

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

CHICAGO REGIONAL COUNCIL OF)
CARPENTERS, UNITED BROTHERHOOD)
OF CARPENTERS AND JOINERS OF)
AMERICA, a voluntary association, JESUS)
HUERTA, and IGNACIO CASTILLO,)

Plaintiffs,)

vs.)

JOSEPH J. SCIAMANNA, INC., a Michigan)
corporation, and SCIAMANNA GROUP EAST,)
L.L.C., a Michigan limited liability company,)
DOMINGO CASTILLO d/b/a DOMINGO)
DRYWALL, and BANKSTON ENTERPRISES,)
L.L.C., a Mississippi limited liability company,)

Defendants.)

Case No. 08 C 4636

Judge Leinenweber

Magistrate Judge Ashman

CORRECTED
**SECOND AMENDED COMPLAINT FOR DECLARATORY,
EQUITABLE AND MONETARY RELIEF SEEKING COMPLIANCE WITH THE
EMPLOYEE CLASSIFICATION ACT**

Plaintiffs CHICAGO REGIONAL COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, a voluntary association, JESUS HUERTA, and IGNACIO CASTILLO complain of Defendants JOSEPH J. SCIAMANNA, INC., an Michigan corporation, SCIAMANNA GROUP, LLC, a Michigan limited liability company, DOMINGO CASTILLO d/b/a DOMINGO DRYWALL, and BANKSTON ENTERPRISES, LLC, a Mississippi limited liability company, and pursuant to the private right of action provision of the Employee Classification Act, 820 ILCS 185/60 state as follows:

NATURE OF THE CASE

1. This case is brought pursuant to the private right of action provision of the Illinois Employee Classification Act, 820 ILCS 185/60. It seeks declaratory, equitable, and monetary relief to remedy the misclassification of employees as independent contractors by the defendants at construction sites building Hilton Garden Inn hotels in Warrenville and Schaumburg, Illinois and to remedy retaliation from a contractor who discriminated against employees who sought to avail themselves of the protections of the Act. Separate claims are made against two other contractors.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 USC § 1332 because there is complete diversity between all the Plaintiffs and all the Defendants and because the amount in controversy exceeds \$75,000.

3. Venue is proper pursuant to 28 USCS § 1391(2) because Northern District of Illinois is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred and because the transactions relevant to this complaint substantially occurred in either the City of Schaumburg, County of Cook, State of Illinois or the Village of Warrenville, County of DuPage, State of Illinois, all of which are within the geographical territory of the Northern District of Illinois.

4. Plaintiffs originally filed this action in the Chancery Division of the Circuit Court of Cook County, Illinois on June 16, 2008. Defendant, JOSEPH J. SCIAMANNA, INC. filed its notice of removal thereby removing this matter to the United States District Court for the Northern District of Illinois on August 14, 2008.

PARTIES

5. Plaintiff CHICAGO REGIONAL COUNCIL OF CARPENTERS, UNITED

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (hereinafter referred to as “CARPENTERS UNION”) is a voluntary association which represents its membership of carpenter employees in the construction industry.

6. Plaintiffs JESUS HUERTA and IGNACIO CASTILLO are members of Plaintiff CARPENTERS UNION and work in the construction industry as carpenters. Plaintiffs HUERTA and CASTILLO were employed by Defendant JOSEPH J. SCIAMANNA, INC., and/or Defendant SCIAMANNA GROUP EAST, LLC and also by Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL at different times on the Hilton Garden Inn Construction sites.

7. Defendant JOSEPH J. SCIAMANNA, INC. is a Michigan corporation engaged as a contractor in the construction industry. (See Exhibit A)

8. Defendant JOSEPH J. SCIAMANNA, INC. has registered with the Michigan Secretary of State the assumed name of “SCIAMANNA GROUP” for usage by JOSEPH J. SCIAMANNA, INC. (See Exhibits B) The President, Secretary, Treasurer, and Director of JOSEPH J. SCIAMANNA, INC. is Joseph J. Sciamanna.

9. Defendant SCIAMANNA GROUP EAST, LLC is a Michigan limited liability company whose president is Joseph J. Sciamanna. (See, Exhibit C and D)

10. There is an alter ego relationship between Defendant JOSEPH J. SCIAMANNA, INC. and Defendant SCIAMANNA GROUP EAST, LLC. because there is common ownership of Defendant JOSEPH J. SCIAMANNA, INC. and SCIAMANNA GROUP EAST, LLC.

11. There is an alter ego relationship between Defendant JOSEPH J. SCIAMANNA, INC. and Defendant SCIAMANNA GROUP EAST, LLC, because JOSEPH J. SCIAMANNA, INC. acted on behalf of SCIAMANNA GROUP EAST, LLC in the employment of carpentry labor as is detailed further in this complaint.

12. There is an alter ego relationship between Defendant JOSEPH J. SCIAMANNA, INC. and Defendant SCIAMANNA GROUP EAST, LLC because JOSEPH J. SCIAMANNA, INC. hired Plaintiffs JESUS HUERTA and IGNACIO CASTILLO and paid them from the checking account of JOSEPH J. SCIAMANNA, INC. for a job apparently held by SCIAMANNA GROUP EAST, LLC as is further detailed in this complaint.

13. There is an alter ego relationship between Defendant JOSEPH J. SCIAMANNA, INC. and Defendant SCIAMANNA GROUP EAST, LLC because Defendant JOSEPH J. SCIAMANNA had Plaintiffs HUERTA and CASTILLO execute papers representing that JOSEPH J. SCIAMANNA, INC. was the contractor at the subject jobsites where SCIAMANNA GROUP EAST, LLC apparently held the subcontract.

14. There is an alter ego relationship between Defendant JOSEPH J. SCIAMANNA, INC. and SCIAMANNA GROUP EAST, LLC because Defendant JOSEPH J. SCIAMANNA, INC. used its assumed name (“SCIAMANNA GROUP”) to verify the documents it required Plaintiffs to execute. These facts are further detailed later in this complaint.

15. Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL is a natural person engaged as a contractor in the construction industry and this Defendant operates his business under the name of DOMINGO DRYWALL .

16. Defendant BANKSTON ENTERPRISES, LLC is a Mississippi limited liability company engaged in the construction industry.

INTERESTED AND AGGRIEVED PARTIES UNDER THE ACT

17. Plaintiff CARPENTERS UNION is an “interested party” as defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, because the Carpenters Union has an economic interest in requiring employers to comply with the Act.

18. Plaintiff CARPENTERS UNION is also an “interested party” under 56 Ill. Adm. Code 240.110 by reason that Plaintiff is a third party representing individuals (its union members) performing services for contractors in the construction industry. Plaintiff CARPENTERS UNION is interested in construction contractors complying with the Act so as to create an equal competitive playing field between signatory union contractors who comply with the Act and non-union contractors who violate the act by misclassifying employees as independent contractors.

19. Plaintiffs JESUS HUERTA and IGNACIO CASTILLO are members of Plaintiff CARPENTERS UNION. They are both “interested” and “aggrieved parties” as defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, and by 56 Ill. Adm. Code 240.110 by reason that these Plaintiffs have been damaged by Defendants’ misclassification of them as independent contractors rather than employees.

CONTRACTORS UNDER THE ACT

20. Defendant JOSEPH J. SCIAMANNA, INC. is a “contractor” as that word is defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, and by 56 Ill. Adm. Code 240.110. This Defendant is in the business of construction, reconstruction, rehabilitation, refurbishment, remodeling,

21. Defendant SCIAMANNA GROUP EAST, LLC is a “contractor” as that word is defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, and by 56 Ill. Adm. Code 240.110. This Defendant is in the business of construction, reconstruction, rehabilitation, refurbishment, remodeling,

22. Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL is a “contractor” as that word is defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, and also as defined by 56 Ill. Adm. Code 240.110. This Defendant is in the business of

construction, reconstruction, rehabilitation, refurbishment, remodeling, improvement, wrecking, painting, decoration of buildings and structures on real property.

23. Defendant BANKSTON ENTERPRISES, LLC is a Mississippi limited liability company and is a “contractor” as that word is defined by Section 5 of the Employee Classification Act, 820 ILCS 185/5, and also as defined by 56 Ill. Adm. Code 240.110. This Defendant is in the business of construction, reconstruction, rehabilitation, refurbishment, remodeling, improvement, wrecking, painting, decoration of buildings and structures on real property.

VIOLATIONS BY JOSEPH J. SCIAMANNA, INC.

24. During the month of April 2008 and for sometime prior thereto, Defendant JOSEPH J. SCIAMANNA, INC. was engaged as a construction contractor constructing portions of the Hilton Garden Inn Hotel located in the City of Warrenville, Illinois. Construction on this project continued for several months thereafter.

25. Also during the month of April 2008 and for sometime prior thereto, Defendant JOSEPH J. SCIAMANNA, INC. was engaged as a construction contractor constructing portions of the Hilton Garden Inn Hotel located in the in the Village of Schaumburg, Illinois. Construction on this project continued for several months thereafter.

26. On or about April 18, 2008, Defendant JOSEPH J. SCIAMANNA, INC. employed Plaintiff JESUS HUERTA to perform carpentry work at the Hilton Garden Inn Hotel jobsites located in Warrenville and in Schaumburg.

27. After Plaintiff JESUS HEURTA rendered carpentry labor at Defendant’s jobsites, Defendant JOSEPH J. SCIAMANNA, INC. issued check number 9309 dated April 30, 2008 drawn on the LaSalle Bank Midwest, NA of Troy Michigan in the amount of Eight Hundred Fifty-Five Dollars (\$855.00) to Plaintiff JESUS HUERTA in payment for his carpentry labor.

The memo on check number 9309 stated that the payment was remuneration for carpenter work.
(A copy of the check is attached hereto as Exhibit E)

28. For many weeks thereafter, Plaintiff JESUS HUERTA performed carpentry labor for Defendant JOSEPH J. SCIAMANNA, INC. and for each pay period, Defendant JOSEPH J. SCIAMANNA, INC. issued checks to Plaintiff JESUS HEURTA in payment for labor performed at Defendant's jobsites. The subsequent paychecks issued to Plaintiff JESUS HEURTA were similar in form to the check which appears as Exhibit E and in each instance the payee was JOSEPH J. SCIAMANNA, INC.

29. At all times relevant, Plaintiff JESUS HEURTA was performing work for Defendant JOSEPH J. SCIAMANNA, INC. as an employee and not as a independent contractor.

30. At all times relevant Plaintiff JESUS HEURTA was performing work under the direction, supervision and control of agents and employees of Defendant JOSEPH J. SCIAMANNA, INC. and Plaintiff provided carpentry labor at the time and place specified by agents of Defendant according to the instructions of Defendant's foreman.

31. On or about May 5, 2008, Defendant SCIAMANNA, INC. by and through its agent demanded that Plaintiff JESUS HUERTA execute a document entitled "INDEPENDENT CONTRACTOR / INSURANCE WAIVER." This document is attached hereto as Exhibit F, and was accompanied by a separate document entitled "SUBCONTRACTOR INFORMATION." (Exhibit G)

32. The entitled "INDEPENDENT CONTRACTOR / INSURANCE WAIVER" was drafted by employees and agents of JOSEPH J. SCIAMANNA, INC. and the document had a space in the lower left hand corner to be initialed by "SCIAMANNA GROUP" which was the legally assumed name for JOSEPH J. SCIAMANNA, INC.

33. On or about April 24, 2008, Defendant JOSEPH J. SCIAMANNA, INC. employed Plaintiff IGNACIO CASTILLO to perform work at the Hilton Garden Inn Hotel jobsites located in Warrenville and in Schaumburg. Shortly thereafter, Plaintiff IGNACIO CASTILLO began to perform carpentry work for Defendant at those jobsites.

34. After employing Plaintiff IGNACIO CASTILLO and after Plaintiff IGNACIO CASTILLO rendered carpentry labor at Defendant's jobsites, Defendant JOSEPH J. SCIAMANNA, INC. issued check number 9349 dated May 12, 2008 and drawn on the LaSalle Bank Midwest, NA of Troy Michigan in the amount of Four Hundred Twenty Dollars (\$420.00). The memo on the check stated that the payment was remuneration for labor. (See Exhibit H)

35. Thereafter, for many weeks and for each pay period, Defendant JOSEPH J. SCIAMANNA, INC. issued similar checks to Plaintiff IGNACIO CASTILLO in payment for labor performed at Defendant's jobsites. All the paychecks issued to Plaintiff IGNACIO CASTILLO were similar in form to the check which appears as Exhibit H and in each instance the payee was JOSEPH J. SCIAMANNA, INC.

36. At all times relevant, Plaintiff IGNACIO CASTILLO was performing work for Defendant JOSEPH J. SCIAMANNA, INC. as an employee and not as a independent contractor

37. At all times relevant Plaintiff IGNACIO CASTILLO was performing work under the direction, supervision and control of agents and employees of Defendant JOSEPH J. SCIAMANNA, INC. and Plaintiff provided carpentry labor at the time and place specified by agents of Defendant according to the instructions of Defendant's foreman.

38. On or about May 14, 2008, Defendant SCIAMANNA, INC. by and through its agent demanded that Plaintiff IGNACIO CASTILLO execute a document entitled "INDEPENDENT CONTRACTOR / INSURANCE WAIVER." (See Exhibit I), and a separate document entitled "SUBCONTRACTOR INFORMATION". (See Exhibit J)

39. The entitled “INDEPENDENT CONTRACTOR / INSURANCE WAIVER” was drafted by employees and agents of JOSEPH J. SCIAMANNA, INC. and the document had a space in the lower left hand corner to be initialed by “SCIAMANNA GROUP” which was the legally assumed name for JOSEPH J. SCIAMANNA, INC.

COUNT I
MISSCLASSIFICATION VIOLATIONS BY JOSEPH J. SCIAMANNA, INC.

40. Each instance of misclassification of an individual employee as an independent contractor and each day in which such a misclassification occurs is a separate violation of the Employee Classification Act, § 820 ILCS 185/40.

41. Plaintiffs JESUS HUERTA and IGNACIO CASTILLO have suffered by their misclassification by Defendant JOSEPH J. SCIAMANNA, INC. by not having been paid wages, employment benefits, proper payroll tax withholdings under the federal and state revenue laws, FICA payments, payments under the Illinois Unemployment Insurance Act, and Workers Compensation Insurance.

42. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were acting as an employees for Defendant JOSEPH J. SCIAMANNA, INC. in that:

- A. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were paid by the hour and not by a set contract amount.
- B. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were working directly under the supervision, direction, and control of Defendant.
- C. At all relevant times, Defendant directed Plaintiff JESUS HUERTA as to when, where, and how to perform the work.
- D. At no time did Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO submit a bid to perform work nor did they subcontract to perform certain specified work.
- E. At all relevant times, Defendant supplied the materials and various tools for the job.

F. At no time were Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO operating a business nor was they exposed to obtaining a profit or suffering a loss by reason of their labor.

43. Defendant JOSEPH J. SCIAMANNA, INC. willfully violated the Employee Classification Act in that Defendant failed to classify Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO as a employees and instead classified them as an independent contractors by committing the following acts and omissions:

- A. After Plaintiffs JESUS HUERTA and IGNACIO CASTILLO performed many days of carpentry labor, Defendant JOSEPH J. SCIAMANNA, INC required Plaintiffs HUERTA and CASTILLO to sign respective written documents stating that they were an independent subcontractors and Defendant threatened that if Plaintiffs HUERTA and CASTILLO would fail to sign such a document that they would not be paid for the work they had already performed and that they would not be paid for future labor.
- B. The independent contractor document referred to above (Exhibits E and G) were a sham in that they failed to truly reflect the fact that as a matter of law Plaintiffs were employees and not independent contractors.
- C. Defendant JOSEPH J. SCIAMANNA, INC. failed to have Plaintiffs JESUS HUERTA and IGNACIO CASTILLO fill out an IRS W-4 Employee Withholding Allowance Certificate forms.
- D. Defendant JOSEPH J. SCIAMANNA, INC. failed to make withholdings for state or federal income tax, or for FICA from Plaintiffs JESUS HUERTA and IGNACIO CASTILLO's paychecks.
- E. Defendant JOSEPH J. SCIAMANNA, INC. failed to make payments pursuant to the Illinois Unemployment Insurance Act with regard to the payments made to Plaintiffs JESUS HUERTA and IGNACIO CASTILLO.
- F. Defendant JOSEPH J. SCIAMANNA, INC. failed to make any provision to have Plaintiffs JESUS HUERTA and IGNACIO CASTILLO covered by Illinois Workers Compensation as required by the Illinois Workers Compensation Act, 820 ILCS 305.
- G. Defendant JOSEPH J. SCIAMANNA, INC. did not comply with the laws which require employers to pay time and a half for overtime under the Fair Labor Standards Act, 29 U.S.C.. §§ 201 et seq. with regard to Plaintiffs HUERTA and CASTILLO.

COUNT II
POSTING VIOLATIONS BY JOSEPH J. SCIAMANNA, INC.

1-43. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 43 above, as paragraphs 1 through 43 of this Count II.

44. That at all times relevant, all Defendant JOSPEH J. SCIAMANNA, INC willfully violated Section 15 of the Employee Classification Act, 820 ILCS 185/15, by failing to post a summary of the requirements of the Employee Classification Act in English, Spanish and Polish at the Warrenville, Illinois jobsite.

COUNT III
RETALIATORY DISCHARGE VIOLATIONS COMMITTED BY
DEFENDANT JOSEPH J. SCIAMANNA, INC.

1-44. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 44 above, as paragraphs 1 through 44 of this Count III.

45. On June 17, 2008, Plaintiffs filed their original complaint in this matter in the Circuit Court of Cook County, Illinois. Thereafter, Defendant JOSEPH J. SCIAMANNA, INC. learned that the suit had been filed and through their agent and employee interrogated Plaintiffs IGNACIO CASTILLO and JESUS HUERTA about Plaintiffs' role in filing the suit.

46. On or about July 11, 2008, and for many weeks thereafter, Defendant JOSEPH J. SCIAMANNA, INC. willfully violated Section 55 of the Employee Classification Act, 820 ILCS 125/55, by discharging from employment Plaintiffs IGNACIO CASTILLO and JESUS HUERTA.

47. Defendant JOSEPH J. SCIAMANNA, INC. discharged Plaintiffs IGNACIO CASTILLO and JESUS HEURTA as employees in substantial part for the reason that Plaintiffs CASTILLO and JESUS HEURTA instituted the instant lawsuit against the Defendant whereby these Plaintiffs sought to exercise rights granted under the Employee Classification Act by filing the original complaint in the Circuit Court of Cook County on June 17, 2008.

48. Defendant JOSEPH J. SCIAMANNA, INC. retaliated against IGNACIO CASTILLO and JESUS HUERTA and violated Section 55 of the Employee Classification Act by discharging them from employment because they sought to exercise their rights under the Employee Classification Act by filing the lawsuit in the Circuit Court of Cook County on June

49. On or about July 11, 2008, and for many weeks thereafter, Defendant JOSEPH J. SCIAMANNA, INC. employed the services of approximately four to five workers (hereinafter referred to as “new hires”), none of whom was a member of Plaintiff CARPENTERS UNION and all of whom were hired subsequent to the discharge of JESUS HUERTA and IGNACIO CASTILLO.

50. At all times relevant, the work performed by the new hires has been the same carpentry work as that performed by Plaintiffs JESUS HUERTA and IGNACIO CASTILLO.

51. After discharging Plaintiffs JESUS HUERTA, and IGNACIO CASTILLO, Defendant JOSEPH J. SCIAMANNA, INC. continued to employ the services of the “new hires” who perform carpentry work and have continued to improperly classify them as independent contractors.

52. At all times relevant, none of the “new hires” has attempted to exercise his rights under the Employee Classification Act nor have any of the “new hires” cooperated with any representative to exercise rights under the act on their behalf.

WHEREFORE, Plaintiffs CARPENTERS UNION, JESUS HEURTA and IGNACIO CASTILLO for relief under Counts I, II, and III pray that this Court enter an Order for the following declaratory, equitable and monetary relief as against Defendant JOSEPH J. SCIAMANNA, INC.:

Relief With Respect to Plaintiff JESUS HUERTA

- A. Declare that JESUS HUERTA was misclassified by Defendant JOSEPH J. SCIAMANNA, INC. as independent contractors and should have been classified as employees under the Illinois Employee Classification Act.
- B. Declare that Defendant JOSEPH J. SCIAMANNA, INC. willfully violated the Act with respect to its misclassification of JESUS HUERTA.
- C. Declare that Plaintiff JESUS HUERTA is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of Plaintiff JESUS HUERTA in the amount of all wages, salary, employment benefits, and other compensation denied or lost by JESUS HUERTA by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of JESUS HUERTA in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of Plaintiff JESUS HUERTA in the amount of all wages, salary, employment benefits, and other compensation denied or lost by JESUS HUERTA by reason of Defendant's retaliation against him for his seeking to exercise his rights under the Act pursuant to Section 60(a)(3) of the Employee Classification Act.
- G. Reinstate Plaintiff JESUS HUERTA to his employment with JOSEPH J. SCIAMANNA, INC. and require that Defendant JOSEPH J. SCIAMANNA, INC. amend its reporting to the State of Illinois Department of Revenue, the U.S. Internal Revenue Service, and any other state or federal agency concerning the status of JESUS HUERTA as an employee. pursuant to Section 60(a)(3) of the Employee Classification Act.
- H. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against the Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- I. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- J. Grant Plaintiff JESUS HUERTA attorney's fees and costs pursuant to Section 60(a)(4)

Relief With Respect to Plaintiff IGNACIO CASTILLO

- A. Declare that IGNACIO CASTILLO was misclassified by Defendant JOSEPH J. SCIAMANNA, INC. as independent contractors and should have been classified as employees under the Illinois Employee Classification Act.
- B. Declare that Defendant JOSEPH J. SCIAMANNA, INC. willfully violated the Act with respect to its misclassification of IGNACIO CASTILLO.
- C. Declare that Plaintiff IGNACIO CASTILLO is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of Plaintiff IGNACIO CASTILLO in the amount of all wages, salary, employment benefits, and other compensation denied or lost by IGNACIO CASTILLO by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of IGNACIO CASTILLO in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of Plaintiff IGNACIO CASTILLO in the amount of all wages, salary, employment benefits, and other compensation denied or lost by IGNACIO CASTILLO by reason of Defendant's retaliation against him for his seeking to exercise his rights under the Act pursuant to Section 60(a)(3) of the Employee Classification Act.
- G. Reinstate Plaintiff IGNACIO CASTILLO to his employment with JOSEPH J. SCIAMANNA, INC. and require that Defendant JOSEPH J. SCIAMANNA, INC. amend its reporting to the State of Illinois Department of Revenue, the U.S. Internal Revenue Service, and any other state or federal agency concerning the status of IGNACIO CASTILLO as an employee. pursuant to Section 60(a)(3) of the Employee Classification Act.
- H. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against the Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- I. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- J. Grant Plaintiff IGNACIO CASTILLO attorney's fees and costs pursuant to Section 60(a)(4)

Relief With Respect to Plaintiff CARPENTERS UNION

- A. Declare that Defendant JOSEPH J. SCIAMANNA, INC. violated the Act in regard to Plaintiff JESUS HUERTA and IGNACIO CASTILLO as noted above.
- B. Declare that Plaintiff CARPENTERS UNION is an interested party pursuant to Sections 5 and 60 of the Employee Classification Act.
- C. Enter a money judgment against Defendant JOSEPH J. SCIAMANNA, INC. and in favor of Plaintiff CARPENTERS UNION in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- D. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against the Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- E. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against Defendant JOSEPH J. SCIAMANNA, INC. in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- F. Grant Plaintiff CARPENTERS UNION attorney's fees and costs pursuant to Section 60(a)(4)

COUNT IV

MISSCLASSIFICATION VIOLATIONS BY SCIAMANNA GROUP EAST, LLC

1-52. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 52 above, as paragraphs 1 through 52 of this Count IV.

53. This suit was filed in the Circuit Court of Cook County on June 17, 2008. In July of 2008, and after Defendant SCIAMANNA GROUP EAST, LLC found out about the existence of the suit agents and employees of Defendant SCIAMANNA GROUP EAST, LLC approached Plaintiff JESUS HUERTA and required that he execute a document entitled "INDEPENDENT CONTRACTOR / INSURANCE WAIVER" which was back dated to May 12, 2008. The back dating of this document was a sham transaction. (Exhibit K) Defendant also required Plaintiff HUERTA to fill out a new "SUBONTRACTOR INFORMATION SHEET" (Exhibit L) and an IRS W-9 form. (Exhibit M)

54. Similarly, Defendant SCIAMANNA GROUP EAST, INC. required Plaintiff IGNACIO CASTILLO to execute a document entitled “INDEPENDENT CONTRACTOR/INSURANCE WAIVER”, (Exhibit N) “CONTRACTOR INFORMATION” (Exhibit O) and IRS W-9 form. (Exhibit P)

55. That at all times relevant, either Defendant JOSEPH J. SCIAMANNA, INC. or Defendant SCIAMANNA GROUP EAST, LLC or the both of them were the employer(s) of Plaintiff JESUS HUERTA with respect to the construction projects of the Hilton Garden Inn Hotel projects in Warrenville, Illinois and Schaumburg, Illinois.

56. During the month of April 2008 and for sometime prior thereto, Defendant SCIAMANNA GROUP EAST, LLC was engaged as a construction contractor constructing portions of the Hilton Garden Inn Hotel located in the City of Warrenville, Illinois. Construction on this project continued for several months thereafter.

57. Also during the month of April 2008 and for sometime prior thereto, Defendant SCIAMANNA GROUP EAST, LLC was engaged as a construction contractors constructing portions of the Hilton Garden Inn Hotel located in the in the Village of Schaumburg, Illinois. Construction on this project continued for several months thereafter.

58. On or about April 18, 2008, Defendant SCIAMANNA GROUP EAST, LLC employed Plaintiff JESUS HUERTA to perform carpentry work at the Hilton Garden Inn Hotel jobsites located in Warrenville and in Schaumburg. Shortly thereafter, Plaintiff JESUS HUERTA began to perform carpentry work for Defendant at those jobsites.

59. At all times relevant, Plaintiff JESUS HEURTA was performing work for Defendant SCIAMANNA GROUP EAST, LLC as an employee and not as a independent contractor.

60. At all times relevant Plaintiff JESUS HEURTA was performing work under the

direction, supervision and control of agents and employees of Defendant SCIAMANNA GROUP EAST, LLC and Plaintiff provided carpentry labor at the time and place specified by agents of Defendant according to the instructions of Defendant's foreman.

61. On or about April 24, 2008, Defendant SCIAMANNA GROUP EAST, LLC employed Plaintiff IGNACIO CASTILLO to perform work at the Hilton Garden Inn Hotel jobsites located in Warrenville and in Schaumburg. Shortly thereafter, Plaintiff IGNACIO CASTILLO began to perform carpentry work for Defendant at those jobsites.

62. At all times relevant, Plaintiff IGNACIO CASTILLO was performing work for Defendant SCIAMANNA GROUP EAST, LLC as an employee and not as a independent contractor

63. At all times relevant Plaintiff IGNACIO CASTILLO was performing work under the direction, supervision and control of agents and employees of Defendant SCIAMANNA GROUP EAST, LLC and Plaintiff provided carpentry labor at the time and place specified by agents of Defendant according to the instructions of Defendant's foreman.

64. Each instance of misclassification of an individual employee as an independent contractor and each day in which such a misclassification occurs is a separate violation of the Employee Classification Act, § 820 ILCS 185/40.

65. Plaintiffs JESUS HUERTA and IGANACIO CASTILLO have suffered by their misclassification by Defendant SCIAMANNA GROUP EAST, LLC. by not having been paid wages, employment benefits, proper payroll tax withholdings under the federal and state revenue laws, FICA payments, payments under the Illinois Unemployment Insurance Act, and Workers Compensation Insurance.

66. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were acting as an employees for Defendant SCIAMANNA GROUP EAST, LLC in that:

- A. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were paid by the hour and not by a set contract amount.
- B. At all relevant times, Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were working directly under the supervision, direction, and control of Defendant.
- C. At all relevant times, Defendant directed Plaintiff JESUS HUERTA as to when, where, and how to perform the work.
- D. At no time did Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO submit bid to perform work nor did they subcontract to perform certain specified work.
- E. At all relevant times, Defendant supplied the materials and various tools for the job.
- F. At no time were Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO operating a business nor was they exposed to obtaining a profit or suffering a loss by reason of their labor.

67. Defendant SCIAMANNA GROUP EAST, LLC willfully violated the Employee Classification Act in that Defendant failed to classify Plaintiffs JESUS HUERTA and/or IGNACIO CASTILLO as a employees and instead classified them as an independent contractors by committing the following acts and omissions:

- A. After Plaintiffs JESUS HUERTA and IGNACIO CASTILLO performed many days of carpentry labor, Defendant JOSEPH J. SCIAMANNA, INC required Plaintiffs HUERTA and CASTILLO to sign respective written documents stating that they were an independent subcontractors and Defendant threatened that if Plaintiffs HUERTA and CASTILLO would fail to sign such a document that they would not be paid for the work they had already performed and that they would not be paid for future labor.
- B. The independent contractor document referred to above (Exhibits E and G) were a sham in that they failed to truly reflect the fact that as a matter of law Plaintiffs were employees and not independent contractors.
- C. Defendant SCIAMANNA GROUP EAST, LLC failed to have Plaintiffs JESUS HUERTA and IGNACIO CASTILLO fill out an IRS W-4 Employee Withholding Allowance Certificate forms.
- D. Defendant SCIAMANNA GROUP EAST, LLC failed to make withholdings for state or federal income tax, or for FICA from Plaintiffs JESUS HUERTA and IGNACIO CASTILLO's paychecks.

- E. Defendant SCIAMANNA GROUP EAST, LLC. failed to make payments pursuant to the Illinois Unemployment Insurance Act with regard to the payments made to Plaintiffs JESUS HUERTA and IGNACIO CASTILLO.
- F. Defendant SCIAMANNA GROUP EAST, LLC. failed to make any provision to have Plaintiffs JESUS HUERTA and IGNACIO CASTILLO covered by Illinois Workers Compensation as required by the Illinois Workers Compensation Act, 820 ILCS 305.
- G. Defendant SCIAMANNA GROUP EAST, LLC. did not comply with the laws which require employers to pay time and a half for overtime under the Fair Labor Standards Act, 29 U.S.C.. §§ 201 et seq. with regard to Plaintiffs HUERTA and CASTILLO.

COUNT V
POSTING VIOLATIONS BY SCIAMANNA GROUP EAST, LLC

1-67. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 67 above, as paragraphs 1 through 67 of this Count V.

68. That at all times relevant, all Defendant SCIAMANNA GROUP EAST, LLC willfully violated Section 15 of the Employee Classification Act, 820 ILCS 185/15, by failing to post a summary of the requirements of the Employee Classification Act in English, Spanish and Polish at the Warrenville, Illinois jobsite.

COUNT VI
RETALIATORY DISCHARGE VIOLATIONS COMMITTED BY
DEFENDANT SCIAMANNA GROUP EAST, LLC

1-68. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 68 above, as paragraphs 1 through 68 of this Count VI.

69. On June 17, 2008, Plaintiffs filed their original complaint in this matter in the Circuit Court of Cook County, Illinois. Thereafter, Defendant SCIAMANNA GROUP EAST, LLC learned that the suit had been filed and through their agent and employee interrogated Plaintiffs IGNACIO CASTILLO and JESUS HUERTA about Plaintiffs' role in filing the suit.

70. On or about July 11, 2008, and for many weeks thereafter, Defendant SCIAMANNA GROUP EAST, LLC willfully violated Section 55 of the Employee

Classification Act, 820 ILCS 125/55, by discharging from employment Plaintiffs IGNACIO CASTILLO and JESUS HUERTA.

71. Defendant SCIAMANNA GROUP EAST, LLC discharged Plaintiffs IGNACIO CASTILLO and JESUS HEURTA as employees in substantial part for the reason that Plaintiffs CASTILLO and JESUS HEURTA instituted the instant lawsuit against the Defendant whereby these Plaintiffs sought to exercise rights granted under the Employee Classification Act by filing the original complaint in the Circuit Court of Cook County on June 17, 2008.

72. Defendant SCIAMANNA GROUP EAST, LLC retaliated against IGNACIO CASTILLO and JESUS HUERTA and violated Section 55 of the Employee Classification Act by discharging them from employment because they sought to exercise their rights under the Employee Classification Act by filing the lawsuit in the Circuit Court of Cook County on June

73. On or about July 11, 2008, and for many weeks thereafter, Defendant SCIAMANNA GROUP EAST, LLC employed the services of approximately four to five workers (hereinafter referred to as “new hires”), none of whom was a member of Plaintiff CARPENTERS UNION and all of whom were hired subsequent to the discharge of JESUS HUERTA and IGNACIO CASTILLO.

74. At all times relevant, the work performed by the new hires has been the same carpentry work as that performed by Plaintiffs JESUS HUERTA and IGNACIO CASTILLO.

75. After discharging Plaintiffs JESUS HUERTA and IGNACIO CASTILLO, Defendant SCIAMANNA GROUP EAST, LLC continued to employ the services of the “new hires” and have continued to improperly classify them as independent contractors.

76. At all times relevant, none of the “new hires” has attempted to exercise his rights under the Employee Classification Act nor have any of the “new hires” cooperated with any representative to exercise rights under the act on their behalf.

WHEREFORE, Plaintiffs CARPENTERS UNION, JESUS HEURTA and IGNACIO CASTILLO for relief under Counts I, II, and III pray that this Court enter an Order for the following declaratory, equitable and monetary relief as against Defendant SCIAMANNA GROUP EAST, LLC:

Relief With Respect to Plaintiff JESUS HUERTA

- A. Declare that JESUS HUERTA was misclassified by Defendant SCIAMANNA GOUP EAST, LLC as an independent contractor and should have been classified as an employee under the Illinois Employee Classification Act.
- B. Declare that Defendant SCIAMANNA GROUP EAST, LLC willfully violated the Act with respect to its misclassification of JESUS HUERTA.
- C. Declare that Plaintiff JESUS HUERTA is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of Plaintiff JESUS HUERTA in the amount of all wages, salary, employment benefits, and other compensation denied or lost by JESUS HUERTA by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of JESUS HUERTA in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of Plaintiff JESUS HUERTA in the amount of all wages, salary, employment benefits, and other compensation denied or lost by JESUS HUERTA by reason of Defendant's retaliation against him for his seeking to exercise his rights under the Act pursuant to Section 60(a)(3) of the Employee Classification Act.
- G. Reinstate Plaintiff JESUS HUERTA to his employment with SCIAMANNA GROUP EAST, LLC and require that Defendant SCIAMANNA GROUP EAST, LLC amend its reporting to the State of Illinois Department of Revenue, the U.S. Internal Revenue Service, and any other state or federal agency concerning the status of JESUS HUERTA as an employee pursuant to Section 60(a)(3) of the Employee Classification Act.
- H. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against the Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.

- I. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- J. Grant Plaintiff JESUS HUERTA attorney's fees and costs pursuant to Section 60(a)(4)

Relief With Respect to Plaintiff IGNACIO CASTILLO

- A. Declare that IGNACIO CASTILLO was misclassified by Defendant SCIAMANNA GROUP EAST, LLC as independent contractors and should have been classified as employees under the Illinois Employee Classification Act.
- B. Declare that Defendant SCIAMANNA GROUP EAST, LLC willfully violated the Act with respect to its misclassification of IGNACIO CASTILLO.
- C. Declare that Plaintiff IGNACIO CASTILLO is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of Plaintiff IGNACIO CASTILLO in the amount of all wages, salary, employment benefits, and other compensation denied or lost by IGNACIO CASTILLO by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of IGNACIO CASTILLO in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of Plaintiff IGNACIO CASTILLO in the amount of all wages, salary, employment benefits, and other compensation denied or lost by IGNACIO CASTILLO by reason of Defendant's retaliation against him for his seeking to exercise his rights under the Act pursuant to Section 60(a)(3) of the Employee Classification Act.
- G. Reinstate Plaintiff IGNACIO CASTILLO to his employment with SCIAMANNA GROUP EAST, LLC and require that Defendant SCIAMANNA GROUP EAST, LLC amend its reporting to the State of Illinois Department of Revenue, the U.S. Internal Revenue Service, and any other state or federal agency concerning the status of IGNACIO CASTILLO as an employee pursuant to Section 60(a)(3) of the Employee Classification Act.
- H. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against

the Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.

- I. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- J. Grant Plaintiff IGNACIO CASTILLO attorney's fees and costs pursuant to Section 60(a)(4)

Relief With Respect to Plaintiff CARPENTERS UNION

- A. Declare that Defendant SCIAMANNA GROUP EAST, LLC violated the Act in regard to Plaintiff JESUS HUERTA and IGNACIO CASTILLO as noted above.
- B. Declare that Plaintiff CARPENTERS UNION is an interested party pursuant to Sections 5 and 60 of the Employee Classification Act.
- C. Enter a money judgment against Defendant SCIAMANNA GROUP EAST, LLC and in favor of Plaintiff CARPENTERS UNION in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- D. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against the Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- E. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against Defendant SCIAMANNA GROUP EAST, LLC in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- F. Grant Plaintiff CARPENTERS UNION attorney's fees and costs pursuant to Section 60(a)(4)

COUNT VII

VIOLATIONS BY DEFENDANT DOMINGO CASTILLO d/b/a DOMINGO DRYWALL

1-76. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 76 above, as paragraphs 1 through 76 of this Count VII.

77. During the period on or about April 2008, Defendant DOMINGO CASTILLO

d/b/a DOMINGO DRYWALL engaged in numerous willful violations of the Employee Classification Act by employing the services of numerous workers to install drywall at the Hilton Gardens Inn project located in Warrenville, Illinois and by misclassifying them as independent contractors, paying them cash and failing to make proper state and federal tax payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act.

78. During the period on or about April 2008, Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL engaged in numerous willful violations of the Employee Classification Act by employing the services of numerous workers to install drywall at the Hilton Gardens Inn project located in Warrenville, Illinois and by misclassifying them as independent contractors, paying them cash and failing to make proper state and federal tax payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act.

79. At all relevant times, the workers employed by Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL were improperly classified as independent contractors and not as employees.

80. After Plaintiffs JESUS HUERTA and IGNACIO CASTILLO were discharged from their employment with either JOSEPH J. SCIAMANNA, INC. and/or SCIAMANNA GROUP EAST, LLC. they were employed as carpenters for DOMINGO CASTILLO.

81. During his employment of Plaintiffs JESUS HUERTA and IGNACIO CASTILLO, Defendant DOMINGO CASTILLO engaged in numerous willful violations of the Employee Classification Act by employing the services of numerous workers to install drywall at the Hilton Gardens Inn project located in Warrenville, Illinois and by misclassifying them as independent contractors, paying them cash and failing to make proper state and federal tax

payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act.

82. At all relevant times, the workers employed by Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL improperly classified Plaintiff JESUS HUERTA and IGNACIO CASTILLO as independent contractors and not as employees.

WHEREFORE, Plaintiffs CARPENTERS UNION, JESUS HUERTA, and IGNACIO CASTILLO pray that this Court enter an Order for the following declaratory, equitable and monetary relief as against by Defendant DOMINGO CASTILLO d/b/a DOMINGO DRYWALL.

Relief With Respect to Plaintiff JESUS HUERTA

- A. Declare that JESUS HUERTA was misclassified by Defendant DOMINGO CASTILLO as an independent contractor and should have been classified as an employee under the Illinois Employee Classification Act.
- B. Declare that Defendant DOMINGO CASTILLO willfully violated the Act with respect to its misclassification of JESUS HUERTA.
- C. Declare that Plaintiff JESUS HUERTA is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant DOMINGO CASTILLO and in favor of Plaintiff JESUS HUERTA in the amount of all wages, salary, employment benefits, and other compensation denied or lost by JESUS HUERTA by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant DOMINGO CASTILLO and in favor of JESUS HUERTA in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against the Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- G. Enter a monetary judgment in favor of Plaintiff JESUS HUERTA and against Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each

day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.

- H. Grant Plaintiff JESUS HUERTA attorney's fees and costs pursuant to Section 60(a)(4).

Relief With Respect to Plaintiff IGNACIO CASTILLO

- A. Declare that IGNACIO CASTILLO was misclassified by Defendant DOMINGO CASTILLO as an independent contractor and should have been classified as an employee under the Illinois Employee Classification Act.
- B. Declare that Defendant DOMINGO CASTILLO willfully violated the Act with respect to its misclassification of IGNACIO CASTILLO.
- C. Declare that Plaintiff IGNACIO CASTILLO is an aggrieved person under Section 60 of the Act.
- D. Enter a money judgment against Defendant DOMINGO CASTILLO and in favor of Plaintiff IGNACIO CASTILLO in the amount of all wages, salary, employment benefits, and other compensation denied or lost by IGNACIO CASTILLO by reason of the misclassification of his employment plus an equal amount in liquidated damages pursuant to Section 60(a)(1) of the Illinois Employee Classification Act.
- E. Enter a money judgment against Defendant DOMINGO CASTILLO and in favor of IGNACIO CASTILLO in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- F. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against the Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- G. Enter a monetary judgment in favor of Plaintiff IGNACIO CASTILLO and against Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- H. Grant Plaintiff IGNACIO CASTILLO attorney's fees and costs pursuant to Section 60(a)(4).

Relief With Respect to Plaintiff CARPENTERS UNION

- A. Declare that Defendant DOMINGO CASTILLO violated the Act in regard to Plaintiff JESSUS HUERTA and IGNACIO CASTILLO as noted above.

- B. Declare that Plaintiff CARPENTERS UNION is an interested party pursuant to Sections 5 and 60 of the Employee Classification Act.
- C. Enter a money judgment against Defendant DOMINGO CASTILLO and in favor of Plaintiff CARPENTERS UNION in the amount of \$500 for each day the Act was violated relative to him as compensatory damages pursuant to Section 60(a)(2) of the Employee Classification Act.
- D. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against the Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Schaumburg, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- E. Enter a monetary judgment in favor of Plaintiff CARPENTERS UNION and against Defendant DOMINGO CASTILLO in an amount to be calculated by \$500 for each day that each Defendant has violated the Act by failing to post at the Warrenville, Illinois jobsite pursuant to Section 60(a)(2) of the Act.
- F. Grant Plaintiff CARPENTERS UNION attorney's fees and costs pursuant to Section 60(a)(4)

COUNT VIII
VIOLATIONS BY DEFENDANT BANKSTON ENTERPRISES, LLC

1-82. Plaintiffs hereby incorporate by reference and re-allege the allegations of paragraphs 1 through 82 above, as paragraphs 1 through 82 of this Count VIII.

83. During the period on or about April 2008, Defendant BANKSTON ENTERPRISES, LLC engaged in numerous willful violations of the Employee Classification Act by employing the services of numerous workers to perform work at the Hilton Gardens Inn project located in Warrenville, Illinois and by misclassifying them as independent contractors, paying them cash and failing to make proper state and federal tax payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act.

84. During the period on or about April 2008, Defendant BANKSTON ENTERPRISES, LLC and RENE BANKSTON JR. engaged in numerous willful violations of the Employee Classification Act by employing the services of numerous workers to perform

work at the Hilton Gardens Inn project located in Schaumburg, Illinois and by misclassifying them as independent contractors, paying them cash and failing to make proper state and federal tax payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act.

85. At all relevant times the workers employed by Defendant BANKSTON ENTERPRISES, LLC were improperly classified as independent contractors and not as employees.

WHEREFORE, Plaintiffs CARPENTERS UNION, JESUS HEURTA, and IGNACIO CASTILLO pray that this Court enter an Order for the following declaratory, equitable and monetary relief as against Defendant BANKSTON ENTERPRISES, LLC:

- A. Declare that Defendant BANKSTON ENTERPRISES, LLC misclassified its workers as independent contractors when it should have classified them as employees.
- B. Order that Defendant BANKSTON ENTERPRISES, LLC immediately make proper state and federal tax payments to the State Department of Revenue and Federal Internal Revenue Service as well as make proper FICA payments, and payments under the Illinois Unemployment Insurance Act regarding its misclassified employees.
- C. Order an accounting of overtime hours worked by its misclassified employees and retain jurisdiction to require proper payments after such accounting is accomplished.
- D. Order an accounting of Defendant BANKSTON ENTERPRISES, LLC payment to its other workers to determine the workers who have been misclassified and determine other violations of the Employee Classification Act.
- E. Enter a monetary judgment of \$500 for every violation revealed by discovery in this case in favor of each of the Plaintiffs and against Defendant BANKSTON ENTERPRISES, LLC.
- F. Grant Plaintiffs' attorneys leave to file a petition for attorney's fees and costs related to this lawsuit and thereupon to award said fees and costs to Plaintiffs.

Respectfully submitted,

/s/ Gregory N. Freerksen

Gregory N. Freerksen

One of the attorneys for Plaintiffs

Chicago Regional Council of Carpenters,

United Brotherhood of Carpenters and Joiners

of America, Jesus Huerta and Ignacio Castillo

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