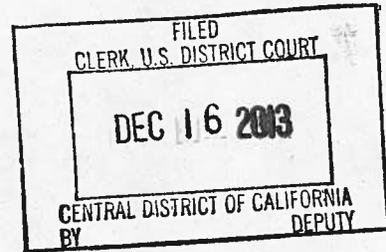


1 Janet M. Herold  
Regional Solicitor  
Daniel J. Chasek  
2 Associate Regional Solicitor  
NANCY E. STEFFAN, Trial Attorney (CSBN 280958)  
3 Office of the Solicitor  
U.S. Department of Labor  
4 350 S. Figueroa St., Suite 370  
Los Angeles, California 90071  
5 Direct: (213) 894-5366  
Facsimile: (213) 894-2064  
6 Email: Steffan.Nancy.E@dol.gov



7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 **THOMAS E. PEREZ**, Secretary of  
Labor, United States Department of  
Labor,

12 Plaintiff,

13 v.

14 **ALKANAN, INC. d/b/a Recycling**  
15 **Innovation d/b/a Valley Recycling,**  
a corporation;  
16 **KARIM AMERI**, an individual;

17 Defendants.  
18  
19

} Civil Action

} File No

**CV 13-09228**

*GAF*  
*(JEM)*

} **MEMORANDUM OF POINTS AND**  
} **AUTHORITIES IN SUPPORT OF**  
} **APPLICATION FOR A**  
} **TEMPORARY RESTRAINING**  
} **ORDER AND ORDER TO SHOW**  
} **CAUSE WHY A PRELIMINARY**  
} **INJUNCTION SHOULD NOT**  
} **ISSUE**

20  
21 Plaintiff Thomas E. Perez, Secretary of Labor, U.S. Department of Labor  
22 (“Secretary”), submits this memorandum of law in support of his application for a  
23 temporary restraining order and order to show cause why a preliminary injunction  
24 should not issue enjoining Defendants Alkanan, Inc. d/b/a Recycling Innovation  
25 d/b/a Valley Recycling (“Alkanan”) and Karim Ameri’s unlawful interference,  
26  
27 threats, and intimidation of workers in violation of the investigative and anti-  
28

1 retaliation provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et*  
2 *seq.* (“FLSA”).

3  
4 The Department of Labor’s Wage and Hour Division (Wage and Hour) initi-  
5 ated an investigation of Defendants’ pay practices on October 28, 2013. Since De-  
6 fendant Ameri learned of the Secretary’s investigation, he has not only instructed  
7 employees not to provide truthful information to the Secretary but has actually  
8 threatened termination, deportation, and even bodily harm to those employees who  
9 cooperate with the Secretary’s investigation. Such threats plainly constitute unlaw-  
10 ful interference with the Secretary’s investigation and unlawful retaliation against  
11 employees under sections 11(a) and 15(a)(3) of the FLSA, 29 U.S.C. §§ 211(a) and  
12 215(a)(3). The Secretary respectfully requests that Defendant Ameri be enjoined  
13 from threatening, intimidating, retaliating against, and/or harming his employees  
14 because of the employees’ communications and/or cooperation with the Secre-  
15 tary’s pending investigation.

16  
17 This request is urgent. The Secretary’s investigation and future enforcement  
18 efforts are threatened with irreparable harm absent immediate action to enjoin De-  
19 fendant Ameri’s unlawful interference, threats, and intimidation. Such threats hin-  
20 der and obstruct witness participation in this investigation, and could deter other  
21 workers from exercising their right to communicate with the government for fear  
22 of retaliation. Defendant Ameri must be prevented from continuing such unlawful

1 conduct lest his threats be carried out and employees either lose their livelihoods or  
2 are physically harmed.

3  
4 An injunction is necessary to protect the public interest in  
5 enforcement of federal labor laws. The FLSA protects employees from violations  
6 of its minimum wage and overtime provisions and protects law-abiding employers  
7 from unfair competition from employers who fail to comply with the Act's  
8 requirements. 29 U.S.C. §§ 206, 207, 202(a). These important public interests are  
9 served by ensuring that the Secretary of Labor's investigations, including all  
10 communications by employees to the Secretary, are free from witness intimidation.  
11  
12

13  
14 There can be no doubt here that the balance of interests tips sharply in favor  
15 of the Secretary. Allowing Defendants to continue flouting the FLSA's protections  
16 by threatening employees who are perceived to be cooperating with the Secretary  
17 will deter the Defendants' employees from communicating with the Secretary and  
18 thereby irreparably harm the Secretary's investigation and future enforcement ef-  
19 forts. If Defendants are not enjoined and their threats are carried out, employees  
20 will suffer irreparable harm of termination or bodily harm at the hands of Defend-  
21 ants. By contrast, if the Court grants the requested relief to the Secretary, the De-  
22 fendants would bear only the minimal burden of ceasing their interference with the  
23 Secretary's investigation. 29 U.S.C. §§ 211(a) and 215(c)(3).  
24  
25  
26  
27  
28

1           **I. BACKGROUND**

2           Alkanan, Inc. owns and operates at least six recycling facilities in the San  
3 Fernando Valley area under the business names Recycling Innovation and Valley  
4 Recycling. See Declaration of Wage and Hour District Director Kimchi Bui, at-  
5 tached as Exhibit A (“Bui Decl.”), ¶ 4. These facilities purchase recyclable prod-  
6 ucts from the public and resell them to factories that recycle the goods. Id. De-  
7 fendant Ameri is the co-owner of Alkanan. Id. at ¶ 5. Defendant Ameri oversees  
8 the day-to-day operations of Alkanan’s recycling facilities and hires, fires, and su-  
9 pervises employees; sets employees’ schedules; and determines and pays employ-  
10 ees’ salaries. Id. The Wage and Hour Division initiated an investigation into De-  
11 fendants’ pay practices in late October of 2013. Id. at ¶ 2.

12           Almost immediately after the investigation began, Alkanan employees re-  
13 ported to Wage and Hour that Defendant Ameri had instructed them to provide  
14 false information to the Department of Labor. See Declaration of Wage and Hour  
15 Technician Carolina Ferniza (Ferniza Decl., attached as Exhibit B (“Ferniza  
16 Decl.”), ¶ 7. Specifically, employees told Wage and Hour that Defendant Ameri  
17 told them that if they are contacted by the Department of Labor, they should state  
18 that they work only part time, that they are paid the minimum wage, that they are  
19 paid by the hour, and that they have been working for Defendant Ameri for only  
20 three months. Id. Employees stated that Defendant Ameri instructed them to make  
21  
22  
23  
24  
25  
26  
27  
28

1 these statements even though they are not true; based on the limited information  
2 Wage and Hour has gathered in its investigation to date, workers have worked in  
3 excess of 60 hours per week and have been paid a flat rate regardless of the num-  
4 ber of hours worked. Id; Bui Dec. ¶ 6. All of the workers have been employed by  
5 Alkanan for more than three months and many of them have been working for De-  
6 fendants for several years or more. Ferniza Decl. ¶ 7. Some employees reported  
7 that Defendant Ameri required them to write and sign letters stating false infor-  
8 mation about their working conditions and length of employment. Id. at ¶ 8. Em-  
9 ployees were not given copies of these letters. Id.

13 Gathering truthful information from employees is particularly important in  
14 this investigation because Defendants do not maintain any records of hours worked  
15 by their employees. See Kasten v. Saint-Gobain Performance Plastics Corp., 131  
16 S. Ct. 1325, 1333 (2011); Bui Decl. ¶ 6. Instead, Defendant Ameri informed Wage  
17 and Hour that employees are paid a flat rate of \$65-70 per day for shifts that last up  
18 to ten hours, up to six days per week. Bui Decl. ¶ 6. Moreover, Defendants did  
19 not maintain payroll records of any kind prior to March of 2013. Id.

23 In early December, Wage and Hour learned that Defendant Ameri has been  
24 repeatedly questioning employees in an effort to find out which employees have  
25 complained or spoken to Wage and Hour, and has threatened retaliation against  
26 any employee who has. Ferniza Decl. ¶¶ 9-10. Employees have reported that De-  
27  
28

1 defendant Ameri frequently asks them, in one-on-one conversations, whether they  
2 have spoken to the Department of Labor and whether they know which of their  
3 coworkers have spoken to the Department of Labor. Id. ¶ 9. Employees stated that  
4 Defendant Ameri continues to ask these questions, in some cases on a daily basis,  
5 even after they tell him that they have not spoken to the Department of Labor and  
6 they do not know who has. Id. Workers have told Wage and Hour that they feel  
7 threatened and harassed by this repeated questioning and fearful that Defendant  
8 Ameri will find out that they have spoken to the Department of Labor. Id.  
9  
10  
11

12           Of greatest concern, employees have told Wage and Hour that Defendant  
13 Ameri has stated that once he finds out who is cooperating with the investigation,  
14 he will retaliate. Ferniza Decl. ¶ 10. Workers have reported that Defendant Ameri  
15 has told them on various occasions that if he finds out who has complained to the  
16 Department of Labor that he will that he will fire that person, that the person will  
17 be reported to immigration, that he will “make [that person’s] life bad,” and that he  
18 will “break [the person’s] teeth.” Id.  
19  
20  
21

22           In addition to threats and intimidation reported by workers, Defendant  
23 Ameri’s accountant also told the District Director of Wage and Hour’s Los Ange-  
24 les office that Mr. Ameri was very upset that his employees had been complaining  
25 about his wage practices. Bui Decl. ¶ 7. He was particularly upset that workers  
26 were posting wage complaints on Facebook and asked the District Director what  
27  
28

1 he could do to make the employees stop their complaints. Id. Defendant Ameri's  
2 accountant further told the District Director of Wage and Hour's Los Angeles of-  
3 fice that Mr. Ameri had made a threat to break an employee's arm, but that he did  
4 not intend this as a "serious" threat of physical violence.<sup>1</sup> Id. at ¶ 8.

6 As a result of these threats, the Alkanan employees, who are all immi-  
7 grants, have told Wage and Hour that they are very fearful that Defendant Ameri  
8 will find out that they have spoken to the government. Ferniza Decl. ¶ 11. Em-  
9 ployees repeatedly ask Wage and Hour whether their names will be reported to Mr.  
10 Ameri if they speak with investigators. Id. Employees have told Wage and Hour  
11 that they believe that if Defendant Ameri finds out they have spoken to the Secre-  
12 tary that they will be fired and deported. Id. One employee told Wage and Hour  
13 that he believed Defendant Ameri would want to kill him if he found out that he  
14 met with an investigator. Id. Moreover, Defendant Ameri's threats have limited  
15 Wage and Hour's ability to investigate Defendant's pay practices. Id. at ¶ 12. To  
16 date, a number of employees have refused to speak with Wage and Hour regarding  
17 their working conditions. Id.

---

25 <sup>1</sup> Defendant's accountant told Wage and Hour that he believed employees had mis-  
26 interpreted a comment about breaking someone's arm as a threat, but explained  
27 that in his native language, such comments are not serious threats. Defendant  
28 Amari speaks to workers in English and Spanish, neither of which is his native  
language.

1       **II.    LEGAL ARGUMENT**

2           **A. Jurisdiction**

3  
4           Jurisdiction of this action is conferred upon the Court by Section 17 of  
5 the FLSA, 29 U.S.C. § 217 (injunction proceedings), and by 28 U.S.C. § 1345  
6 (proceeding commenced by the United States).  
7

8           **B. A Temporary Restraining Order Should Be Issued Restraining**  
9           **Defendants From Further Interference and Retaliation**

10           The TRO sought by the Secretary is an extraordinary request forced by De-  
11 fendants' repeated interference with the Secretary's investigation and serious and  
12 alarming threats of retaliation – including deportation and bodily harm – against  
13 employees who are believed to have spoken with DOL investigators.  
14  
15

16           A party seeking a TRO under Federal Rule of Civil Procedure 65 “must es-  
17 tablish that he is likely to succeed on the merits, that he is likely to suffer irrepara-  
18 ble harm in the absence of preliminary relief, that the balance of equities tips in his  
19 favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def.  
20 Council, Inc., 555 U.S. 7, 20 (2008) (discussing standard for preliminary injunc-  
21 tion); Frontline Medical Associates, Inc. v. Coventry Healthcare Workers Com-  
22 pensation, Inc., 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009) (requirements for is-  
23 suing TRO are identical to those for preliminary injunction); L.A. Unified Sch.  
24 Dist. v. U.S. Dist. Ct., 650 F.2d 1004, 1008 (9th Cir. 1981) (“if the district court's  
25  
26  
27  
28

1 order meets the exacting requirements of a preliminary injunction, it follows a for-  
2 tiori that it is acceptable as a TRO”). Alternatively, “serious questions going to  
3 the merits’ and a hardship balance that tips sharply toward the plaintiff can support  
4 issuance of an injunction, assuming the other two elements of the Winter test are  
5 met.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1132 (9th Cir.  
6 2011). A “serious question” is one on which the movant “has a fair chance of suc-  
7 cess on the merits.” Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415,  
8 1421 (9th Cir. 1984).

9  
10  
11  
12 A moving party need not satisfy the standard requirements for equitable re-  
13 lief when an injunction is sought to prevent the violation of a federal statute, and  
14 the statute specifically provides for injunctive relief. Trailer Train Co. v. State Bd.  
15 Of Equalization, 697 F.2d 860, 869 (9th Cir. 1983); Marxe v. Jackson, 833 F.2d  
16 1121, 1128 n.3 (3d Cir. 1987). Here, Sections 11 and 17 of the FLSA explicitly  
17 provide for injunctive relief in order to restrain violations of, inter alia, the investi-  
18 gatory and anti-retaliation provision of the FLSA. See 29 U.S.C. §§ 211 and 217.  
19 Therefore, the Secretary need not show that there is a possibility of irreparable  
20 harm before a court may issue an injunction. Instead, the Secretary need only  
21 show that the defendant is engaged in, or about to be engaged in, the act or practic-  
22 es prohibited by the statute. See Atchison, T. and S. F. Ry. Co. v. Lennen, 640  
23 F.2d 255, 259 (10th Cir. 1981). However, to reinforce the gravity of the Defend-  
24  
25  
26  
27  
28

1 ants' conduct, the Secretary has taken the additional step of showing that the in-  
2 junction is necessary to prevent irreparable harm.

3  
4 **1. The Secretary is Likely to Succeed on the Merits of his Claims**

5  
6 a. The Secretary is Likely to Prevail on his Retaliation Claim

7 The anti-retaliation provision is a critical element in the enforcement scheme  
8 of the FLSA. See e.g., Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288,  
9 292 (1960). Under the provision, found at Section 15(a)(3) of the FLSA, it is:

10  
11 unlawful for any person...to discharge or in any other manner  
12 discriminate against any employee because such employee has filed  
13 any complaint or instituted or caused to be instituted any proceeding  
14 under [the FLSA], or has testified or is about to testify in any such  
15 proceeding...

16 29 U.S.C. § 215(a)(3). "The FLSA's anti-retaliation clause is designed to ensure  
17 that employees are not compelled to risk their jobs in order to assert their wage and  
18 hour rights under the Act." Lambert v. Ackerly, 180 F.3d 997, 1004 (9th Cir.  
19 1999). "Unchecked retaliation, no matter what form, subverts the purpose of the  
20 FLSA." Mullins v. City of New York, 626 F.3d 47, 55 (2d Cir. 2010); see also  
21 Centeno-Burney v. Perry, 302 F. Supp. 2d 128, 135 (W.D.N.Y. 2003).

22  
23  
24 As explained by the Supreme Court, Congress intended the anti-retaliation  
25 provision to provide an incentive for workers to report wage and hour violations:  
26

27 For weighty practical and other reasons, Congress did not seek to  
28 secure compliance with prescribed standards through continuing

1 detailed federal supervision or inspection of payrolls. Rather it chose  
2 to rely on information and complaints received from employees  
3 seeking to vindicate rights claimed to have been denied. Plainly,  
4 effective enforcement could thus only be expected if employees felt  
5 free to approach officials with their grievances. This end the  
6 prohibition of 15(a)(3) against discharges and other discriminatory  
7 practices was designed to serve. For it needs no argument to show  
8 that fear of economic retaliation might often operate to induce  
9 aggrieved employees quietly to accept substandard conditions.

10 Robert DeMario Jewelry, 361 U.S. at 292; see also Kasten, 131 S. Ct. at 1333.

11 Accordingly, this anti-retaliation provision must be interpreted liberally to “give  
12 effect to the statute’s remedial purpose.” In re Majewski, 310 F.3d 653, 655 (9th  
13 Cir. 2002). Threats of retaliation, like those made by Defendants, are as much a  
14 basis for injunctive relief as past retaliatory acts. See United States v. Oregon  
15 State Med. Soc., 343 U.S. 326, 333 (1952) (“All it takes to make the cause of  
16 action for relief by injunction is a real threat of future violation or a contemporary  
17 violation of a nature likely to occur”).

18 In order for a plaintiff to establish a prima facie case of retaliation under the  
19 FLSA, he must show that: “(1) he engaged in activity protected by the FLSA; (2)  
20 defendant took an adverse employment action; and (3) there was a causal link  
21 between the protected activity and the adverse action.” Conner v. Schnuck  
22 Markets, Inc., 121 F.3d 1390, 1394 (10th Cir. 1997) (analyzing an FLSA  
23 retaliation claim by adopting the Title VII burden-shifting analysis of McDonnell  
24 Douglas Corp. v. Green, 411 U.S. 792 (1973)); see also Stewart v. Masters  
25  
26  
27  
28

1 Builders Ass'n of King & Snohomish Counties, 736 F. Supp. 2d 1291, 1295 (W.D.  
2 Wash. 2010) (citing Conner and using same burden-shifting analysis for FLSA  
3 retaliation claim); Cardenas v. UPS, Inc., 2010 WL 511343 (C.D. Cal. 2009)  
4 (applying same three elements). Here, the Secretary meets all three required  
5 elements to make a *prima facie* showing of retaliation and will further demonstrate  
6 that these unlawful acts of intimidation and threats will continue without relief  
7 from this Court.  
8  
9

10  
11 *i. Protected Activity*

12 As to the first element to establish retaliation – engaging in a protected  
13 activity – the Supreme Court has instructed that the term “complaint” should be  
14 broadly construed to effectuate the important remedial purposes and weighty  
15 public interest underlying the Act. Kasten, 131 S. Ct. at 1334. The “enforcement  
16 needs” of the FLSA “argue for an interpretation of the word ‘complaint’ that would  
17 provide ‘broad rather than narrow protection to the employee.’” Id. at 1333  
18 (citations omitted). As observed by the First Circuit in Valerio v. Putnam  
19 Associates, Inc., 173 F.3d 35 (1st Cir. 1999), when analyzing what is a  
20 “complaint” under the FLSA’s anti-retaliation provision:  
21  
22  
23  
24

25 By failing to specify that the filing of any complaint need be with a  
26 court or an agency, and by using the word “any,” Congress left open  
27 the possibility that it intended “complaint” to relate to less formal  
28

1 expressions of protest, censure, resentment, or injustice conveyed to  
2 an employer.

3 Id. at 41. Moreover, an employee does not actually have to have filed a complaint  
4 to be protected. If an employer retaliates because the employer “erroneously  
5 believed” the employee engaged in protected conduct, such retaliation would still  
6 violate the Act. Singh v. Jutla & C.D. & R’s Oil, Inc., 214 F. Supp. 2d 1056, 1059  
7 (N.D. Cal. 2002).  
8

9  
10 Here, Defendant Ameri threatened retaliation against any employee found to  
11 have complained to the Secretary or cooperated with the Secretary’s investigation  
12 by providing information about violative working conditions. Ferniza Decl. ¶ 10.  
13 Such complaints are clearly protected by the FLSA’s anti-retaliation provision. 29  
14 U.S.C. § 215(a)(3); see also Ackerly, 180 F.3d at 1004 (“complaints filed ‘under’  
15 the FLSA are...those complaints filed with the Department of Labor or the federal  
16 court as specified in the [FLSA].”); Robert DeMario Jewelry, 361 U.S. at 292  
17 (“Plainly, effective enforcement could thus only be expected if employees felt free  
18 to approach officials with their grievances.”).  
19  
20  
21

22  
23 *ii. Adverse Action*

24 The Ninth Circuit has defined an adverse employment action broadly to  
25 mean any employment decision “reasonably likely to deter employees from  
26 engaging in protected activity.” Ray v. Henderson, 217 F. 3d 1234, 1243 (9th Cir.  
27  
28

1 2000) (the Ninth Circuit takes “an expansive view of the type of actions that can be  
2 considered adverse employment actions”); see also Hagan v. EchoStar Satellite,  
3 L.L.C., 529 F. 3d 617, 624 (5th Cir. 2008) (adopting Title VII framework for  
4 FLSA retaliation claims); Wolf v. Coca-Cola Co., 200 F. 3d 1337, 1342-43 (11th  
5 Cir. 2000) (same); Conner, 121 F.3d at 1394 (same); Stewart, 736 F. Supp. 2d at  
6 1295 (same). The Supreme Court recently made clear in the context of Title VII  
7 “that the anti-retaliation provision...is not limited to [adverse employment actions]  
8 that affect the terms and conditions of employment.” Burlington Northern & Santa  
9 Fe Railway Co. v. White, 548 U.S. 53, 64 (2006).

10  
11  
12  
13  
14 Here, Defendant Ameri has threatened workers with a number of  
15 consequences for speaking with the Secretary – harassment, termination,  
16 deportation, and physical violence – all of which clearly constitute adverse actions  
17 within the meaning of the FLSA’s anti-retaliation provision. Ferniza Decl. ¶¶ 9-  
18 10. Moreover, in addition to the adverse actions threatened, the mere threats to  
19 carry out these actions can and does constitute an adverse action in that they are  
20 “reasonably likely to deter employees from engaging in protected activity.” Ray,  
21 217 F.3d at 1243; see also Solis v. SCA Restaurant Corp., 938 F. Supp. 2d 380,  
22 399 (E.D.N.Y. 2013) (threat of termination is adverse action under FLSA anti-  
23 retaliation provision); Harris v. Oak Grove Cinemas, Inc., 2013 WL 3456563 (D.  
24 Or. May 2, 2013) (granting TRO to enjoin threats of termination and bodily harm  
25  
26  
27  
28

1 against employees that cooperated with Secretary's FLSA investigation);  
2 Furthermore, Defendant Ameri's ongoing and persistent questioning of employees  
3 regarding their cooperation with the Secretary's investigation, which has made  
4 employees feel threatened and intimidated, is also an adverse action. Ferniza Decl.  
5

6 ¶ 9.

7  
8 *iii. Causation*

9 For the final element – a causal link between the protected activity and the  
10 adverse action – a party claiming retaliation under the FLSA must “proffer  
11 evidence from which a reasonable factfinder could infer that the employer  
12 retaliated against him for engaging in the protected activity.” Blackie v. State of  
13 Me., 75 F.3d 716, 723 (1st Cir. 1996). The “causal connection may be  
14 demonstrated by evidence of circumstances that justify an inference of retaliatory  
15 motive, such as protected conduct closely followed by adverse action.” Schnuck  
16 Markets, Inc., 121 F.3d at 1395 (citations omitted).  
17  
18  
19

20 Here, there can be little doubt that Defendant Ameri's threats of retaliation  
21 and other intimidation of employees are in response to Defendant Ameri's belief  
22 that his employees engaged in the protected activities of filing complaints with the  
23 Secretary and providing information in the Secretary's ongoing investigation.  
24  
25 Indeed, Defendant Ameri indicated to workers that he would carry out the threats  
26 specifically against anyone found to have cooperated with the Secretary. Ferniza  
27  
28

1 Decl. ¶ 10. This is precisely the type of intimidation that the FLSA's anti-  
2 retaliation provision was designed to prevent. Kasten, 131 S. Ct. at 1333 (the  
3 "anti-retaliation provision makes [the FLSA's] enforcement scheme effective by  
4 preventing 'fear of economic retaliation' from inducing workers 'quietly to accept  
5 substandard conditions.'" (citation omitted).  
6  
7

8  
9 b. The Secretary Will Show Defendants Have Violated Section 11  
10 and Obstructed the Secretary's Exercise of His Investigative Pow-  
11 ers

12 The Secretary is likely to prevail in showing that Defendant Ameri has  
13 violated Section 11(a) of the FLSA by prohibiting his employees from  
14 communicating to the Secretary. Section 11 of the FLSA empowers the Secretary  
15 to:  
16

17 investigate...the wages, hours,...and practices of  
18 employment[,]...enter and inspect such places[,]...question  
19 such employees, and investigate such facts, conditions,  
20 practices, or matters as he may deem necessary or  
21 appropriate to determine whether any person has violated  
22 any provision of [the FLSA]....the Secretary shall bring all  
actions under section 17 to restrain violations of this chapter.

23 29 U.S.C. § 211(a). The FLSA grants the Secretary these investigatory powers  
24 because the statute "relies for enforcement..., not upon 'continuing detailed federal  
25 supervision or inspection of payrolls,' but upon 'information and complaints  
26 received from employees seeking to vindicate rights claimed to have been  
27  
28

1 denied.”” Kasten, 131 S. Ct. at 1333. Here, Defendants have plainly violated the  
2 FLSA’s investigatory provision by directing their employees to provide the  
3 Secretary’s investigators with false information regarding their pay, hours, and  
4 length of employment. Ferniza Decl. ¶ 7. Such instructions have especially  
5 hampered the Secretary’s ability to determine the extent of any FLSA violations,  
6 because the Defendants failed to keep any records of hours worked and have no  
7 payroll records whatsoever for the period prior to March of this year. Bui Decl. ¶  
8 6. Therefore, speaking with employees is the only way the Secretary can  
9 determine how much the employees actually worked and how much they were  
10 paid. See Kasten, 131 S. Ct. at 1333 (enforcement of the FLSA depends upon  
11 workers to provide information).

12 Defendants’ instructions to provide false information combined with  
13 Defendants’ concurrent threats against employees who cooperate or are perceived  
14 to cooperate with the Secretary’s investigation has caused these workers to  
15 rightfully fear continued retaliation if they speak truthfully to the Secretary. See  
16 Ferniza Decl. ¶¶ 7-11. Workers have told Wage and Hour that they believe they  
17 would be fired or deported if Defendant Ameri found out that they had spoken with  
18 the Secretary. Id. at ¶ 11. It is critical that the Court put a stop to the Defendants’  
19 interference because, as stated by the Supreme Court in Kasten, the Secretary  
20 needs to be able to interview workers to enforce the FLSA. Kasten, 131 S. Ct. at  
21  
22  
23  
24  
25  
26  
27  
28

1 1333. Section 11(a) directs the Secretary to seek injunctive relief to stop any  
2 employer who impedes the Secretary's investigation, and the Secretary is likely to  
3 succeed in such an action due to the Defendants' brazen obstruction. 29 U.S.C. §§  
4 211(a), 217.  
5

6 **2. Absent Immediate Injunctive Relief, the Secretary, the Public, and**  
7 **Defendants' Employees Will Continue to Suffer Irreparable Harm**  
8

9 It is well-established that an employer's retaliatory acts can cause irreparable  
10 harm by deterring potential complainants or witnesses from coming forward to  
11 challenge the employer's illegal conduct. See Holt v. Cont'l Grp., Inc., 708 F.2d  
12 87, 91 (2nd Cir. 1983) ("A retaliatory discharge carries with it the distinct risk that  
13 other employees may be deterred from protecting their own rights . . . or from  
14 providing testimony for the plaintiff in her effort to protect her own rights. These  
15 risks may be found to constitute irreparable injury"); see also Arcamuzi v.  
16 Continental Air Lines, Inc., 819 F.2d 935, 938-39 (9th Cir. 1987) ("[A]llegations  
17 of retaliation for the exercise of statutorily protected rights represent possible  
18 irreparable harm far beyond economic loss"); Carrillo v. Schneider Logistics, Inc.,  
19 2012 WL 556309 (C.D. Cal. 2012) ("courts routinely recognize that retaliatory  
20 discharges deter workers from vindicating their statutory rights and seeking access  
21 to courts, and that these injuries constitute irreparable harm"). The "resulting  
22 weakened enforcement of federal law can itself be irreparable harm in the context  
23  
24  
25  
26  
27  
28

1 of a preliminary injunction application.” Mullins, 626 F.3d at 55; see also Centeno-  
2 Burney, 302 F. Supp. 2d at 135. The deterrent effect on workers prevents the  
3 Secretary from exercising his authority to investigate by limiting the Secretary’s  
4 ability to interview workers and learn of potential FLSA violations.  
5

6 Here, numerous parties will be irreparably harmed if Defendant Ameri is not  
7 enjoined from further obstruction and retaliation: 1) the Secretary; 2) the  
8 employees currently subjected to these unlawful conditions; 3) and the public at  
9 large – particularly Defendants’ law-abiding competitors whose businesses are  
10 undercut by Defendants’ unfair and unlawful business practices. The employees  
11 themselves are irreparably harmed by being discouraged from coming forward to  
12 vindicate their potential rights under the FLSA by the looming threats of  
13 harassment, termination, immigration consequences, and physical violence if  
14 Defendant Ameri learns that they spoke to the Secretary. See Ferniza Decl. ¶ 12.  
15 The employees’ “fear of economic retaliation” is inducing them “to quietly accept  
16 substandard conditions.” Kasten, 131 S. Ct. at 1333 (quoting Robert DeMario  
17 Jewelry, 361 U.S. at 292).  
18  
19  
20  
21  
22

23 The Secretary relies on the testimony of workers when conducting  
24 investigations into employers’ wage and hour violations, especially here where  
25 Defendants failed to keep records and employee testimony is the only means  
26 available to the Secretary to determine the actual working conditions. Kasten, 131  
27  
28

1 S. Ct. at 1333. Without assurances from the Court that witnesses who cooperate  
2 with the government are protected from retaliation, the Secretary cannot effectively  
3 enforce the law in this case, violating the investigative provision of the FLSA and  
4 hampering other current and future investigations by the Secretary in this  
5 community. The “resulting weakened enforcement of the FLSA” directly  
6 interferes with and irreparably harms the Secretary’s enforcement powers.  
7

8  
9 Mullins, 626 F.3d at 55. If this Court does not enter the relief sought, Defendant  
10 Ameri will continue to threaten and intimidate potential witnesses, preventing the  
11 Secretary from exercising his authority under Section 11 to determine the full  
12 scope of Defendants’ violations of FLSA, and harming the Secretary’s future  
13 investigations.  
14  
15

16 **3. The Balance of Equities Tilts Sharply in the Secretary’s Favor and**  
17 **an Injunction is in the Public Interest**  
18

19 The balance of equities tilts sharply in the Secretary’s favor, and entering the  
20 preliminary injunction is in the public interest. See Independent Living Ctr. of S.  
21 Cal., Inc. v. Maxwell-Jolly, 572 F.3d 644, 657-58 (9th Cir. 2009) (court may  
22 consider last two Winter factors together). Defendants Alkanan, Inc. and Karim  
23 Ameri have no legitimate interest in preventing the Secretary from exercising the  
24 investigative authority granted by Section 11 of the FLSA. Further, Defendants  
25 have no legitimate interest in inflicting harassment, termination, immigration  
26  
27  
28

1 consequences, or physical bodily harm upon their employees or in retaliation  
2 against their employees for the employees' protected communications with the  
3 Secretary. The Secretary, on the other hand, seeks only to have Defendants be  
4 ordered to comply with the law and that the employees be reminded of their  
5 protected rights under the Act. Restraining Defendant Ameri's contact with his  
6 employees pending the completion of the Secretary's investigation will ensure that  
7 he complies with the FLSA's investigative and anti-retaliation provisions and  
8 ensure that his employees feel free to report violations and otherwise communicate  
9 with the Department of Labor.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 (4) Requiring Defendant Karim Ameri to read aloud, or permitting a representa-  
2 tive of the Secretary to read aloud, the following statement to all employees  
3 employed at Alkanan's Recycling Innovation and Valley Recycling facili-  
4 ties informing them of their right to speak with representatives of the Secre-  
5 tary free from retaliation or threats of retaliation or intimidation by Defend-  
6 ants, the statement to be read during employees' paid working hours:  
7

8  
9 *You are protected by the Fair Labor Standards Act and have the right to*  
10 *participate freely in the U.S. Department of Labor's investigation into*  
11 *your employer's pay practices. You have the right to speak freely with*  
12 *investigators or other officials from the Department of Labor. Your em-*  
13 *ployer is prohibited from retaliating against you in any way, including by*  
14 *terminating you, reporting you to immigration, inflicting physical harm*  
15 *on you, or threatening to do any of these things because you spoke with*  
16 *the Department of Labor.*

17 *The U.S. District Court for the Central District of California has ordered*  
18 *Mr. Ameri, and anyone acting on Mr. Ameri's behalf, to cease coercing,*  
19 *retaliating against, threatening to retaliate against, intimidating, or at-*  
20 *tempting to influence or in any way threatening employees for providing*  
21 *information to the Department of Labor. The Court has barred Mr.*  
22 *Ameri from contacting or communicating with any employees of Alkanan*  
23 *regarding any complaints that employees have made or will make to the*  
24 *Department of Labor.*

25 *Usted está protegido por la Ley de Normas Justas de Trabajo y tiene el*  
26 *derecho de participar libremente en la investigación del Departamento*  
27 *de Trabajo. Usted tiene el derecho de hablar libremente con investigado-*  
28 *res o otras personas del Departamento de Trabajo. Su empleador está*  
*prohibido de hacer represalias contra de usted de cualquier manera in-*  
*cluyendo la terminación de usted, reportando usted a inmigración, infligir*  
*daño físico a usted, o amenazar con hacer cualquiera de estas cosas*  
*porque usted hablo con el Departamento de Trabajo.*

1 *El Tribunal Federal de Distrito Central de California ha ordenado que el*  
2 *señor Ameri, y cualquier persona que actúe en el nombre de él, cesen*  
3 *coerción o vindicación o amenazas o intimidación o intentar influir o*  
4 *amenazar de cualquier manera los empleados por dar información al*  
5 *Departamento de Trabajo. El Tribunal ha prohibido que el señor Ameri*  
6 *contacte o comuniqué con empleados de Alkanan acerca de cualquier*  
7 *comunicación entre ellos y el Departamento de Trabajo.*

8 (5) Requiring Defendants to post at each worksite of Defendant Alkanan a hard  
9 copy of the statement included in ¶ 4 above, in both English and Spanish,  
10 and providing each employee with a copy of the written statement, in Eng-  
11 lish and in Spanish, along with the written paystub provided to each em-  
12 ployee with his or her next paycheck; and

13 (6) Prohibiting Defendant Karim Ameri from speaking directly to employees of  
14 Defendant Alkanan's recycling facilities, either directly or through another  
15 person acting on his behalf, regarding any communication any employee has  
16 or will have with the Department of Labor about the pending investigation  
17 by the Wage and Hour Division.  
18

19 Plaintiff further requests that a hearing on his request for preliminary in-  
20 junction be held as soon as is practicable, and Plaintiff requests the following addi-  
21 tional relief:  
22

23 (1) Providing for costs and expenses to reimburse Plaintiff in maintaining this  
24 application; and  
25

26 (2) Providing for all such other relief as may be appropriate, just, and proper.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: December 16, 2013

Respectfully submitted,

M. PATRICIA SMITH  
Solicitor of Labor

JANET M. HEROLD  
Regional Solicitor

DANIEL J. CHASEK  
Associate Regional Solicitor

  
\_\_\_\_\_  
NANCY E. STEFFAN  
Trial Attorney  
Attorneys for Plaintiff  
United States Department of Labor

**EXHIBIT A**

1 Janet M. Herold  
Regional Solicitor  
2 Daniel J. Chasek  
Associate Regional Solicitor  
3 **NANCY E. STEFFAN** (CSBN 280958)  
Trial Attorney  
4 Office of the Solicitor  
U.S. Department of Labor  
5 350 S. Figueroa St., Suite 370  
Los Angeles, California 90071  
6 Direct: (213) 894-5366  
Facsimile: (213) 894-2064  
7 Email: Steffan.Nancy.E@dol.gov

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **THOMAS E. PEREZ**, Secretary of  
12 Labor, United States Department of  
Labor,

13  
14 Plaintiff,

15 v.

16 **ALKANAN, INC. d/b/a Recycling**  
17 **Innovation d/b/a Valley Recycling**, a  
corporation; **KARIM AMERI**, an  
individual;

18 Defendants.  
19  
20

} Civil Action

} File No. \_\_\_\_\_

} **DECLARATION OF WAGE AND  
} HOUR DISTRICT DIRECTOR  
} KIMCHI BUI IN SUPPORT OF  
} PLAINTIFF'S MOTION FOR  
} TEMPORARY RESTRAINING  
} ORDER**

21  
22  
23 I, KIMCHI BUI, hereby declare and state as follows:

24 1. I am the District Director for the Los Angeles District Office of the Wage  
25 Hour Division of the United States Department of Labor ("Wage and Hour" or the  
26 "District Office"). I have personal knowledge of the facts stated herein, and, if  
27 necessary, I could and would testify to the facts stated below. Further, I have reviewed  
28

1 the Wage and Hour official file regarding this matter and am familiar with the  
2 documents contained therein, which were made in the ordinary course of government  
3 business by myself or other Wage and Hour staff members.  
4

5         2. My office has authorized the investigation of Alkanan, Inc. d/b/a Recycling  
6 Innovation, d/b/a Valley Recycling ("Alkanan") which was commenced on or about  
7 October 28, 2013, pursuant to the Fair Labor Standards Act of 1938, as amended (the  
8 "Act" or the "FLSA"), 29 U.S.C. §§ 201, et seq. to determine whether Alkanan had  
9 violated terms of the FLSA and, specifically, its minimum wage and overtime  
10 provisions, 29 U.S.C. §§ 206-207 (the "Investigation").  
11  
12

13         3. Alkanan is a California corporation in the recycling business with its  
14 principal place of business at 29110 Quail Run Drive, Agoura Hills, CA 91303.  
15

16         4. Alkanan operates approximately six recycling facilities ("recycling  
17 facilities" or "facilities") in the San Fernando Valley area under the names Recycling  
18 Innovation and Valley Recycling. At these facilities, Alkanan purchases recyclable  
19 materials from the public and resells them to recycling factories.  
20  
21

22         5. Karim Ameri is the co-owner of Alkanan and manages the day-to-day  
23 operations of the facilities. Mr. Ameri hires, fires, and supervises employees; sets  
24 employees' schedules; and sets and pays employees' wages.  
25

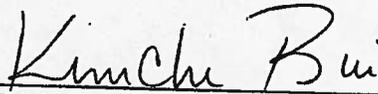
26         6. When Wage and Hour began this investigation, Mr. Ameri informed Wage  
27 and Hour that Alkanan does not keep records of the hours that its employees work.  
28

1 Rather, according to Mr. Ameri, employees are paid a flat rate of \$65-70 per day for  
2 shifts that last up to ten hours, up to six days per week. Furthermore, Alkanan did not  
3 keep payroll records of any kind prior to March of 2013.  
4

5 7. On December 4, 2013, Mr. Ameri and his CPA visited the District Office  
6 and requested a meeting regarding the Investigation. Mr. Ameri's CPA told me that Mr.  
7 Ameri was upset by the way his employees had been acting since the Investigation  
8 began. Mr. Ameri was upset that his employees were claiming that he owes them  
9 money. He was also upset that at least one employee had complained about Alkanan's  
10 pay practices on Facebook. Mr. Ameri's CPA asked me what he could do if employees  
11 complain about his pay practices on Facebook. I told him that he could not retaliate or  
12 otherwise interfere with our investigation.  
13  
14  
15  
16

17 8. Mr. Ameri's CPA also told me that he believed that some of Mr. Ameri's  
18 comments to employees had been misinterpreted or misunderstood due to a language  
19 barrier. Mr. Ameri's CPA stated that in their native language, a threat to "break his  
20 arm" does not constitute a serious threat of physical violence. Mr. Ameri's CPA stated  
21 that Mr. Ameri did not actually intend to threaten physical violence when he threatened  
22 to break an employee's arm.  
23  
24  
25  
26  
27  
28

1 I declare, under the penalty of perjury, of the laws of the United States, that the  
2 foregoing is true and correct and that this declaration was executed in Los Angeles,  
3 California on December 16<sup>th</sup>, 2013.  
4

5  
6   
7 KIMCHI BUI,  
8 DISTRICT DIRECTOR  
9 Wage and Hour Division, Los Angeles District Office  
10 United States Department of Labor  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**

1 Janet M. Herold  
Regional Solicitor  
Daniel J. Chasek  
2 Associate Regional Solicitor  
NANCY E. STEFFAN (CSBN 280958)  
3 Trial Attorney  
Office of the Solicitor  
4 U.S. Department of Labor  
350 S. Figueroa St., Suite 370  
5 Los Angeles, California 90071  
Direct: (213) 894-5366  
6 Facsimile: (213) 894-2064  
7 Email: Steffan.Nancy.E@dol.gov

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **THOMAS E. PEREZ**, Secretary of  
12 Labor, United States Department of La-  
bor,

13 Plaintiff,

14 v.

15 **ALKANAN, INC. d/b/a Recycling**  
16 **Innovation**, a corporation; **KARIM**  
**AMERI**, an individual;

17 Defendants.  
18  
19  
20

Civil Action

File No. \_\_\_\_\_

**DECLARATION OF WAGE AND  
HOUR TECHNICIAN CAROLINA  
FERNIZA IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER.**

21 Now comes CAROLINA FERNIZA, and states as follows:  
22

23 1. I have been, at all relevant times herein, employed by the Secretary of  
24 Labor ("Secretary") in the Wage and Hour Division of the United States  
25 Department of Labor ("Wage and Hour") as a Technician in the Los Angeles,  
26 California District office.

27 2. As set forth below, I have personal knowledge of the matters stated  
28 herein and, if necessary, I could and would testify to the facts stated below.

1           3.     I am fluent in English and Spanish.

2           4.     It is and has been part of my official duties to assist with  
3 investigations of violations of the Fair Labor Standards Act of 1938, as amended  
4 (29 U.S.C. § 201, et seq.). Since October of this year, I have been assigned to  
5 conduct interviews with Spanish-speaking employees of Alkanan, Inc. d/b/a  
6 Recycling Innovation d/b/a Valley Recycling (“Alkanan”) as part of Wage and  
7 Hour’s investigation into Alkanan’s pay practices.  
8

9           5.     I began conducting interviews of Alkanan employees on or about  
10 October 28, 2013. The employees I have interviewed work in the recycling  
11 facilities operated by Alkanan. The employees’ duties including purchasing  
12 recyclable goods from members of the public who bring their recyclables to the  
13 facilities.  
14

15           6.     The employees I have spoken with are native Spanish speakers. The  
16 employees have told me that Mr. Ameri speaks to them in English or Spanish,  
17 although Spanish is not Mr. Ameri’s native language.

18           7.     Beginning in early November, employees told me that Defendant  
19 Karim Ameri instructed them to provide false information to the Department of  
20 Labor. Employees informed me that Mr. Ameri told them that if they are  
21 contacted by the Department of Labor they should state that they work only part  
22 time, that they are paid the minimum wage, that they are paid by the hour, that they  
23 are paid by check, and that they have been working for Mr. Ameri for only three  
24 months. Employees told me that Mr. Ameri instructed them to make these  
25 statements even though they are not true. To the contrary, employees have told me  
26 that they have worked shifts of 60 hours per week or more, that they are paid a flat  
27 daily rate regardless of the number of hours worked, and that they have been paid  
28

1 in cash. All of the employees I have spoken with have worked for Alkanan for  
2 more than three months; many have worked for Alkanan for several years or more.

3 8. Employees have also told me that Mr. Ameri required them to write  
4 letters stating that Mr. Ameri is a good boss, that they are paid properly, and that  
5 they have only been working for Alkanan for three months, even though this is not  
6 true. Employees were not given copies of these letters.

7  
8 9. In early December, I learned from employees that that Mr. Ameri  
9 frequently asks them, in one-on-one conversations, whether they have spoken to  
10 the Department of Labor and whether they know which of their coworkers has  
11 spoken to the Department of Labor. Employees have reported to me that Mr.  
12 Ameri continues to ask these questions, repeatedly, even after they tell him that  
13 they have not spoken to the Department of Labor and that they do not know who  
14 has. Employees have told me that they feel harassed and threatened by this  
15 repeated questioning because they are fearful that Mr. Ameri will find out that they  
16 have spoken to me.

17  
18 10. Employees are afraid to tell Mr. Ameri that they have spoken to me  
19 because he has threatened to retaliate against any employee who complains to the  
20 Department of Labor. On various occasions, Mr. Ameri has told employees that if  
21 he finds out who has complained to the Department of Labor that he will fire that  
22 person, that the person will be reported to immigration, that he will "make [that  
23 person's] life bad", and that he will "break [that person's] teeth." Employees have  
24 told me about these conversations. One employee also played me several  
25 recordings, which the employee told me were made during conversations with Mr.  
26 Ameri. In the recordings, I heard an individual that the employee identified as Mr.  
27 Ameri saying that he planned to get rid of people who had complained to the  
28

1 Department of Labor and that these people would be reported to immigration. I  
2 also listened to recordings in which Mr. Ameri said that when he found out who  
3 had complained to the Department of Labor that he would "make his life bad" and  
4 "break his teeth."

5  
6 11. As a result of these threats, the employees I have spoken to are very  
7 worried that Mr. Ameri will find out that they have spoken to me. The employees  
8 I have interviewed repeatedly ask whether their names will be revealed to their  
9 employer if they speak with me. Employees are worried that they will be fired or  
10 deported if Mr. Ameri learns that they have spoken with Wage and Hour. One of  
11 the employees I spoke with told me that he believes Mr. Ameri would want to kill  
12 him if he found out he spoke with the Department of Labor. These employees are  
13 unwilling to be identified at this time for fear of Mr. Ameri's retaliation against  
14 them.

15  
16 12. Mr. Ameri's attempts to coerce his employees not to speak truthfully  
17 to me have limited my ability to investigate Alkanan's pay practices. To date,  
18 several employees have refused to speak with me regarding their working  
19 conditions.

20  
21 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the  
22 laws of the United States of America that the foregoing is true and correct.  
23

24  
25 Dated: 12/16/2013

26   
CAROLINA FERNIZA