

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**ROLANDO PADRON, BOBIRT R.
MIRANDA and EUSEBIO R.
CALZADA, individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**WAL-MART STORES, INC., d/b/a
WALMART,

Defendant.**

Case No.: _____

Judge: _____

Magistrate Judge: _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COME PLAINTIFFS, Rolando Padron, Bobirt R. Miranda, and Eusebio Calzada (hereinafter collectively “Plaintiffs” and/or individually, “Padron” “Miranda” and “Calzada”), individually, and on behalf of a class of similarly situated present and former warehouse employees of Defendant, of Cuban national origin, race and ethnicity, by and through their undersigned Counsel of Record, and for their Class Action Complaint against Defendant, WAL-MART STORES, INC., d/b/a WALMART (hereinafter “Defendant” or “Walmart”), and in so doing allege, upon information and belief, except as to allegations particularly pertaining to themselves, which are based on personal knowledge, as follows against Defendant:

NATURE OF ACTION

1. On April 12, 2010, the Chicago District Office of the EEOC issued a “Determination” that the evidence obtained in its investigation of the underlying charges of discrimination established reasonable cause to believe that Walmart discriminated against

Plaintiffs and a class of employees because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.

2. Plaintiffs bring this nationwide Class Action Complaint against Defendant Walmart, seeking damages and injunctive relief for Defendant's widespread Cuban national origin, race and ethnicity discrimination and related illegal conduct constituting violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* (hereinafter "Title VII"), and violations of The Civil Rights Act of 1866, 42 U.S.C. §1981. Plaintiffs, in their representative capacities, seek a permanent injunction against Walmart from discrimination based on Cuban national origin, race and ethnicity, whereby Defendant has intentionally and willfully subjected Plaintiffs and a class of current and former Cuban warehouse employees to disparate treatment in the terms and conditions of their employment, by paying them lower wages than similarly situated non-Cuban employees, based on their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

3. Plaintiffs allege, in the alternative, that Walmart's facially neutral compensation policy has a disparate impact on Plaintiffs and a nationwide class of Cuban warehouse employees, resulting in Plaintiffs and the putative class being paid a lower wage than similarly situated non-Cuban warehouse employees in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

4. Plaintiffs, in their individual capacities also bring claims that Walmart discriminated against them by subjecting them to different terms and conditions than similarly situated non-Cuban employees by subjecting them to variable schedules, denials of make-up days and other discriminatory terms and conditions based on their Cuban national origin, race

and ethnicity in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

5. Plaintiffs, in their individual capacities also bring claims that Walmart retaliated against them for engaging in the protected activity of reporting and opposing discrimination, by terminating their employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 & 1981(A).

6. Plaintiffs have been subjected to discrimination on the basis of their Cuban national origin, race and ethnicity.

7. Plaintiffs were outstanding warehouse employees of Defendant who made substantial contributions to Defendant's operations and during all relevant times performed their job responsibilities in a manner that met or exceeded Defendant's legitimate business expectations.

8. Plaintiffs have suffered extreme emotional distress, lost wages, disparate pay, lost benefits, and other significant damages as a direct and proximate result of Defendant's illegal conduct as alleged herein.

9. Plaintiffs bring a Title VII claim and a Civil Rights Act of 1866 claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of Defendant's intentional and willful national origin, race and ethnicity discrimination, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

10. In the alternative, Plaintiffs bring a Title VII claim individually and on behalf of a nationwide class of all other similarly situated current and former Cuban warehouse employees of Defendant who were paid lower wages than similarly situated non-Cuban warehouse employees as a result of the disparate impact of Defendant's compensation policy.

11. All allegations and claims are pled in the alternative to the extent such an interpretation is necessitated by law, required for proper construction under the law, and permitted under federal law.

JURISDICTION AND VENUE

12. The subject matter jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1332, 1343(3) and (4), 1658 and 2201 and 2202. This is a suit authorized and instituted pursuant to the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000 *et seq.*, as amended by the "Civil Rights Act of 1991," and the "Civil Rights Act of 1866," 42 U.S.C. § 1981 and 1981(a).

13. Upon information and belief, the amount in controversy in this action exceeds the sum or value (sic) of \$5,000,000.00, exclusive of interest and costs.

14. Upon information and belief, at least one member of the Rule 23 Class is a citizen of a different state than that of Defendant.

15. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) because the Plaintiffs and Defendant either reside in this judicial district and/or because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

16. Plaintiffs, in their class-wide claims, request injunctive and declaratory relief and compensation for disparate pay, back pay, lost wages and punitive damages and/or any and all other damages permitted by applicable law, and attorneys' fees and costs.

THE PARTIES

a. Plaintiffs

17. Plaintiff, ROLANDO PADRON, is a resident of the City of West Chicago, in DuPage County, Illinois.

18. Plaintiff, BOBIRT R. MIRANDA, is a resident of the City of West Chicago, in DuPage County, Illinois.

19. Plaintiff, EUSEBIO R. CALZADA, is a resident of the City of West Chicago, in DuPage County, Illinois.

b. Defendant

20. Defendant, WAL-MART STORES, INC., d/b/a WALMART, is a Delaware corporation with offices and doing business throughout the State of Illinois and throughout the United States. At all relevant times, Defendant has continuously been a corporation doing business in Illinois.

21. At all relevant times Defendant has continuously had at least fifteen (15) employees and been engaged in an industry affecting commerce within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

CLASS ALLEGATIONS

22. Plaintiffs bring their claims under Title VII and the Civil Rights Act of 1866, individually, and as a class action pursuant to Federal Rules of Civil Procedure Rule 23. The Rule 23 Class is defined as:

“All current and former Cuban warehouse employees of Walmart who were paid a lower wage than similarly situated non-Cuban warehouse employees, from January 1, 2006, through the present”

23. Excluded from the Rule 23 Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Rule 23 Class period has had: a controlling interest in Walmart; the Judge to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit a timely and otherwise proper request for exclusion from the Rule 23 Class.

24. **Numerosity:** The persons in the Rule 23 Class identified above are geographically diverse and so numerous that joinder of all members is impracticable. The precise number of such persons is unknown, and the calculation of that number is presently within the sole control of Defendant.

25. **Commonality:** There are numerous questions of law and fact common to the Rule 23 Class that predominate over any questions affecting only individual members. The questions of law and fact common to this Rule 23 Class that predominate over any question solely affecting individual members of the Rule 23 Class include, but are not limited to, the following:

- (a) Whether Defendant paid Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees;
- (b) Whether Defendant's actions in paying Cuban warehouse employees a lower wage than similarly situated non-Cuban warehouse employees was intentional, willful and/or deliberate;
- (c) Whether Defendant's compensation policy has a disparate impact on Cuban warehouse employees, resulting in Cuban warehouse employees being paid a lower wage than similarly situated non-Cuban warehouse employees;

- (d) Whether the Defendant was an “employer” of Plaintiffs and the Rule 23 Class within the meaning of Title VII, and the Civil Rights Act of 1866;
- (e) Whether Defendant’s actions as alleged herein violate Title VII; and
- (f) Whether Defendant’s actions as alleged herein violate the Civil Rights Act of 1866.

26. **Typicality:** The claims of the Representative Plaintiffs are typical of the Rule 23 Class.

27. **Adequacy:** The Representative Plaintiffs will fairly and adequately represent the interests of the Rule 23 Class.

28. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage/back pay litigation, where individual class members lack the financial resources to vigorously prosecute separate lawsuits in Federal Court against large corporations like Defendant (the discriminatory behavior has adversely impacted the Rule 23 Classes ability to bring individual actions).

29. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of this litigation where no individual employee can justify the commitment of the large financial resources to vigorously prosecute a lawsuit in Federal Court against the corporate Defendant.

30. The Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

PROCEDURAL HISTORY

31. Plaintiffs, Rolando Padron, Bobirt R. Miranda and Eusebio R. Calzada, each filed their respective *pro se* “Charge of Discrimination” with the Equal Employment Opportunity Commission on November 30, 2006, alleging violations of Title VII of the Civil Rights Act of 1964. *See Plaintiffs’ Charges of Discrimination attached hereto as Group Exhibit “A”*

32. On or about April 12, 2010, the commission concluded its investigation and issued a determination that the ***“evidence obtained in the investigation establishes reasonable cause to believe that Respondent discriminated against Charging Party and a class of employees based on because of their national origin, Cuban, by paying them a lesser wage, in violation of Title VII.”*** Following a conciliation failure, the commission issued Plaintiffs a “Notice of Right to Sue” letter dated July 20, 2010. *See Plaintiffs’ Notice of Right to Sue and Determination Letters attached hereto as Group Exhibit “B”.*

33. Plaintiffs timely filed this lawsuit within ninety (90) days from the date of receipt of the July 20, 2010, Notice of Right to Sue letters.

COMMON ALLEGATIONS

34. During all relevant times herein, Defendant was and is an employer as defined by Title VII.

35. During all relevant times herein, Representative Plaintiff and the Rule 23 Class are/were employees of Defendant as defined by Title VII.

36. Plaintiffs are members of a racial minority. Plaintiffs are of Cuban national origin.

37. Plaintiffs have dark colored hair, eyes, and skin.

38. Plaintiff Padron worked as a warehouse employee for Defendant from August 2001 through November 12, 2006, when Plaintiff Padron was terminated after engaging in the

protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Padron worked as a warehouse employee, performing duties such as shipping and receiving.

39. Plaintiff Miranda worked as a warehouse employee for Defendant from July 2000 through November 20, 2006, when Plaintiff Miranda was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Miranda worked as a warehouse employee, performing duties such as shipping and receiving.

40. Plaintiff Calzada worked as a warehouse employee for Defendant from July 1998 through November 8, 2006, when Plaintiff Calzada was terminated in retaliation for engaging in the protected activity of reporting and opposing unlawful national origin, race and ethnicity discrimination. Plaintiff was a dedicated, hardworking, and loyal employee that contributed to Defendant in a substantial and meaningful manner. During his employment with Walmart, Plaintiff Calzada worked as a warehouse employee, performing duties such as shipping and receiving.

41. Plaintiffs first reported what they believed to be national origin, race and ethnicity discrimination in 2005, to Store Manager (Brad Wilson). Nothing was done to redress or eliminate the national origin, race and ethnicity discrimination. Over the next year, and prior to filing their charges of discrimination, Plaintiffs reported the continuous and ongoing national

origin, race and ethnicity discrimination and retaliation against themselves and other Cuban coworkers, on at least five separate occasions, to Brad Wilson (store manager), “Skip” Turner (District Manager) and Angel Gomez (Human Resources). Walmart, despite knowledge of the national origin, race and ethnicity discrimination, continued to pay Cuban warehouse employees less than non-Cuban warehouse employees, continued to discriminate against, harass and retaliate against Plaintiffs in the terms and conditions of their employment, with regard to variable schedules (to which non-Cuban’s were not subjected) and denial of make-up days (to which non-Cuban’s were not subjected.).

42. Plaintiffs were qualified, competent and dedicated employees who were paid lesser wages than similarly situated non-Cuban warehouse employees on the basis of their Cuban national origin, race and ethnicity.

43. Defendant’s warehouse employees perform duties such as shipping and receiving.

44. Plaintiffs and putative class members have been subjected to discrimination as a result of Defendant’s implementation and enforcement of its “facially neutral” compensation policies and practices which have had a disparate impact on Cuban warehouse employees, namely, Cuban warehouse employees have been paid lower wages than similarly situated non-Cuban warehouse employees.

45. Plaintiffs and putative class members have also been intentionally discriminated against on the basis of their Cuban national origin, race and ethnicity, in that Walmart has intentionally paid Plaintiffs and putative class members lower wages than similarly situated non-Cuban warehouse employees.

46. At all relevant times herein, Plaintiffs were performing all of their job duties/responsibilities in an outstanding manner and there was no legitimate non-discriminatory

reason for paying Plaintiffs and other Cuban warehouse employees lower wages than similarly situated non-Cuban warehouse employees.

47. Plaintiffs have suffered severe damages as a direct and proximate result of Defendant's illegal conduct, as alleged herein.

48. All allegations herein are pled in the alternative to the extent necessitated for viable construction under applicable federal law.

COUNT I

(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.* – DISPARATE IMPACT)

(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)

49. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein, except for those allegations alleging intentional discrimination.

50. All conditions precedent to Count I have been satisfied.

51. Plaintiffs and the Rule 23 Class are/were warehouse employees of Defendant.

52. Plaintiffs are former warehouse employees of Defendant.

53. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

54. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of their employer.

55. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

56. Defendant's facially neutral compensation policy has had a disparate impact on Plaintiffs, Cuban warehouse employees and the Rule 23 class, as alleged herein.

57. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiffs and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

58. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

59. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

60. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the disparate impact suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

COUNT II

(DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.* – DISPARATE TREATMENT)

(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)

61. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

62. All conditions precedent to Count II have been satisfied.

63. Plaintiffs and the Rule 23 Class are/were warehouse employees of the Defendant.

64. Plaintiffs were warehouse employees of the Defendant as alleged herein.

65. Plaintiff and the Rule 23 Class are members of a racial minority. Plaintiff and the Rule 23 Class are of Cuban national origin, race and ethnicity.

66. Plaintiffs and the Rule 23 Class always performed their duties to the legitimate expectations of Defendant.

67. Plaintiff and the Rule 23 Class have suffered adverse job actions, including being paid lower wages than similarly situated non-Cuban warehouse employees.

68. Defendant intentionally and willfully failed and refused to pay Plaintiffs, Cuban warehouse employees and the Rule 23 class to equal wages as similarly situated non-Cuban employees based upon their Cuban national origin, race and ethnicity. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for federal law and for the rights of the Plaintiffs and the Rule 23 Class.

69. The actions of Defendant as perpetrated by its agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff and the Rule 23 Class because of their Cuban national origin, race and ethnicity, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

70. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiffs and the Rule 23 Class based on their Cuban national origin, race and ethnicity.

71. Defendant's actions have caused Plaintiffs and the Rule 23 Class great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

72. There is a causal connection between the Plaintiffs' and the Rule 23 Class' Cuban national origin, race and ethnicity and the discriminatory, disparate treatment suffered by Plaintiffs and the Rule 23 Class at the hands of the Defendant.

COUNT III

(DISCRIMINATION ON THE BASIS OF RACE IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981 – DISPARATE TREATMENT)

(Plaintiffs individually, and on behalf of a nationwide class of similarly situated Cuban warehouse employees)

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs, as if fully set forth herein.

74. All conditions precedent to Count III have been satisfied.

75. Defendant has discriminated against Plaintiffs and the Rule 23 Class by paying them lower wages than similarly situated non-Cuban warehouse employees because of their Cuban national origin, race and ethnicity in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 and 1981(a).

76. Defendant's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiffs and the Rule 23 Class.

77. By reason of Defendant's discriminatory employment practices based upon race, national origin, ethnicity or color, Plaintiffs and the Rule 23 Class have experienced extreme harm, including loss of compensation, wages, back and front pay, damages and other

employment benefits, and as such, are entitled to all legal and equitable remedies available under the Civil Rights Act of 1866.

78. There is a causal connection between the Plaintiff's and the Rule 23 Class' race, national origin, ethnicity or color and the discrimination and damages suffered by Plaintiffs at the hands of the Defendant.

COUNT IV

(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)

(Plaintiff Padron individually v. Defendant)

79. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

80. All conditions precedent to Count IV have been satisfied.

81. At all times relevant herein, Plaintiff was an employee of the Defendant.

82. Plaintiff is of Cuban national origin.

83. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

84. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;
- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;

- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

85. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

86. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

87. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

88. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

89. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

90. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

91. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

92. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

93. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

94. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

COUNT V

(RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

(Plaintiff Padron v. Defendant)

95. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

96. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

97. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in

November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

98. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

99. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

100. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

101. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

102. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

COUNT VI

(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)

(Plaintiff Miranda individually v. Defendant)

103. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

104. All conditions precedent to Count VI have been satisfied.

105. At all times relevant herein, Plaintiff was an employee of the Defendant.

106. Plaintiff is of Cuban national origin.

107. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

108. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

(a) Being paid lower wages than similarly situated non-Cuban employees;

(b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;

(c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;

(d) Terminated Plaintiff; and

(e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

109. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

110. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise

adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000(e), *et seq.*

111. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

112. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

113. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

114. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

115. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

116. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

117. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

118. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

COUNT VII

(RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

(Plaintiff Miranda v. Defendant)

119. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

120. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

121. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

122. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

123. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

124. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

125. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

126. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

COUNT VIII

(NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e, *et seq.*)

(Plaintiff Calzada individually v. Defendant)

127. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

128. All conditions precedent to Count VIII have been satisfied.

129. At all times relevant herein, Plaintiff was an employee of the Defendant.

130. Plaintiff is of Cuban national origin.

131. Plaintiff always performed his job duties to the legitimate expectations of Defendant.

132. Plaintiff has suffered adverse job actions on the basis of his Cuban national origin, including, but not limited to:

- (a) Being paid lower wages than similarly situated non-Cuban employees;

- (b) Being subjected to a variable schedule while similarly situated non-Cuban employees were not subjected to a variable schedule;
- (c) Being denied make-up days while similarly situated non-Cuban employees were not denied make-up days;
- (d) Terminated Plaintiff; and
- (e) Otherwise treated differently and less favorably in the terms and conditions of his employment than similarly situated non-Cuban employees.

133. Defendant treated similarly situated non-Cuban employees more favorably than the Plaintiff, as alleged herein. Defendant intended to, knowingly engaged in, condoned and/or ratified severe national origin discrimination, as alleged herein.

134. The actions of Defendant as perpetrated by their agents and as described and complained of above, are unlawful employment practices in that they likely have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting Plaintiff because of his national origin, in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*

135. At all times relevant to this cause of action, Defendant had a duty under Title VII to refrain from discriminating against Plaintiff based on his national origin.

136. Plaintiff reported the national origin discrimination on numerous occasions to management and supervisory employees of Defendant.

137. Despite knowledge of the discrimination based on national origin, and despite repeated reports and complaints by Plaintiff, Defendant refused to take any action to investigate, remediate, stop, prevent, or otherwise address the ongoing discrimination.

138. Defendant intentionally subjected Plaintiff to unequal and discriminatory treatment that altered the conditions of Plaintiff's employment and by knowingly failing and refusing to protect Plaintiff from the discriminatory actions alleged herein.

139. The discriminatory actions by Defendant, through their management, agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

140. Defendant, by and through their agents, engaged in the foregoing acts and conduct when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

141. The actions of Defendant in intentionally engaging in and condoning national origin discrimination against Plaintiff has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damage.

142. There is a causal connection between the Plaintiff's national origin and the dissimilar treatment suffered by Plaintiff at the hands of the Defendant.

COUNT IX

(RETALIATION FOR EXERCISE OF RIGHTS UNDER TITLE VII CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq. – REPORTING NATIONAL ORIGIN DISCRIMINATION AND ENGAGING IN A PROTECTED ACTIVITY)

(Plaintiff Calzada v. Defendant)

143. Plaintiff realleges and incorporates by reference all preceding paragraphs, as if fully set forth herein.

144. Plaintiff complained about, reported, and protested against Defendant's unlawful employment practices under Title VII, as alleged herein.

145. Plaintiff complained of ongoing and repeated national origin discrimination and unequal and adverse treatment based on national origin. On various occasions, most recently in November 2006, Plaintiff made internal complaints and reports to Defendant of ongoing national origin discrimination.

146. In retaliation for Plaintiff's complaints, reports, and protests of unlawful discrimination, Defendant increased its discrimination based on national origin and ultimately terminated Plaintiff based on his national origin and his reports and complaints of national origin based discrimination.

147. At all relevant times herein, Plaintiff was performing all of his job duties in a manner that met or exceeded Defendant's legitimate business expectations.

148. The discriminatory actions by Defendant, through its management agents and employees, were intentional and willful, and in deliberate disregard of and with reckless indifference to the federal laws, state laws, and the rights and sensibilities of Plaintiff.

149. Defendant, by and through its agents, retaliated against Plaintiff when they knew or should have known that the same were in violation of Title VII and any alleged reasons to the contrary are pretextual.

150. The actions of Defendant in retaliating against Plaintiff caused him great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- i. Acceptance of jurisdiction of this cause;

- ii. A declaratory judgment that the employment practices challenged herein are illegal and violative of the rights secured to Plaintiffs and the Class;
- iii. A preliminary and permanent injunction against the Defendant and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs, usages, and discrimination as set forth herein;
- iv. An Order requiring the Defendant to initiate and implement programs that:
 - (1) provide equal employment opportunities for Cuban employees;
 - (2) remedy the effects of the Defendant's past and present unlawful employment practices; and
 - (3) eliminate the continuing effects of the discriminatory practices described herein above;
- v. Certification of this case as a class action pursuant to Rule 23 of Federal Rules of Civil Procedure;
- vi. Designation of the Plaintiff as representative of the Rule 23 Class, and counsel of record as Class Counsel;
- vii. Damages sufficient to compensate Plaintiff and the Rule 23 Class for their injuries;
- viii. Back Pay, inclusive of lost wages and any benefits;
- ix. Pre-judgment and post-judgment interest;
- x. Reasonable attorney's fees and costs of this action;
- xi. Punitive damages; and

- xii. Any and all other relief that this Honorable Court may deem just and equitable.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: October 15, 2010

Respectfully submitted,

**ROLANDO PADRON, BOBIRT R. MIRANDA
and EUSEBIO R. CALZADA**

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