ASIAN PACIFIC AMERICAN LEGAL CENTER

MEMBER OF
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FOR ADVANCING JUSTICE

January 26, 2011

The Hon. Tani Cantil-Sakauye, Chief Justice,
and Associate Justices of the Supreme Court
c/o Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: ***Overhill Farms, Inc. v. Nativo Lopez, et al.*, No. S189293**
Court of Appeal Case No. G042984 (filed Nov. 15, 2010)
Letter in Support of the Petition for Review (Cal. R. Ct. 8.500(f))

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to Cal. R. Ct. 8.500(f), the Asian Pacific American Legal Center (APALC), Legal Aid Foundation of Los Angeles (LAFLA), and 21 organizations[1] together submit this amicus curiae letter in support of the petition for review.

Amici are local, state and national organizations that work to advance racial and economic justice. For decades, amici and their members have safeguarded the fundamental rights at stake in this case by collectively representing tens of thousands of low-wage workers, participating in direct action, and filing litigation. Amici's clients are almost invariably poor, of color, and unrepresented by unions. Amici's long history and extensive experience fighting for low-wage workers' rights have taught us that the First Amendment rights of workers to speak out, to protest, to name the injustices they experience, and to express themselves is crucial, not only to the workers who must reassert their humanity in the face of daily exploitation, but to our democracy.

The Court of Appeal's decision in this case, if allowed to stand, will fundamentally alter the legal protections that workers enjoy to engage in free expression. Specifically, the Court of Appeal wrongly concluded that use of the term "racist" by workers engaged in a heated dispute with their employers is a provably false statement that gives rise to a defamation claim. Unless reversed, the decision will chill the speech of workers and others who will have no choice but to

[1]Other amici who submit this letter in support of review are: Alliance of Guestworkers for Dignity, California Rural Legal Assistance Foundation, California Rural Legal Assistance, Inc., Centro Legal de la Raza, Carwash Workers Organizing Committee of the United Steelworkers, Friends of Farmworkers, Inc., Gender Justice, Global Workers, Legal Aid Society – Employment Law Center, Louisiana Justice Institute, Low Wage Workers Legal Network, National Employment Law Project, National Lawyers Guild – Labor and Employment Committee, Neighborhood Legal Services of Los Angeles County, New Orleans Workers' Center for Racial Justice, Northwest Workers' Justice Project, Public Justice Center, Inc., Maurice and Jane Sugar Law Center for Economic and Social Justice, Women's Employment Rights Clinic of Golden Gate University School of Law, Working Hands Legal Clinic (WHLC), and Worksafe, Inc. A full description of all amici is attached to this letter as Appendix A.

stay silent or risk meritless litigation—the precise type of litigation California's anti-SLAPP statute was designed to deter. Amici join in the Petition for Review and urge the California Supreme Court to ensure that this does not happen.

I. Freedom of Expression to Challenge Racism Has a Long-Standing Tradition in American Democracy and is Critical to Advancing Civil Rights and Eradicating Economic Exploitation.

Freedom of expression is a hallmark of American democracy. Given the nation's legacy of slavery and discrimination, the right to publicly challenge racism is fundamental to preserving our democracy. A "nation of immigrants," the United States has a framework of immigration laws that is rooted in racism and exclusion. (See Hing, *Institutional Racism, ICE Raids, and Immigration Reform* (2009) 44 U.S.F. L. Rev. 307, 323-342 [chronicling institutionalized racism of U.S. immigration laws, beginning with forced migration of African slave labor]; Weil, *Races at the Gate: A Century of Racial Distinctions in American Immigration Policy (1865-1965)* (2001) 15 Geo. Immigr. L.J. 625 [discussing the United States' development of a racialist, restrictionist federal immigration policy].) Courts have recognized both the history and the modern day reality of racism in this country:

> American society remains deeply afflicted by racism. Long before slavery became the mainstay of the plantation society of the antebellum South, Anglo-Saxon attitudes of racial superiority left their stamp on the developing culture of colonial America.... Today, over a century after the abolition of slavery, many citizens suffer from discriminatory attitudes and practices, infecting our economic system, our cultural and political institutions, and the daily interactions of individuals.

(*Lee v. Superior Court* (1992) 9 Cal. App. 4th 510, 516-17 [quoting Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 Harv. C.R.-C.L. L. Rev. 133, 135-36 (1982)]; see also *Korematsu v. United States* (1944) 323 U.S. 214, 233 [Murphy, J. dissenting] ["This exclusion of 'all persons of Japanese ancestry, both alien and non-alien,' from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved.... Such exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism."])

The civil rights movement exemplifies that the ability of American democracy to evolve and progress is predicated upon the First Amendment right to speak out against racism and discrimination. In 1955, shortly after Rosa Parks refused to get up from her seat on a Montgomery bus, Martin Luther King, Jr. remarked, "The only weapon that we have in our hands this evening is the weapon of protest." (Clayborne Carson, The Eyes on the Prize Civil Rights Reader (1991) at 49.) King recognized that the intersection of racism and economic

exploitation is at the vanguard of the civil rights movement and that both must be confronted simultaneously through free speech in order to achieve equality.[2]

When the Court of Appeal denied the Latino immigrant workers in this case ("Defendants") the right to publicly protest racist exploitation by their employer, the court jeopardized our cherished democratic tradition of protecting free speech that exposes inequality and oppression. At stake in this case is not just the ability of workers to stand up and speak out against mistreatment and abuses in the workplace, but also the capacity of the public to advance civil rights and racial justice in this country.

II. People of Color and Immigrants Are Disproportionately Overrepresented in Low-Wage Industries Where Exploitation is Prevalent.

For low-wage immigrant workers of color like Defendants, the daily reality of the workplace is characterized by poverty wages, unsafe and hazardous working conditions, racist and sexist discriminatory attitudes and practices, and the constant threat of employer intimidation and retaliation if they dare to contest such exploitation and abuses. Racism, sexism, economic exploitation, and anti-immigrant sentiment are intertwined with the creation and perpetuation of abysmal working conditions in low-wage industries such as food production, agriculture, garment, domestic services, janitorial, restaurant, construction, manufacturing/packaging, and retail.[3]

A seminal study of low-wage workers in Los Angeles recently found that people of color and immigrants are disproportionately overrepresented in low-wage industries[4] and are more likely to be exploited than their white and U.S.-born counterparts. (See Milkman, et al., *Wage Theft and Workplace Violations in Los Angeles: the Failure of Employment and Labor Law for Low-Wage Workers* (2010).) Notable highlights from this study of 1,815 low-wage workers in multiple industries include:

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[2]The night before King was assassinated in April 1968, he spoke of the critical need to challenge an injunction against a march to protest racist, exploitive treatment of Black sanitation workers employed by the City of Memphis: "We have an injunction and we're going into court tomorrow morning to fight this illegal, unconstitutional injunction. All we say to America is, 'Be true to what you said on paper.'" (*Id.* at 413.) The struggle of the Black sanitation workers in Memphis did not just reflect the legacy of slavery, but also served as a harbinger for the modern-day plight of low-wage immigrant workers and workers of color, like the defendants in this case, who labor at the intersection of racism, sexism, economic exploitation, and anti-immigrant bias.

[3] There is a historical context for the structural racism that exists in low-wage industries. For example, when the landmark Fair Labor Standards Act ("FLSA") was passed during the New Deal era, agricultural and domestic workers – at the time predominantly African American workers – were excluded from FLSA's protections. This exclusion was at the insistence of conservative Southern Democrats who, seeking to preserve the racial and economic caste system in the South, made it a condition of their support for the legislation. (See Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal* (1987) 65 Tex. L. Rev. 1335, 1371-1379.)

[4] Low-wage workers are more likely to be Black or Hispanic than high wage workers. (Gregory Acs, et. al., Progress Toward Self-Sufficiency for Low-Wage Workers: Final Report (2010) at 21.)

- Workers of color comprised more than 97 percent of respondents in the study. (*Id.* at 15.)
- Immigrant workers comprised more than 80 percent of respondents in the study. (*Id.* at 15.)
- 38.3 percent of Latino workers surveyed experienced minimum wage violations, compared to 10.3 percent of White workers. (*Id.* at 43.)
- 35.8 percent of foreign-born workers surveyed experienced minimum wage violations compared to 15.5 percent of their U.S.-born counterparts. (*Id.* at 42.)

Moreover, the study found that, even within the context of low-wage industries characterized by substandard working conditions, female immigrant workers, like many of the Defendants in this case and the majority of terminated Overhill employees, are particularly exploited.

- Female Latina workers were twice as likely (49.6 percent) as their male Latino counterparts (27.3 percent) to experience minimum wage violations. (*Id.* at 42.)
- Female undocumented immigrant workers had the highest rate of minimum wage violations of any group – 57.4 percent. (*Id.* at 44.)

Indeed, as the California Supreme Court has noted, the "workers most often affected by [wage theft] abuses are low-wage workers, often non-English speaking immigrants in the garment, restaurant, electronics, and agricultural industries." (*Reynolds v. Bement* (2005) 36 Cal. 4th 1075, 1093.)

The racial hierarchy built into the very structure of low-wage industries serves to maintain oppressive working conditions for workers of color at the bottom. At the top of the hierarchy are entities that are primarily White-owned who control the industry and reap most of the profits. They in turn wield power over middlemen contractors who are often people of color and share race and even national origin with the workers they hire. These workers of color, who are largely Latino and Asian immigrants in California, toil at the bottom for sweatshop wages. Scholars have called this a "racialized social order that disenfranchises [workers] and makes it very difficult for them to rise up in protest." (Edna Bonacich, et. al., *Behind the Label: Inequality in the Los Angeles Apparel Industry* (2000) at 296.)

While Professor Bonacich described the garment industry, noting that its racial structure created a "current system of employment for garment workers [that] shares some features with the old system of slavery in the United States South," the same "racialized social order" characterizes the food manufacturing industry in which Defendants labored for Overhill Farms. The workforces in this industry are predominantly immigrant workers of color, while the employers who have power and control over industry and workplace conditions typically are not. In this racialized context, food production workers endure egregious working conditions. According to a recent report, immigrant women workers in the U.S. food industry routinely experience mistreatment at the hands of their employers, including wage theft, gender discrimination and sexual harassment, high rates of workplace exposures and injuries, and threats

of retaliation if the workers dare to complain about such abuses. (See S. Poverty Law Ctr., *Injustice On Our Plates: Immigrant Women in the U.S. Food Industry* (2010) at 21-53.)

The daily reality of racism and economic exploitation has a profound adverse effect on low-wage immigrant workers and workers of color. By definition, workplace discrimination and harassment "alter the conditions of [the victim's] employment and create an abusive working environment." (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal. App. 4th 30, 35 [citation omitted].) Courts have found that in the workplace some acts of racial hostility can send the message to workers that they "are unwelcome and considered unequal." (*Anthony v. County of Sacramento* (E.D. Cal. 1995) 898 F. Supp. 1435, 1448.) Racial discrimination can also lead to unsafe working conditions. (*Id.* at 1449 ["Where concern for safety and individual rights turns on race, an officer of color may well feel unable to trust her colleagues' concern for her own safety."]) Workers, particularly female workers, also face the prospect of "predatory exploitation" from sexually oriented remarks and other such offensive conduct, particularly in light of the bargaining positions of the parties. (*Donald Schriver v. Fair Employment & Hous. Com* (1986) 220 Cal. App. 3d 396, 411.)

The ability of workers to speak out in the face of these harsh realities is critical. The ability to do so without facing meritless litigation by an employer must be protected if the anti-SLAPP statute in California is to have any meaning.

III. The Court Should Grant Review Because the Court of Appeal Erred in its Legal Analysis of Defamation and Because of the Profound Chilling Effect the Decision, if Allowed to Stand, Would Have on Speech Related to Racial and Economic Justice.

The structural racism and racial hierarchy built into the very fabric of low-wage industries and workplaces highlight the Court of Appeal's error in determining that Defendants' statements were actionable defamation. Defendants alleged that Overhill Farms exploited and abused them in a number of ways. Specifically, Defendants stated that they experienced a workplace environment where the employer "inflicted 'racist and discriminatory abuse' on its workforce ... was 'abusive and racist' and 'discriminate[d] against Latinos,' [engaged in] 'unjust terminations and discriminatory treatment' ... '[was] abusive in the manner that it treat[ed] its employees,' ... 'stole time and money from the workers,' ... 'fired workers for expressing themselves freely according to the First Amendment ...,' and [] 'use[d] intimidation and fear and deception to control its workforce.'" (*Id.* at 6-7.) In this context, Defendants voiced their opinion that Overhill Farms engaged in "racist firings." (Appellants' Petition for Review at 6.)

These statements mirror the typical panoply of real and perceived, direct and structural, discriminatory mistreatment and abuses experienced by the predominantly immigrant and of color workers who toil in low-wage industries. Given the fear and threat of intimidation and retaliation that often exists when workers challenge workplace violations, Defendants stood up in the best of American democratic traditions when they decided not to remain silent and instead chose to exercise their First Amendment right of protest and free speech.

We urge the Court to grant review for two independent reasons. First, Defendants' statements[5] were non-actionable opinion that cannot form the basis for defamation. Second, the Court of Appeal's decision would have a profound chilling effect on speech and expression aimed at challenging racial and economic injustice.

A. Defendants' Statements Were Non-Actionable Opinion that Did Not *Ipso Facto* Allege a "Claim of Racially Motivated Employment Termination"

In cases, as here, involving "matters of public interest," the plaintiff "bears the burden of proving the statements at issue were false." (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal. App. 4th 1138, 1150 [reversing denial of anti-SLAPP motion by defendant garment workers seeking dismissal of a defamation action brought by their employer in response to a labor dispute where workers accused the employer of violating California labor laws].) Overhill Farms cannot meet its burden of proving that the statements at issue were false because the statements were non-actionable opinion.

As this Court has stated, "where potentially defamatory statements are published in a public debate, a heated labor dispute, or in another setting in which the audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion." (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal. 3d 596, 601, 603; see also *In re Blaney* (1947) 30 Cal. 2d 643, 649 ["[T]he use of such words as 'unfair' or 'unfair to organized labor' is not a falsification of facts"] [quoting *Cafeteria Employees Union v. Angelos* (1943) 320 U.S. 293, 295]; see also *Beverly Hills Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, 39 F.3d 191, 196 (8th Cir. 1994) [holding that calling an employer's actions "discriminatory" and "unfair to black employees" was not actionable defamation]; see also *Old Dominion Branch No. 496 v. Austin* (1974) 418 U.S. 264, 285 ["[W]ords like 'traitor' cannot be construed as representations of fact," nor can "loose language or undefined slogans," or words "like 'unfair' or 'fascist'," as these words are used "in a loose, figurative sense" and protected]; see also *Greenbelt Cooperative Pub. Ass'n v. Bresler* (1970) 398 U.S. 6, 13 [rejecting the claim that a speaker's use of the word "blackmail" meant that the speaker was charging the other party "with the crime of blackmail," and holding that "the word 'blackmail' in these circumstances was not slander"].)

The Court of Appeal overrode these long-held protections of speech to protest "traitor[ous]" and "fascist" acts. Like these terms, Defendants' charge that their employer was "racist" and engaged in "racist" activities constitutes protected statements of opinion. (See, e.g., *Smith v. School Dist.* (E.D. Pa. 2000) 112 F. Supp. 2d 417, 429 [calling someone "racist" is "merely non-fact based rhetoric," even if "unflattering, annoying and embarrassing."])

The Court of Appeal erred in taking statements Defendants made during protests—where

[5] We note that yet another reason for review is found in the Court of Appeal's failure to evaluate the statements made by each individual defendant. Defamation allegations must be specific and must, at a minimum, be attributed to individuals rather than groups or by association. The failure of the Court of Appeal to determine whether the allegations of defamatory statements were sufficient for each defendant is yet another error.

words such as "racist" are interpreted and protected in the context of the heated dispute in which they are made—and analyzing them as part of a legal claim for race discrimination under the Fair Employment and Housing Act (FEHA). (*Overhill Farms, Inc. v. Lopez*, 190 Cal. App. 4th 1248, 1263 (2010) [referencing the Department of Fair Employment and Housing to demonstrate that "a claim of racially motivated employment termination is a provably false fact"].) This analysis is without factual or legal support. Defendants' statements during protests, in flyers and on signs did not constitute "a claim of racially motivated employment termination" where the question of racial motivation is a provable element. (See *Heard v. Lockheed Missiles & Space Co.* (1996) 44 Cal. App. 4th 1735, 1748 ["[A]n individual is discriminated against when the employer 'treats some people less favorably than others because of their race.'"] [emphasis added] [quoting *Teamsters v. United States* (1977) 431 U.S. 324, 335-336, fn. 15.]) As the dissent in *Overhill Farms* made clear, "a closer examination [of the publications] reveals the absence of any charge that Overhill made its decision to terminate certain employees' employment *because* they were Hispanic or female." (*Overhill Farms, Inc.*, 190 Cal. App. 4th at 1277 [J. Fybel, dissenting] [emphasis in the original].) To the contrary, Defendants' statement that Overhill made a "racist" decision in terminating the workers with unresolved social security numbers was part and parcel of a much larger dispute in which Defendants also claimed that Overhill Farms "abuse[d]" its employees and engaged in "unjust" and "discriminatory" behavior. In the context of the dispute between Overhill Farms and its workers, the term "racist"—like the terms "unjust," "abusive," and "discriminatory"—is simply not subject to proof as factually true or false, and therefore cannot form the basis of a defamation claim.

The majority goes even further, concluding that Defendants' "disclosure of facts underlying the employment termination was materially incomplete and misleading, making their 'racist firing' claim sound far more credible than it actually is." (*Id.* at 1264.) The requirement that protesters meet some minimum threshold of "disclosure" about the circumstances surrounding the dispute, presumably to present a more complete story or to give credence to the other side, is unprecedented. Would an employee demonstrating against alleged wage and hour violations be obligated to carry picket signs that state the employer allowed for rest breaks occasionally? Would employees alleging gender discrimination have to include on its leaflets a statement that the employer employed some female workers in management? Courts have instead adopted broad protections for speech in the context of labor disputes and expect that "epithets, fiery rhetoric or hyperbole" will be "reciprocally attacked and defended, frequently with considerable heat." (*Gregory*, 17 Cal. 3d at 603.) In other words, courts have long rejected the Court of Appeal's notion that individuals should be hindered from expressing their views out of concern that such expression might somehow be "incomplete" or "misleading."

If the Court of Appeal's decision were to stand, all protest would invite litigation, citing to the proposition that as long as the terms used could be subject to proof under any theory of law, they can be provably false and therefore defamatory. Moreover, the Court of Appeal's decision requires workers engaged in a heated dispute with their employers to determine whether their message is fair and balanced enough or risk litigation. The implications of such an outcome are profound.

Particularly in the low-wage worker context, where people of color and immigrant workers endure some of the most abusive workplaces, and where the economic structures that permit such abuse often coincide with the racial hierarchy of the industry, the charge of "racist" in public demonstrations and protest cannot be proved false. As such, it cannot form the basis for a defamation cause of action.

The Court of Appeal also erred because under its own premise that Defendants' protest statements actually constituted a claim for racially motivated termination (as opposed to heated charges of "racism" and "racist" actions), such statements would be protected under Cal. Civ. Proc. § 425.16 as a statement "in connection with" civil litigation. (See *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1115 [stating that communications preparatory to or in anticipation of bringing an action or other official proceeding are "entitled to the benefits of section 425.16"]; see also *Dove Audio, Inc v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 784 [holding that the anti-SLAPP statute applies to prelitigation communications even if an "official proceeding" has not yet been initiated].) In other words, under the Court of Appeal's reasoning—which turned Defendants' public demonstrations into testimony in support of a legal claim of race-based termination—such statements would be protected under Civ. Proc. Code § 425.16(e)(1) and (e)(2). Defendants are engaged in litigation with Overhill Farms over working conditions and, to the extent the Court of Appeal concluded that Defendants' statements specifically addressed any claims related to litigation, the protections of the anti-SLAPP statute clearly apply. Indeed, both Civ. Proc. Code § 425.16 and Civ. Code § 47(b) protect litigants' right to access the courts and to make statements related to litigation without fear of being harassed subsequently by derivative tort actions. (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006).137 Cal.4th 1, 5.)

B. The Court of Appeal's Decision Chills Speech Regarding Discrimination and Workplace Exploitation in Contravention of Public Policy

Workers have a right to protest and speak out against real or perceived abuse, exploitation, and discrimination. (*First Nat'l Bank v. Bellotti*, 435 U.S. 765, 776 (1977) ["The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."] [internal citations and quotation marks omitted]; *Mandell v. County of Suffolk & John Gallagher* (2d Cir. 2003) 316 F.3d 368, 383 [holding that a government employee's testimony criticizing his department's systemic racism and anti-Semitism is constitutionally protected]; *Moore v. Summers* (D. D.C. 2000) 113 F. Supp. 2d 5, 26 [acknowledging that employees have a right to challenge perceived racism in their agency]; *cf. Noel v. McCain* (4th Cir. 1976) 538 F.2d 633, 636 ["The First and Fourteenth Amendments assure broad rights to criticize public officials about racial discrimination in the performance of their duties."]; *Baca v. Moreno Valley Unified Sch. Dist.* (E.D. Cal. 1996) 936 F. Supp. 719, 727-28 [holding that the California Constitution prohibits

censorship of statements that are critical of district employees, including allegations of racism that may be defamatory].)

The low-wage immigrant workers who are defendants in this case relied on this right to call out their employer for wage and hour violations, overtime violations, denial of benefits, low wages, workplace intimidation and abuse, and mass terminations, which they believed to be part of the racism they experienced in the workplace and in the industry in which they labored. Instead of protecting Defendants' right to expose racism and exploitation, the Court of Appeal determined that Defendants' statements were actionable defamation, thus chilling the speech of all workers who courageously speak out about the abuse they experience. If allowed to stand, the Court of Appeal's decision will ultimately discourage dialogue and debate about racism and other forms of oppression, thus undermining civil rights and creating tension with this state's strong public policies that favor elimination of discrimination and workplace exploitation.

California law reflects a public policy that strongly favors the elimination of discrimination and workplace exploitation. (See, e.g., Cal. Gov. Code § 12920 ["It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation."]; Cal. Lab. Code § 90.5(a) ["It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation . . . "]) Public policy also strongly favors protecting immigrant workers from exploitation. (See Cal. Lab. Code § 1171.5 [The Legislature finds and declares the following: (a) All protections, rights, and remedies under state law . . . are available to all individuals regardless of immigration status . . . . (b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and . . . no inquiry shall be permitted into a person's immigration status [unless necessary to comply with federal immigration law]."]; Cal. Gov. Code § 7285 [same].

California law further provides extended protections to employees engaging in concerted activity. See Cal. Labor Code § 923. The Court of Appeal erred in its suggestion that Defendants were entitled to lesser protections because the protests "did not involve the union" and were unrelated to collective bargaining or attempts to change a policy relating to all employees. (190 Cal. App. 4th at 1265, n. 6.) That is not the law in California. The right of workers to come together and to speak out belongs to workers promoting their individual rights and expressly protects concerted actions for "... other mutual aid or protection." (Cal. Labor Code § 923.) See, e.g., *Gelini v. Tishgart* (1999) 77 Cal. App. 4th 219, 222 [citing *Montalvo v. Zamora* (1970) 7 Cal. App. 3d 69]).

Defendants exercised their right to protest in furtherance of California's strong public policy to protect vulnerable workers from exploitation. Indeed, this state's history, and the country's, is filled with examples of the critical importance of such protest in advancing equality and racial justice. See Feldman, *Whose Common Good? Racism in the Political Community*

(1992) 80 Geo. L.J. 1835, 1876 [arguing that the reduction of racism requires society to "hold it at the forefront of political discussion" and to encourage inclusive dialogue within the broad community]; Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement* (1984) 36 Stan. L. Rev. 509, 530 ["[F]ree speech and dissent *protect* the ability of groups of people—including working people—to change their society, better their group situation, and expand their human freedom."] [emphasis in original].)

IV. Conclusion

In adopting California's anti-SLAPP statute, the Legislature declared, "[I]t is in the public interest to encourage continued participation in matters of public significance" and "this participation should not be chilled through abuse of the judicial process." Cal. Civ. Proc. § 425.16(a). The Court of Appeal's decision, if allowed to stand, would significantly impair participation in discussions of racial equality. It would invite employers, and any other targets of protest, to bring suit to silence efforts to shed light on abusive practices. It would further suppress the voices of workers who dare speak out about exploitation and oppressive working conditions in industries where the right to protest should be most encouraged and protected.

Respectfully submitted,

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APPENDIX A

Statements of Interest

The Alliance of Guestworkers for Dignity is a national membership organization of guestworkers with members in California. Our members frequently engage in local and national policy development on the issues of wage theft and worker health and safety, worker-led actions, and work with legal partners to litigate wage claims. Our members face significant obstacles to basic participation in democratic processes including speaking publicly about their direct experiences. Our members have regularly faced retaliation from current and former employers, at times working together with hostile immigration enforcement agencies, when they have participated in both litigation and democratic processes. It is axiomatic that democracy benefits when those affected by a situation offer their experience and perspective, and workers' centers offer a way for voices traditionally excluded from local, state, and national policy debates to participate and contribute. If the Court of Appeals' opinion is allowed to stand, it would set a bad precedent that would interfere with our members' ability to conduct their core missions of litigation and public policy participation. Moreover, the message to other vulnerable workers, including guest workers and other immigrant workers, would be that speaking out and advocating for policy changes will come at a high cost—too high for most vulnerable, low-wage workers including our members in California and across the United States.

The Asian Pacific American Legal Center ("APALC") is the largest legal organization in the country serving the Asian and Pacific Islander communities. Founded in 1983 and based in Los Angeles, APALC is a unique organization that combines traditional legal services with civil rights advocacy and leadership development. Its mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact Asian Pacific Americans and to create a more equitable and harmonious society. APALC is committed to challenging discrimination and safeguarding the constitutional and civil rights of the Asian Pacific American communities and other communities of color. APALC has a long history of challenging workplace exploitation and abuse in low-wage industries, including protecting the rights of immigrant workers to exercise their First Amendment rights to expose discrimination. Accordingly, APALC has a strong interest in the outcome of this case.

California Rural Legal Assistance Foundation (CRLA Foundation) is a non-profit legal services organization that provides, among other services, legal counseling and representation to low-income workers in employment related matters, including wage and hour disputes. They annually assist hundreds of farmworkers and other low-wage workers with employment-related legal problems, including workers who have been subjected to unlawful labor practices affecting the entire workforce. CRLA Foundation routinely represents large groups of workers in representative actions including class actions, opt-in actions under the Fair Labor Standards Act, 29 U.S.C. section 201, et seq.; actions under California's Labor Law Private Attorneys General Act ("PAGA" Cal. Labor Code section 2698, et seq.) and in proceedings before California's Agricultural Labor Relations Board. Many of CRLA Foundation's clients are immigrants, non-English speakers and others who suffer from discrimination in the workplace.

California Rural Legal Assistance, Inc. (CRLA) is a non-profit legal services provider with 21 offices located throughout rural California. For more than 30 years CRLA has provided direct representation to tens of thousands of farm workers and other low-wage workers on labor and employment issues. CRLA represents workers in opt-in actions under the Fair Labor Standards Act and in representative actions under the PAGA. CRLA provides community education and outreach and monitors compliance with state wage and hour and occupational health and safety requirements and uses communication about pending lawsuits and administrative complaints as an effective means of communicating the nature of the rights and protections available to their clients. CRLA regularly represents workers who express fear that there will be reprisals against themselves, their family or co-workers as a result of their participation in actions against their employers.

The Carwash Workers Organizing Committee of the United Steelworkers is committed to improving the lives of working families in greater Los Angeles. Carwash workers are some of the hardest working and most exploited workers in Los Angeles, often working for less than minimum wage and without the basic protections required. We support the petition for review of the decision of the Court of Appeal for the Fourth Appellate District in Case No. G042984, filed on November 15, 2010. We feel strongly about the revision of this decision because we believe that the impact it would have on the lives of carwash workers, who are not unionized and in their great majority are immigrants, would be highly detrimental.

Centro Legal de la Raza (Centro Legal) was founded in 1969 to provide culturally and linguistically appropriate legal aid services to low-income, predominantly Spanish-speaking, residents of Oakland's Fruitvale District and the greater Bay Area. Through legal services clinics, Centro Legal assists approximately 9,000 clients annually with support ranging from advice and referrals, to full representation in court in the areas of housing law, employment law, family law, consumer protection, immigration law and support to survivors of domestic violence. Of the clients that Centro Legal serves, it provides legal assistance to about 600 clients with employment-related problems per year. In Centro Legal's employment law practice, it focuses on assisting workers who face wage-theft in the workplace. A key aspect of this representation is informing workers of their right to speak out and voice any unfair labor practices. As a result, the outcome of this matter is of considerable interest to our organization and to the hundreds of wage and hour claimants we assist.

Friends of Farmworkers, Inc. is a Pennsylvania based non-profit legal services organization founded in 1975 whose mission is to improve the living and working conditions of indigent farmworkers, mushroom workers, food processing workers, and workers from immigrant and migrant communities. See: www.friendsfw.org/. The organization represents low wage workers and organizations and associations of such workers. The organization participates in state and national coalition organizations advocating on behalf of immigrant worker justice and represents membership organizations which engage in public advocacy on behalf of immigrant worker justice. California appellate courts are accorded considerable respect in other jurisdictions and the decision of the court below may cause a serious chilling effect on the First

Amendment rights of low wage workers trying to improve working conditions in their communities.

Lisa Stratton and Jill Gaulding co-founded GENDER JUSTICE, a nonprofit advocacy organization, in 2010. GENDER JUSTICE seeks to break down gender barriers that limit opportunity for all individuals, whether they identify as women or men, feminine or masculine, queer or straight (or reject such binaries entirely). It does so through efforts in four areas: impact litigation, education, legal outreach, and policy development. GENDER JUSTICE targets the root causes of gender discrimination, such as cognitive bias and stereotyping, and addresses the economic and personal consequences of gender discrimination. We focus particularly on communities who struggle more than most to gain access to justice, such as low-income, immigrant, and blue-collar workers.

Global Workers is a non-profit entity based in New York whose mission is *portable justice* – the right and ability of transnational migrants to access justice in the country of employment even after they have departed. To do this, Global Workers trains and supports the Global Workers Defender Network. The Defender Network is comprised of experienced human rights advocates in the migrant sending countries. These on-the ground partners provide various services such as locating clients, executing affidavits or other documents, or assisting with settlement distribution. The Defenders also educate migrants as to their rights before they migrate, and identify labor cases for workers who may not have received assistance in the U.S. before they return to their home country. The Defenders Network currently operates in Mexico and Guatemala but provide case-by-case advice and referral for other countries. Through consultations, trainings, and practice manuals, we also provide U.S. advocates advice on a broad array of issues related to transnational litigation. Because we were created to help give a voice to thousands of migrants who return to their home countries having suffered many injustices and not knowing that they had rights, the outcome of this case is critical. If the lower courts decision is not reversed, workers will then have zero incentive to ever say anything thereby furthering the chilling effect on some of our countries most vulnerable workers.

The Legal Aid Foundation of Los Angeles ("LAFLA") is a nonprofit public interest organization that has provided free civil legal services to low-income people in the metropolitan Los Angeles area for over 80 years. Each year, LAFLA assists, free of charge, thousands of workers from a range of low-wage industries, such as garment, retail, construction, manufacturing, janitorial, and restaurant. The majority of clients represented by LAFLA are immigrants and people of color whose basic employment rights, including the rights to minimum wage and overtime pay, are routinely violated and who often experience discrimination in the workplace. LAFLA regularly represents workers who have faced retaliation by their employers for speaking out and complaining about violations of their workplace rights.

The Legal Aid Society–Employment Law Center ("LAS-ELC"), founded in 1916, is a San Francisco-based nonprofit legal services organization that advocates nationally, through litigation and other means, for the employment rights of persons of color, immigrants, women, individuals with disabilities, the LGBT community, and the working poor. LAS-ELC has an interest in ensuring that the decisions rendered by the lower courts in this case

are reversed, and are not allowed to exert a severely chilling effect upon the ability of workers to freely and fully advocate for their workplace rights.

The Louisiana Justice Institute (LJI) is a non-profit civil rights legal advocacy organization and law firm that fosters and supports social justice campaigns for communities of color. LJI provides counseling, advocacy, and litigation on projects in six substantive legal areas, including worker rights/economic justice. Since our inception, LJI has worked tirelessly on issues on immigrant worker rights, particularly in the post-Katrina Gulf Coast environment, and with workers who to this day suffer civil and criminal jeopardy for their efforts to organize and work collectively for fair and equitable labor conditions, and treatment with dignity and respect. Currently, LJI serves as local counsel in David, et al. vs. Signal, et al., a proposed class-action case in the U.S. District Court for the Eastern District of Louisiana, involving the rights of Indian-born workers to fair/legal compensation. Because the Overhill Farms, Inc. v. Nativo Lopez, et al., No. S189293case has a direct impact on the ability of workers to express their views about employer action toward immigrant workers, LJI has an interest in the outcome of this case.

The Low Wage Workers Legal Network is an affiliation of over 190 advocates from over 65 organizations in 23 states, the District of Columbia and Zacatecas, Mexico, that are engaged in legal advocacy on behalf of low wage workers. Members of the Network currently represent workers and worker organizations who advocate publicly for racial and economic justice, and some members engage in such advocacy directly. They are concerned that the decision of the court below may cause a serious chilling effect on the First Amendment rights of low wage workers trying to improve working conditions in their communities.

The National Employment Law Project (NELP) is a non-profit legal organization with 40 years of experience advocating for the employment and labor rights of low-wage and contingent workers. NELP seeks to ensure that all workers, and especially the most vulnerable, have access to good jobs to attain economic security and benefit from workplace protections guaranteed in our nation's labor and employment laws. Protecting workers' First Amendment rights to use public forums for a variety of expressive activities, including employment-related speech, is part of that mission. NELP has litigated and participated as *amicus* in numerous cases addressing workers' rights, and has written community advocacy materials to assist workers' organizations engaging in First Amendment activities, including direct action against employers.

The National Lawyers Guild, Inc. (NLG) is a non-profit corporation formed in 1937 as the nation's first racially integrated voluntary bar association, with a mandate to advocate for the protection of rights granted by the United States Constitution, fundamental principles of human and civil rights, and a recognition of labor and economic rights as human rights. The Guild currently consists of approximately 6,000 lawyers, legal workers and law students. Individually and on specific shared projects, members work nationally and internationally on a wide range of legal concerns, especially those impacting people who are socially and politically marginalized and disenfranchised. Labor and employment issues have been a central focus of the Guild's mission during its nearly seventy-year history. The Guild's Labor and Employment Committee has a long record of action on behalf of low wage and immigrant workers in particular, both as

amicus and through strategic coordination, scholarship and advocacy. The members of the Labor and Employment Committee also provide direct representation to individual and organized workers in a variety of local, state, federal and international forums. The NLG is therefore deeply concerned with the fundamental right of freedom of association and First Amendment rights.

Neighborhood Legal Services of Los Angeles County (NLS) represents hundreds of low-wage workers in claims for unpaid wages and other labor law violations before the State Labor Commissioner and in State Court. In addition, NLS' Workers' Rights Project operates three workers' rights self-help centers through which hundreds of low-wage workers annually get assistance in filing and pursuing claims on their own with the Labor Commissioner. Invariably, the low-wage workers NLS assists are immigrants and people of color who regularly experience violations of their workplace rights and retaliation for demanding the rights afforded to them by law.

The New Orleans Workers' Center for Racial Justice ("Workers' Center") is a membership organization that was founded in the aftermath of Hurricane Katrina in response to the structural exclusion of African Americans and the brutal exploitation of immigrants within the new Gulf Coast economy. Workers' Center members include African-American workers, including many hurricane survivors, as well as immigrant workers. Workers' Center members include those who have worked, currently work, and who seek jobs in agriculture. The Workers' Center is dedicated to organizing workers across lines of race and industry to advance racial justice and build worker power and participation to achieve a just reconstruction of New Orleans. This includes organizing and advocacy to ensure that employers comply with fundamental worker protection laws that is conducted at the same time that our members are engaged in litigation to recover financial compensation for workplace violations. If allowed to stand, the Court of Appeals' decision will chill critical speech and organizing by workers and will embolden employers across the United States to engage in similar actions to quash organizing and speech that is protected by the First Amendment.

Northwest Workers' Justice Project is a non-profit law firm in Portland , Oregon, that represents low-wage workers and their organizations in the Pacific Northwest in employment matters, including wage and discrimination claims. See, www.nwjp.org. Over ninety percent of its individual clients are immigrants and people of color. Many of the organizations that NWJP represents are engaged in public advocacy concerning issues of racism and economic justice. The holding of the Court of Appeal in this matter, even though in another state, will, if allowed to stand, be chilling to NWJP's clients in expressing publicly their views concerning race and economic justice.

The Public Justice Center, Inc. (PJC) is a non-profit civil rights and poverty law organization founded in 1985. Its Workplace Justice Project focuses exclusively on protecting and expanding the rights of low-wage workers. The PJC has a longstanding commitment to ensuring that workers who face discrimination or who suffer other violations of state or federal law are able to seek redress and express their views without fear of retaliation. The PJC has submitted or joined in briefs of *amicus curiae* in recent cases involving claims by individuals faced with illegal employment actions. *See,* e.g., *Lark v. Montgomery Hospice, Inc.*, 414 Md. 215 (2010); *Haas v.*

Lockheed Martin Corp., 396 Md. 469 (2007); *Jordan v. Alternative Res. Corp.*, 467 F.3d 378 (4th Cir. 2006); *Ocheltree v. Scollon Productions, Inc.*, 335 F.3d 325 (4th Cir. 2003); *Porterfield v. Mascari II, Inc.*, 374 Md. 402 (2003); *Newell v. Runnels*, 407 Md. 578 (Md. 2009). The PJC also recently submitted an *amicus curiae* brief involving protection from retaliatory defamation suits. *See Norman v. Borison*, No. 70 (Sept. 2010) (Md.) (pending). The PJC has an interest in this case because this Court's ruling will affect employers' ability to use SLAPP suits as a means of chilling workers' rights to free speech.

The Maurice and Jane Sugar Law Center for Economic and Social Justice (Sugar Law Center) is a national nonprofit law center that provides legal support to worker and community organizers. The Sugar Law Center provides direct counseling, advocacy, and litigation on projects to enact living wage statutes, protect workers from wage theft, improve benefits to displaced workers, and on other projects towards a fuller realization of the economic and social rights of low income and unemployed workers. The Sugar Law Center is deeply interested in this case, since its outcome directly affects the ability of workers to organize, express their views freely, and work collectively for employment justice in labor disputes.

The Women's Employment Rights Clinic (WERC) of Golden Gate University School of Law is an on-campus clinical education program focused on the employment rights of low-wage and immigrant workers. For over 17 years, WERC faculty and students have provided free legal services, including advice, counseling, and representation of workers in a variety of employment-related matters on both individual and class-wide claims. WERC regularly assists immigrant workers with claims of unpaid wages, discrimination and harassment, and advises workers and community based organizations regarding the permissible scope of advocacy about their workplace rights. Because this case has a direct impact on the ability of workers to express their views about employer action toward immigrant workers, WERC has an interest in the outcome of this case.

The Working Hands Legal Clinic (WHLC) is a non-profit organization that provides access to free legal services in the area of employment law to low-income Illinois residents in the Chicago metropolitan region. WHLC works with a network of community-based organizations to reach those who are working on the fringes of Illinois' economy, such as the homeless or immigrant workers who are among the estimated 500,000 Illinois residents that work as day or temporary laborers each day. Our clients are almost universally not represented by unions and factors such as geographic isolation, unfamiliarity with the legal system, inability to travel, poverty, low education levels, language barriers and fear make these workers highly vulnerable to workplace abuses. Fundamental to stopping these practices is their right to organize collectively and to speak out honestly and openly against such practices and their causes. Though WHLC is Illinois based, California courts are accorded deference in other jurisdictions and the decision of the Appellate Court in this case will send a chilling message to low wage workers across the country that their First Amendment rights are limited when it comes to the work place.

Worksafe, Inc. is a California-based non-profit organization dedicated to promoting occupational safety and health through education, training, and advocacy. Worksafe advocates for protective worker health and safety laws and effective remedies for injured workers through the legislature,

administrative agencies, and the courts. Worksafe is also a Legal Support Center funded by the State Bar Legal Services Trust Fund Program to provide advocacy, technical and legal assistance, and training to the legal services projects throughout California that directly serve California's most vulnerable low-wage workers. Millions of low-wage and immigrant workers in California often toil long hours in harsh and hazardous work environments, exposed to hazards such as high heat, unsafe tools and machinery and toxic chemicals that can lead to cancer, respiratory diseases, reproductive damage, and neurological diseases. We advocate to ensure that these workers are protected from retaliation by their employers when they assert their rights to safe working conditions.

PROOF OF SERVICE BY MAIL
C.C.P. § 1013a, 2015.5

I, Sallie Z. Lin, certify as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 1145 Wilshire Boulevard, 2nd Floor, Los Angeles, CA 90017.

On January 26, 2011, I caused the foregoing document, described as LETTER IN SUPPORT OF THE PETITION FOR REVIEW re: *Overhill Farms, Inc. v. Nativo Lopez, et al.,* to be served by mail upon the persons shown below, by placing true and correct copies thereof in envelopes addressed as follows:

Steven J. Goon, Esq.
Chris M. Heikaus Weaver
Rutan & Tucker
611 Anton Boulevard, Suite 1400
Costa Mesa, California, 92626-1931
Counsel for Plaintiff and Respondent

Carol A. Sobel, Esq.
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Counsel for Defendants and Appellants

Clerk of the Court of Appeal Fourth Appellate District
601 W. Santa Ana Boulevard.
Santa Ana, California 92701

And by then sealing said envelope(s) and placing it (them) for collection and mailing on that same date following the ordinary business practices of Asian Pacific American Legal Center.

I am readily familiar with the business practices of Asian Pacific American Legal Center for collection and processing of correspondence for mailing with FedEx. Pursuant to said practices the envelope(s) would be deposited with FedEx that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of the deposit for mailing in the affidavit. (C.C.P, § 1013a(3)).

Executed on January 26, 2011, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sallie Z. Lin