

\*\*E-Filed 5/17/2011\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

WILLIAM A. BAUDLER, Regional Director of  
the Thirty-Second Region of the National Labor  
Relations Board, for and on behalf of the National  
Labor Relations Board,

Petitioner,

v.

OS TRANSPORT LLC and HCA MANAGMENT,  
INC.,

Defendants.

Case Number 05:11-cv-01943 JF/HRL

ORDER<sup>1</sup> GRANTING PETITION FOR  
INJUNCTION

Pursuant to section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j),  
Petitioner William A. Baudler, Regional Director of the Thirty-Second Region of the National  
Labor Relations Board (“the Board”), seeks to enjoin OS Transport LLC and HCA Management  
(collectively, Respondents) from engaging in certain alleged unfair labor practices pending final  
disposition of a complaint currently before the Board. For the reasons discussed below, the  
Court concludes that Petitioner has shown a likelihood of success on the merits and of  
irreparable injury to the integrity of the collective bargaining process and the Board’s ability to  
preserve its remedial powers, and that the balance of the equities and the public interest tip  
decidedly in favor of granting an injunction. Accordingly, the instant petition will be granted.

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<sup>1</sup> This disposition is not designated for publication and may not be cited.

## I. BACKGROUND

Respondents are engaged in the business of hauling waste and recycling materials between various landfills and recycling plants in and around San Jose. OS Transport is owned by Hilda Andrade and her two minor children Oscar Sencion Jr. and Crystal Sencion. Andrade also is the sole owner and only employee of HCA Management. The hauling operations of both companies are held out to Respondents' customers as a single integrated business operation.<sup>2</sup> EX 271-278 (testimony of Don Dean). Oscar Sencion Sr. is Respondents' yard manager and oversees the day-to-day hauling, including route assignments performed by OS Transport's drivers.

In January 2010, Andrade and Sencion Sr. announced to OS Transport drivers and mechanics that the business was being sold to new investors and would have to be restructured. EX 31-32 (testimony of Jesus Garcia Marquez); EX 128-29 (testimony of Miguel Angel Reynoso); EX 246 (testimony of Jose P. Guzman Marquez); EX 328-239 (testimony Marcial Barron Salazar); EX 353 (testimony of Alberto Pizano Martinez). The employees were told that the new investors required the drivers to incorporate as individual corporate entities in order to continue working; the drivers were not told that the "new investors" were Andrade and her children. At a second meeting, held on April 30, 2011, Andrade presented the employees with applications for incorporation written in English and filled out by her attorney. EX 31-32 (testimony of Jesus Garcia Marquez); EX 128-29 (testimony of Miguel Angel Reynoso); EX 353 (testimony of Alberto Pizano Martinez). Most of the employees signed the documents even though several of them could not read or write English and many allegedly did not understand the implications of incorporation. One employee who refused to sign, Julio Escobar, immediately was required to sign a resignation letter. EX 360 (testimony of Alberto Pizano Martinez); EX 483 (testimony of Hilda Cachus Andrade). At the same meeting, Andrade, translating her attorney's statements into Spanish, announced that if employees were thinking

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<sup>2</sup> Following the convention of the parties the Court will refer to the official transcript of the administrative proceeding, the exhibits in that proceeding, and references to the Board's affidavits as "EX," followed by the relevant page number.

1 about getting help from a union, they could do so only through their corporations. EX 31-32  
2 (testimony of Jesus Garcia Marquez); EX 328-239 (testimony Marcial Barron Salazar); EX 353  
3 (testimony of Alberto Pizano Martinez) EX 483 (testimony of Hilda Cachus Andrade).

4 In early April, 2010, two drivers contacted Teamsters Local Union No. 350, International  
5 Brotherhood of Teamsters, Change to Win, (the “Union”) for assistance with their forced  
6 incorporation. The Union began organizing, and on April 14, 2010, it filed a petition to  
7 represent Respondent’s drivers. EX 38-44 (testimony of Jesus Garcia Marquez); EX 234-236  
8 (testimony Marcial Barron Salazar). On May 4, 2010, Union supporters signed a joint letter of  
9 protest with respect to their working conditions and the fact that they had been forced to sign  
10 papers that they could not understand. EX 828 (letter).

11 Miguel Reynoso testified that in a meeting on May 6, 2010, Sencion Sr. told him that all  
12 of the employees who had signed the joint letter would be fired and replaced by new drivers and  
13 that drivers who had not signed the letter would go on working. *See* EX 138-39. According to  
14 Reynoso, Sencion Sr. also said that if Reynoso renounced the union he could return to a lucrative  
15 route. *Id.* Rick Lopez, the manager of GreenWaste Recovery, a client of Respondent, testified  
16 that he hired former OS Transport driver Serafin Urias in early May 2010. EX 287. Shortly  
17 after hiring Urias, Lopez received a call from Sencion Sr. in which Sencion Sr. said that he was  
18 having problems with the Union and that he believed the Union was paying Urias to infiltrate  
19 GreenWaste. *Id.* Sencion Sr. also told Lopez that he was planning to hire more workers so that  
20 he could get rid of his “problematic employees.” *Id.*

21 At or about the same time, Sencion Sr. reassigned Reynoso, Alberto Pizano, and Efrain  
22 Gutierrez Najera—all of whom had signed the protest letter and supported the Union—from  
23 lucrative routes to less desirable ones. EX 138, 144-49, 170-74 (testimony of Miguel Angel  
24 Reynoso); EX 348-50, 392-400 (testimony of Alberto Pizano Martinez). Other Union supporters  
25 also were reassigned from their previous routes, resulting in fewer loads for which they could be  
26 paid. Respondent also allegedly began sending Union supporters home early, even when there  
27 was still material to haul, and stopped assigning Saturday work to Union supporters, particularly  
28 those perceived as leaders.

1 On or about August 29, 2010, Jesus Garcia Marquez submitted a written request for time  
2 off from September 6 through September 20 for the birth of his child, which Andrade approved.  
3 One week into Marquez's approved leave, Andrade cancelled Marquez's company cell phone.  
4 When Marquez returned to work on September 20, he was told that his truck was under repair  
5 and that he had the option of driving a spare truck or waiting for his assigned truck, which would  
6 not be repaired for approximately a week. Marquez opted to request an additional week of leave.  
7 He was told that he would be contacted through a co-worker, Alberto Pizano, when the repairs  
8 were completed. Although Pizano checked in regularly, he was told that Marquez's truck was  
9 not ready. On September 30, Marquez was told in person that his truck was unavailable. He  
10 asked to drive the spare truck but was told that it too needed repairs. Again, he was told that he  
11 would be contacted when the repairs were complete. On October 15, Marquez received a letter  
12 from Andrade stating that he had been terminated for abandoning his job. EX 54-69, 98-109  
13 (testimony of Jesus Garcia Marquez); EX 387-388 (testimony of Alberto Pizano Martinez); EX  
14 487-491 (testimony of Hilda Cachus Andrade).

15 On or about November 4, 2010, Andrade received a DMV pull notice showing a  
16 speeding ticket for Alberto Pizano. Upon contacting her insurance broker, Andrade learned that  
17 Pizano was ineligible for insurance coverage unless proof of non-fault was submitted with  
18 respect to an April 25, 2009, accident appearing on Pizano's driving record. EX 503-506  
19 Pizano testified that in May 2009, he gave Andrade a copy of the CHP report with respect to the  
20 accident, which clearly states that Pizano was not at fault. EX 379-386; EX 852-862 (exhibits).  
21 Pizano also provided Andrade with his own statement about the accident. *Id.* Despite these  
22 communications, Andrade made no effort to retain insurance coverage for Pizano. The insurance  
23 broker testified that Andrade asked her expressly to make no reference to the fact that Pizano  
24 still could be eligible for coverage if proof of non-fault for the April 2009 accident were  
25 submitted, as Andrade did not want to give Pizano the opportunity to provide proof. EX 503-  
26 506 (testimony of Cristina Bettencourt); EX 863-869 (exhibits). When the broker told Andrade  
27 that she could not comply with the request, Andrade responded that "she didn't want to employ  
28 [Pizano] anymore and didn't want to give him any opportunity to provide the proof." EX 509.

1 The same day, Andrade presented Pizano with a termination letter and advised him that he no  
2 longer could be employed because Respondents' insurance company no longer would insure  
3 him. When Pizano told Andrade that she must be mistaken, Andrade told him that it was not her  
4 problem and that she could not help him. EX 375-379.

## 5 **II. LEGAL STANDARD**

6 Section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j), provides

7 The Board shall have power, upon issuance of a complaint as provided in  
8 subsection (b) charging that any person has engaged in or is engaging in an unfair  
9 labor practice, to petition any United States district court, within any district  
10 wherein the unfair labor practice in question is alleged to have occurred or  
11 wherein such person resides or transacts business, for appropriate temporary relief  
or restraining order. Upon the filing of any such petition the court shall cause  
notice thereof to be served upon such person, and thereupon shall have  
jurisdiction to grant to the Board such temporary relief or restraining orders as it  
deems just and proper.

12 “To decide whether granting a request for interim relief under Section 10(j) is ‘just and proper,’  
13 district courts consider the traditional equitable criteria used in deciding whether to grant a  
14 preliminary injunction.” *McDermott v. Ampersand Publishing, LLC*, 593 F.3d 950, 957 (9th Cir.  
15 2010). However, “when evaluating a petition under § 10(j), the court must analyze the request  
16 ‘through the prism of the underlying purpose of § 10(j), which is to protect the integrity of the  
17 collective bargaining process and to preserve the Board’s remedial power while it processes the  
18 charge.’” *Garcia v. Sacramento Coca-Cola Bottling Co.*, 733 F. Supp. 2d 1201, 1207-08 (E.D.  
19 Cal. 2010) (quoting *Miller v. Cal. Pac. Medical Ctr.*, 19 F.3d 449 (9th Cir. 1994)); *see also*  
20 *McDermott*, 593 F.3d at 957.

21 A preliminary injunction is “an extraordinary remedy that may only be awarded upon a  
22 clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council,*  
23 *Inc.*, 129 S.Ct. 365, 376 (2008). “The proper legal standard for preliminary injunctive relief  
24 requires a party to demonstrate [1] ‘that he is likely to succeed on the merits, [2] that he is likely  
25 to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips  
26 in his favor, and [4] that an injunction is in the public interest.’” *Stormans, Inc. v. Selecky*, 586  
27 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 129 S. Ct. at 374). The Ninth Circuit recently  
28 reaffirmed that within this framework a preliminary injunction also is appropriate when a

1 plaintiff demonstrates “that serious questions going to the merits were raised and the balance of  
2 the hardships tips sharply in the plaintiff’s favor,” thereby allowing district courts to preserve the  
3 status quo where difficult legal questions require more deliberate investigation. *Alliance for the*  
4 *Wild Rockies v. Cottrell*, 613 F.3d 960 (2010).

### 5 **III. DISCUSSION**

#### 6 **A. Likelihood of Success on the Merits**

7 In order to establish a likelihood of success on the merits, Petitioner must show that the  
8 Board likely will find, and the Ninth Circuit likely will affirm, a finding that Respondents  
9 committed the alleged unfair labor practices. *See McDermott*, 593 F.3d at 964. Petitioner  
10 contends that in light of “the district court’s lack of jurisdiction over unfair labor practices, and  
11 the deference accorded to [the Board’s] determinations by the courts of appeals,” *Miller*, 19 F.3d  
12 at 460, only a showing of “some evidence” together with “an arguable legal theory,” is  
13 necessary to show a likelihood of success on the merits. *Scott v. Stephen Dunn & Assocs.*, 241  
14 F.3d 652, 662 (9th Cir. 2001) (quoting *Miller*, 19 F.3d at 460). However, the Ninth Circuit since  
15 has expressed skepticism of the deferential standard articulated in *Miller* in light of the Supreme  
16 Court’s holding in *Winter v Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). *See*  
17 *McDermott*, 593 F.3d at 597, 963 (indicating that the lower court in that case “may have been  
18 guided by the ‘too lenient’ preliminary injunction standards” of pre-*Winter* cases); *Small v.*  
19 *Operative Plasterers’ & Cement Mason’s Int’l*, 611 F.3d 483, 491 (9th Cir. 2010) (stating that  
20 “the Supreme Court rejected *Miller*’s deferential standard for granting preliminary injunctions”);  
21 *but see Garcia*, 733 F. Supp 2d at 1208 fn. 3 (concluding that *McDermott* overruled only  
22 *Miller*’s analysis of irreparable injury and that *Small* addressed *Miller*’s likelihood of success  
23 prong only in dicta). In this case, however, the Court concludes that Petitioner’s showing is  
24 sufficient to satisfy either standard.

25 Petitioner alleges that Respondent has engaged in multiple unfair trade practices in  
26 violation of §§ 8(a)(1) and 8(a)(3) of the National Labor Relations Act. Section 7 of the Act  
27 gives employees the right to engage in concerted activity for the purpose of mutual aid and  
28 protection, which includes both the concerted presentation to management of complaints about

1 working conditions, and the right to engage in union activity. Section 8(a)(1) provides that “[i]t  
2 shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce  
3 employees in the exercise of the rights guaranteed in [Section 7].” Petitioner presents evidence  
4 that Respondents violated this provision by making threats of termination and plant closure,  
5 threats to reduce employee work and pay, and promises to restore benefits only if employees  
6 abandon their union or other protected activities. Petitioner also contends that Respondent  
7 violated this provision by indicating that it would be futile for employees to obtain union  
8 representation because the employees were in fact independent corporations.

9 Section 8(a)(3) makes it an unfair trade practice to engage in discriminatory conduct  
10 towards employees as a result of their support for a union. Petitioner offers evidence that  
11 Respondents reassigned Union supporters to less lucrative routes, eliminated their opportunities  
12 for additional work, and caused them to suffer extended periods without work by delaying  
13 repairs to their vehicles and denying them access to spare trucks. Petitioner also alleges that  
14 Respondents terminated two employees for their union activities.

### 15 **1. Intimidation**

16 Economic threats to discourage employees from unionizing violates § 8(a)(1) of the  
17 NLRA, *NLRB v. Grimm*, 157 L.R.R.M. 2064 (9th Cir. 1996), as does misinforming employees  
18 that it would be futile to select a union as their bargaining representative because they are  
19 independent contractors rather than employees, *Careful Courier Servs.*, 344 N.L.R.B. 485  
20 (2005). Petitioner has presented evidence from the hearing before the administrative law judge  
21 indicating that Andrade and her attorney told employees that they would have to form their own  
22 corporations in order to continue working and that they could unionize only their own  
23 corporations. EX 483. In addition, Reynoso testified that Sencion Sr. told him that all of the  
24 employees who had signed the joint letter protesting their work conditions would be fired and  
25 replaced by new drivers, and that the drivers who had not signed the letter would go on working.  
26 EX 138-39. Reynoso also testified that Sencion Sr. told him that if he renounced the Union he  
27 could return to a lucrative route. *Id.* The seriousness of this threat is confirmed by Sencion Sr.’s  
28 comments to his client, Rick Lopez, that he intended to get rid of his “problematic employees.”

1 EX 287.

2 In their opposition papers, Respondents contend that Andrade's comments that drivers  
3 could form a union in their own corporations did not convey the message that Respondent would  
4 not recognize and bargain with a union or imply that bargaining would be futile. However, in  
5 light of the fact that several drivers testified to their lack of understanding of the incorporation  
6 process and Respondents dominant role in that process, including the forced resignation of Julio  
7 Escobar, the Board reasonably could conclude that Andrade's comments were meant to indicate  
8 that it would be futile to unionize once the employees were individually incorporated.  
9 Moreover, Respondents do not contest the testimony of Reynoso, which describes Sencion Sr.'s  
10 threats of economic reprisal for union activity and offer of incentives for abandoning the union.

## 11 **2. Changes in Union Supporters Work and Hours**

12 Petitioner contends that there is substantial evidence that immediately upon learning the  
13 identity of employees who supported the Union, Respondents reassigned those individuals to  
14 less lucrative, more onerous routes, eliminated much of their Saturday work, and sent them home  
15 early even when there was still material to haul. Respondents claim that of the ten employees  
16 whose routes allegedly were changed, only five earned substantially less once absences outside  
17 of Respondents' control are taken into account. They also argue that evidence was presented  
18 indicating that drivers' routes were dictated by the materials that needed to be transported rather  
19 than by Respondents, and that the drivers determined their Saturday work themselves.

20 The evidence presented at the hearing provides substantial support for Petitioner's  
21 claims. Respondents' payroll records show a significant contrast between the amount of  
22 Saturday work given to Union supporters before and after they signed the protest letter, while  
23 drivers not known to be supporters experienced no change in their pattern of Saturday  
24 assignments, and new employees hired after the protest letter worked virtually every Saturday  
25 for the rest of the year. Likewise, Respondents' records indicate that while the drivers taken off  
26 of lucrative routes occasionally returned to those routes, they did those on a much less frequent  
27 basis. These changes are consistent with the threats that Sencion Sr. allegedly made to Reynoso  
28 and the comments he allegedly made to Lopez. While it is possible that the Board will be



1 persuaded by Respondents' alternative explanations, the Court concludes that Petitioner has  
2 satisfied his burden of showing that he is likely to succeed on the merits.

## 3           **2.       Termination of Jesus Garcia Marquez**

4           In order to support a finding that an employer was motivated by an anti-union animus in  
5 terminating an employee, Petitioner must "make a prima facie showing sufficient to support the  
6 inference that protected conduct was the 'motivating factor' in the employer's decision. Once  
7 this is established, the burden will shift to the employer to demonstrated the same action would  
8 have taken place even in the absence of protected conduct." *Healthcare Employees Union,*  
9 *Local 399 v. N.L.R.B.*, 441 F.3d 670, 680 (9th Cir. 2006) (quoting *Wright Line*, 251 NLRB 1083,  
10 1089 (1980)).

11           Petitioner contends that record evidence, including the testimony of Marquez and his co-  
12 worker Pizano, shows that Respondents seized upon Marquez's alleged abandonment of his job  
13 to remove a leading union activist away from the work place. Petitioner also points out that the  
14 weight of the evidence, including the comments by Sencion Sr. to Lopez and Reynoso, support  
15 the allegation that Marquez's so-called abandonment was a pretext. Respondents argue that  
16 because the union activities at issue occurred in May and Marquez was terminated in October,  
17 there is no nexus between Marquez's previous activities and the decision to terminate.  
18 Respondents also claim that they were under no obligation to make efforts to contact Marquez  
19 after he failed to return to work, and that after October 1, 2010, Marquez admittedly made no  
20 effort to inquire about his return. Respondents point out that failing to report to work without  
21 calling in unquestionably is legitimate grounds for termination under Board precedent. *See*  
22 *Engineered Comfort Systems, Inc.*, 346 NLRB 661 (2006).

23           Unlike the situation in *Engineered Comfort Systems, Inc.*, in which an employer directed  
24 a union activist to report to a particular job-site and the employee subsequently left on a week's  
25 vacation leaving only a voice-mail message, there is no evidence in the present record that  
26 Marquez refused to report to work when asked, and there is evidence that in fact Marquez made  
27 arrangements to return to work as soon as his truck (or a spare truck) was available. In addition,  
28 Respondents' cancellation of Marquez's cell phone during his approved absence indicates that

1 they not only made no attempt to contact Marquez prior to termination but also made such  
2 contact more difficult. These actions, combined with Sencion Sr.'s alleged comments with  
3 respect to retaliation, are sufficient evidence to support a conclusion by the Board that the  
4 termination of Marquez was an unfair trade practice.

### 5 **3. Termination of Alberto Pizano**

6 Respondents contend that they had legitimate grounds for terminating Pizano, and that  
7 there is little evidence to support Petitioner's claim that they were motivated to terminate Pizano  
8 in November for signing a letter in May. In addition, Respondents claim that they did not have  
9 proof that Pizano was not at fault for his accident, and that they provided him with the contact  
10 information of the insurance broker so that he could contact the broker directly. Finally,  
11 Respondents admit that they did not want Pizano to return to work once he was declared  
12 uninsurable, but that they were motivated by Pizano's poor driving record rather than his union  
13 activity. Respondents note that "[t]he fact that Respondents may have been glad to be presented  
14 with an opportunity to discharge [a pro-union employee] is legally inconsequential." *Shen Auto.*  
15 *Dealer Group*, 321 NLRB 586 (1996).

16 As Petitioner points out, Respondents fail to address Pizano's uncontroverted testimony  
17 that Andrade had the CHP report finding non-fault in Pizano's personnel file and that Andrade  
18 attempted to have the insurance broker remove from the exclusion letter any reference to the fact  
19 that Pizano could still be eligible for coverage if proof of non-fault for the April 2009 accident  
20 were submitted. This evidence, along with Sencion Sr.'s the comments described above, are  
21 sufficient to establish a *prima facie* case of retaliation and to support a finding that Respondents  
22 are unlikely to sustain their burden of proving that Pizano would have been terminated absent his  
23 Union activities.

### 24 **B. Irreparable Harm**

25 Petitioner also must establish a likelihood of irreparable harm in the absence of  
26 preliminary relief. *McDermott*, 593 F.3d 957 (holding that the previous precedents indicating  
27 that "when a plaintiff demonstrates a strong likelihood of prevailing on the merits, a preliminary  
28 injunction may be entered based only on a 'possibility' of irreparable harm" were now

1 “defunct”). In evaluating the likelihood of irreparable harm, courts must “take into account the  
2 probability that declining to issue the injunction will permit the allegedly unfair labor practice to  
3 reach fruition and thereby render meaningless the Board’s remedial authority.” *Miller*, 19 F.3d  
4 at 460.

5         Petitioner contends that the interim relief he requests, particularly the reinstatement of  
6 terminated employees and a cease and desist order, is necessary to prevent irreparable injury to  
7 employees’ statutory rights and to protect the Union’s nascent organizing campaign. Petitioner  
8 claims that Respondents’ acts of retaliation against Union supporters, including termination and  
9 unfavorable assignments, threaten to chill the exercise of statutory rights by employees.  
10 Petitioner asserts that this chilling effect is likely to erode support for the Union before the Board  
11 issues its decision. EX 538-39 (affidavit of union organizer). Petitioner also claims that  
12 Respondents’ actions raise concerns that the terminated employees and others afraid of reprisal  
13 may look for new jobs, EX 540, thus undermining the Board’s ability to provide a complete  
14 remedy.

15         Respondents argue that Petitioner has failed to show a likelihood of irreparable harm to  
16 the Union’s organizing efforts. They claim that no testimony was elicited from any of the  
17 drivers who testified at the hearing that they were less likely to support the union because they  
18 were fearful for their jobs. While one driver who had supported the Union later disavowed his  
19 support and asked forgiveness from Respondents, Respondents point out that the driver did not  
20 testify that his disavowal had anything to do with Respondents’ actions. They contend that the  
21 only evidence of irreparable harm is hearsay contained in the affidavit of the Union’s organizer.

22         Respondents also observe that the Union was able to reaffirm the support of nine of its  
23 ten remaining supporters through signatures on authorization cards obtained after the  
24 terminations and that claims that Marquez must be reinstated immediately because he is a lead  
25 organizer are belied by the fact that the Union has used other drivers as organizers. Finally,  
26 Respondents argue that Petitioner’s delay in seeking injunctive relief demonstrates the absence  
27 of irreparable harm. They note that although the Union’s initial charges were filed by the Union  
28 in May 2010 and the charges alleging the unlawful termination of Marquez and Pizano were

1 filed in November 2010, Petitioner did not seek injunctive relief until April 2011.

2 Petitioner points out that an expedited unfair labor practice proceeding before an  
3 administrative law judge occurred at the end of February and beginning of March, and that the  
4 present petition was filed as soon as possible after the record of that proceeding could be  
5 reviewed. Petitioner has made a substantial showing that Respondents engaged in serious unfair  
6 labor practices, including the termination of a lead organizer and another Union supporter,  
7 retaliation against Union efforts in the form of unfavorable assignments, threats to Union  
8 supporters, and promises of improved treatment of employees who disavow the Union. These  
9 actions appear calculated to chill the employees' rights to the point that the organizing campaign  
10 could be defeated before to the Board issues its final determination with respect to the complaint  
11 at issue. In particular, the risk that the terminated employees and those who have been retaliated  
12 against will be scattered to other employers and that other potential union supporters will remain  
13 silent for fear of similar treatment threatens the continued existence of any organizing effort.  
14 Accordingly, the Court concludes that Petitioner has shown a likelihood of irreparable harm.

15 **C. Balance of the Equities and the Public Interest**

16 Respondents contend that the equities tip in their favor in light of the challenges facing  
17 them as a small business and the cost of rehiring the terminated employees and balancing the  
18 Saturday schedules. However, in light of the substantial evidence that Respondents engaged in  
19 unfair labor practices and the likelihood that employees were retaliated against simply for  
20 exercising their right to engage in efforts to bargain collectively, the balance of the equities tips  
21 in favor of Petitioner. Respondents' efforts to require employees to sign incorporation  
22 documents that they did not understand in a language that the employees could not read raises  
23 serious concerns about Respondents' good faith in this matter.

24 Congress adopted § 10(j) of the National Labor Relations Act for the purpose of  
25 preventing unfair labor practices that later action by the Board could not remedy. The public has  
26 a strong interest in seeing that employees—particularly those at risk of being taken advantage of  
27 by their employers—have the right to organize and bargain collectively. On the record before the  
28 Court, it appears that it is decidedly in the public's interest that Respondents' employees be

1 assured of their right to bargain collectively without fear of coercion.

#### 2 **IV. ORDER**

3 Good cause therefor appearing, pending the final disposition of the related matter now  
4 before the National Labor Relations Board, the petition will be granted as follows:

5 Respondents, their officers, representatives, agents, servants, employees and all persons  
6 acting on their behalf are:

##### 7 A. Enjoined and restrained from:

8 1) Telling employees that they can unionize only under their own corporations,  
9 thus implying that their support for the Union is futile; offering employees improved working  
10 conditions if they abandon their support for the Union; and, telling employees that they will be  
11 terminated, they will lose their jobs, they will receive reduced work and hours, or that  
12 Respondents will sell or close the business because the employees support the Union or engage  
13 in protected concerted activities, such as signing a letter protesting Respondents' mistreatment of  
14 employees;

15 2) Reducing employees' work assignments and hours because employees support  
16 the Union or engage in protected concerted activities, such as signing a letter protesting  
17 Respondents' mistreatment of employees;

18 3) Terminating employees because they support the Union or engage in protected  
19 concerted activities, such as signing a letter protesting Respondents' mistreatment of employees;

20 4) In any like or related manner interfering with, restraining, or coercing their  
21 employees exercise of the rights guaranteed under Section 7 of the National Labor Relations Act.

##### 22 B. To take the following affirmative action:

23 1) Immediately restore its employees' work assignments and hours to the status  
24 quo ante;

25 2) Within seven (7) days of issuance of this Order, offer interim reinstatement to  
26 Jesus Garcia Marquez and Alberto Pizano to their former positions and previous wages and  
27 working conditions, and reinstate them immediately upon acceptance of that offer;

28 3) Upon the Union's request, for a period of one year from the date of this Order

1 or until further order of this Court or the Board, furnish the Union with the full names and  
2 addresses of its current employees.

3 4) Within seven (7) days of issuance of this Order, hold a meeting or meetings,  
4 scheduled to ensure the widest possible attendance, at which this Order is to be read to the  
5 employees in both English and Spanish by Respondents' owner/manager Hilda Andrade, or at  
6 Respondents' option, by a Board agent in Andrade's presence. The Board shall be afforded a  
7 reasonable opportunity to provide for the attendance of a Board agent at any assembly of  
8 employees called for the purpose of reading the Court's Order.

9 5) Within seven (7) days of issuance of this Order, post copies of the Order in  
10 both English and a Spanish translation approved by the Petitioner at Respondents' facility on  
11 bulletin boards or other conspicuous locations where notices to employees are typically posted,  
12 and grant agents of the Board access to Respondents' facility to monitor compliance with the  
13 posting requirements;

14 6) Within fourteen (14) days of the issuance of this Order, file with the Court,  
15 with a copy submitted to the Petitioner, a sworn affidavit from a responsible official of the  
16 Respondents, setting forth with specificity the manner in which Respondents have complied with  
17 the terms of the Order, including how, when, and to whom the Order was read.

18  
19  
20 IT IS SO ORDERED.

21 DATED: May 17, 2011

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JEREMY FOGEL  
United States District Judge