
23 insubstantial, are generally not large enough to justify individual actions;
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1 b. The costs of individual actions would unreasonably consume the
2 amounts that would be recovered;

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4 c. Individual actions would unduly burden the judicial system; and

5 d. Individual actions brought by Class members would create a risk
6 of inconsistent results and would be unnecessarily duplicative of this litigation.
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8 13. Plaintiff anticipates no difficulty in the management of this action
9 because the evidence proving the Illegal Immigrant Hiring Scheme is ascertainable
10 through discovery, the identities of the members of the Class are known to
11 Defendants. Damages can be calculated through expert testimony.
12

13 **IV. THE ILLEGAL IMMIGRANT HIRING SCHEME ENSURES THAT**
14 **MOST HOURLY WORKERS ARE UNAUTHORIZED FOR**
15 **EMPLOYMENT AND THAT WAGES ARE DEPRESSED**

16 14. The Illegal Immigrant Hiring Scheme saves Fruit Patch, Inc. millions of
17 dollars per year in labor costs. This is so because illegal immigrants will work for
18 starvation wages and in deplorable working conditions. Such hiring practices are in
19 direct violation of the Immigration and Nationality Act and RICO, which makes the
20 employment of illegal immigrants a predicate offense. Thus, if the Balakians were not
21 hiring large numbers of illegal immigrants, their business would have to pay the
22 Plaintiff Class significantly higher wages, and their profits would be sharply reduced.
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1 15. All three of the Balakians have approved the following hiring criteria for
2 Fruit Patch, Inc. These criteria subvert the law against hiring illegal immigrants and
3 effectively turn a blind eye to factors which any reasonable employer would know
4 indicate job applicants are unauthorized for employment in the U.S.: 1) hiring
5 workers who cannot speak English while claiming to be U.S. Citizens or Lawful
6 Permanent Residents; 2) hiring workers who do not have housing and are recent
7 arrivals to the U.S. and claim to be U.S. Citizens or Lawful Permanent Residents; 3)
8 hiring workers who present authorization documents which are invalid on their face
9 because the pictures are of a different person, are upside down, are on poor quality
10 paper, etc.; 4) hiring workers who are personally known to them to be in the U.S.
11 illegally and are using false documents; and 5) hiring workers who have previously
12 been employed under different identities. A majority of the hourly workforce of Fruit
13 Patch, Inc. fall into one or more of these categories.
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19 16. Additionally, Fruit Patch, Inc. is often informed that large numbers of its
20 workers are using false social security numbers by the Social Security Administration.
21 Most of these workers then simply assume new identities and continue to be
22 employed, pursuant to policies set by the Balakians.
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1 **A. The Balakians Have Personally Approved The Scheme**

2 17. The Balakians have personally approved the hiring procedures detailed
3 above. They have also directed their hiring personnel, including Roberto Olivarez,
4 who has hired hundreds of illegal immigrants for Fruit Patch, Inc., to follow these
5 procedures, *i.e.*, in ways that ensure the employment of a largely illegal workforce.
6

7 18. In addition, the Balakians facilitate the hiring of many of these illegal
8 immigrants by directing their hiring-personnel to obtain housing for them, which
9 Roberto Olivarez, among others, has done for illegal workers at Fruit Patch, Inc.
10

11 19. Therefore, Mr. Hernandez alleges that the Balakians have facilitated the
12 Illegal Immigrant Hiring Scheme, thereby causing Fruit Patch, Inc. to hire more than
13 100 illegal workers per year during the last four years.
14

15 **B. The Scheme Violates the Immigration and Nationality Act.**

16 20. The Immigration and Nationality Act provides, in relevant part:
17

18 Any person who, during any 12-month period, knowingly
19 hires for employment at least 10 individuals with actual
20 knowledge that the individuals are aliens... shall be fined
21 under Title 18, or imprisoned for not more than 5 years, or
both.

22 8 U.S.C. § 1324(a)(3)(A).

23 21. The Balakians have violated this provision of the Act by conspiring to
24 employ more than 10 undocumented, illegal aliens in each of the last four years,
25 knowing each was smuggled into the country and/or harbored once they arrived here.
26

1 22. Additionally, by knowingly employing illegal immigrants and, further,
2 conspiring to provide them with housing, the Balakians have conspired to violate 8
3 U.S.C. § 1324(a)(1)(A)(iii) which makes it a federal crime for anyone who “knowing
4 or in reckless disregard of the fact that an alien has come to, entered, or remains in the
5 United States in violation of law, conceals, harbors, or shields from detection, or
6 attempts to conceal, harbor, or shield from detection, such alien in any place,
7 including any building or any means of transportation.”

8
9
10 23. These are provisions of § 274 of the Immigration and Nationality Act,
11 which is a RICO predicate offense. 18 U.S.C. § 1961(1)(F).
12

13 **C. Fruit Patch, Inc. is a RICO Enterprise Controlled And Operated By**
14 **The Balakians**

15 24. Fruit Patch, Inc. is a California corporation affecting interstate
16 commerce. It is therefore a RICO enterprise, pursuant to 18 U.S.C. § 1961(4). All
17 three of the Balakians operate and manage Fruit Patch, Inc., and, as stated, have
18 implemented the Scheme at Fruit Patch, Inc. by virtue of their roles as managers,
19 officers and owners.
20

21 **D. The Balakians Have Violated 18 USC § 1962(d) And Will Continue**
22 **To Do So Indefinitely**

23 25. The conspiracy to perpetrate the Scheme is a violation of 18 U.S.C. §
24 1962(d), an agreement among the Balakians to violate § 1962(c), by participating in
25

1 the affairs of Fruit Patch, Inc. through a pattern of racketeering activity. The Scheme
2 is ongoing, open-ended, and has been perpetrated continuously for the last four years.
3
4 It will not stop without judicial intervention.

5 **V. PLAINTIFFS ARE DIRECT VICTIMS OF THE ILLEGAL**
6 **IMMIGRANT HIRING SCHEME**

7 26. The Balakians' Illegal Immigrant Hiring Scheme, by itself, was a
8 substantial factor in causing the depressed wages about which Hernandez and the
9 Class complain. No other party has been damaged by the Scheme.
10

11 27. Each of the defendants is subject to joint and several liability for all of
12 the damage caused by all the racketeering acts committed by any of the Defendants.
13

14 **VI. PRAYER FOR RELIEF**

15 28. Plaintiff demands judgment and other relief, as follows:
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17 a. Certification of the Class pursuant to FED. R. CIV. P. 23(b)(3);
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19 b. Judgment in an amount equal to three times the damage caused to
20 the Class by the Defendants' racketeering activity, the Illegal Immigrant Hiring
21 Scheme, pursuant to 18 U.S.C. § 1964(c);
22
23 c. For appropriate attorney's fees, pursuant to 18 U.S.C. § 1964;
24
25 d. For the costs of this action; and
26
e. For any other relief the Court deems just and proper.

1 DATED: April 2, 2007

2 /s/ Howard W. Foster

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2007, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

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