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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 ARIZONA CONTRACTORS)
15 ASSOCIATION, INC., an Arizona non-)
16 profit corporation, ARIZONA)
17 EMPLOYERS FOR IMMIGRATION)
18 REFORM, INC., an Arizona non-profit)
19 corporation, CHAMBER OF)
20 COMMERCE OF THE UNITED)
21 STATES OF AMERICA, a Washington)
22 D.C. non-profit corporation, ARIZONA)
23 CHAMBER OF COMMERCE, an)
24 Arizona non-profit corporation,)
25 ARIZONA HISPANIC CHAMBER OF)
26 COMMERCE, INC., an Arizona non-)
27 profit corporation, ARIZONA FARM)
28 BUREAU FEDERATION, an Arizona)
non-profit corporation, ARIZONA)
RESTAURANT AND HOSPITALITY)
ASSOCIATION, an Arizona non-profit)
corporation, ASSOCIATED)
MINORITY CONTRACTORS OF)
AMERICA, an Arizona non-profit)
limited liability company; ARIZONA)
ROOFING CONTRACTORS)
ASSOCIATION, an Arizona non-profit)
corporation, NATIONAL ROOFING)
CONTRACTORS' ASSOCIATION, an)
Illinois not-for-profit corporation,)
WAKE UP ARIZONA! INC., an)
Arizona non-profit corporation, and)
ARIZONA LANDSCAPE)
CONTRACTORS ASSOCIATION,)
INC., an Arizona non-profit corporation.)

Plaintiffs,

Case No. _____

COMPLAINT

- 1. **Violation of Procedural Due Process under U.S. Constitution**
- 2. **Violation of Procedural Due Process under Arizona Constitution**
- 3. **Violation of Commerce Clause of U.S. Constitution**
- 4. **Violation of Supremacy Clause of U.S. Constitution/Federal Pre-Emption**
- 5. **Violation of Separation of Powers of Arizona Constitution**
- 6. **Violation of Fourth Amendment of U.S. Constitution**

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CRISS CANDELARIA, Apache County Attorney, ED RHEINHEIMER, Cochise County Attorney, TERENCE C. HANER, Coconino County Attorney, DAISY FLORES, Gila County Attorney, KENNY ANGLE, Graham County Attorney, DEREK D. RAPIER, Greenlee County Attorney, MARTIN BRANNAN, LaPaz County Attorney, ANDREW P. THOMAS, Maricopa County Attorney, MATTHEW J. SMITH, Mohave County Attorney, JAMES CURRIER, Navajo County Attorney, BARBARA LAWALL, Pima County Attorney, JAMES P. WALSH, Pinal County Attorney, GEORGE SILVA, Santa Cruz County Attorney, SHEILA POLK, Yavapai County Attorney, JON SMITH, Yuma County Attorney, TERRY GODDARD, Attorney General of the State of Arizona, and FIDELIS V. GARCIA, Director of the Arizona Registrar of Contractors,

Defendants.

For their Complaint against CRISS CANDELARIA, Apache County Attorney, ED RHEINHEIMER, Cochise County Attorney, TERENCE C. HANER, Coconino County Attorney, DAISY FLORES, Gila County Attorney, KENNY ANGLE, Graham County Attorney, DEREK D. RAPIER, Greenlee County Attorney, MARTIN BRANNAN, LaPaz County Attorney, ANDREW P. THOMAS, Maricopa County Attorney, MATTHEW J. SMITH, Mohave County Attorney, JAMES CURRIER, Navajo County Attorney, BARBARA LAWALL, Pima County Attorney, JAMES P. WALSH, Pinal County Attorney, GEORGE SILVA, Santa Cruz County Attorney, SHEILA POLK, Yavapai County Attorney, JON SMITH, Yuma County Attorney, the HONORABLE TERRY GODDARD, Attorney General of the State of Arizona, (the "State"), and FIDELIS V. GARCIA, Director, Arizona Registrar of Contractors, Plaintiffs the Arizona Contractors Association, Inc. ("Arizona Contractors Association"), Arizona Employers for Immigration Reform, Inc.

1 (“AZEIR”), Chamber of Commerce of the United States of America (“U.S. Chamber
2 of Commerce”), Arizona Chamber of Commerce, Arizona Hispanic Chamber of
3 Commerce, Inc. (“Arizona Hispanic Chamber of Commerce”), Arizona Farm Bureau
4 Federation (“Arizona Farm Bureau”), Arizona Restaurant and Hospitality
5 Association, Associated Minority Contractors of America (“Associated Minority
6 Contractors”), Arizona Roofing Contractors Association, the National Roofing
7 Contractors’ Association (“National Roofing Contractors’ Association”), Wake Up
8 Arizona! Inc. (“Wake Up Arizona!”), and the Arizona Landscape Contractors
9 Association, Inc. (“Arizona Landscaping Contractors Association”), (hereinafter
10 collectively referred to as “Plaintiffs”) allege as follows:

11 **SUMMARY**

12 1. Plaintiffs bring this case to uphold and to prevent violations of the
13 Constitution of the United States, the laws of the United States, and the Constitution
14 of the State of Arizona.

15 2. On July 2, 2007, the Honorable Janet Napolitano, the Governor of
16 Arizona, signed into law HB 2779, a bill passed by the Arizona Legislature on June
17 20, 2007, codified in relevant part at A.R.S. § 23-211 to 23-214 (hereinafter the
18 “Legal Arizona Workers Act”).

19 3. The Legal Arizona Workers Act violates the United States and Arizona
20 Constitutions and is preempted by federal law.

21 4. The Legal Arizona Workers Act deprives Plaintiffs and others of
22 property without due process of law.

23 5. The Legal Arizona Workers Act regulates and interferes with interstate
24 commerce.

25 6. The Legal Arizona Workers Act violates the Supremacy Clause because
26 it conflicts with and is preempted by federal law.

27 7. The Legal Arizona Workers Act violates the separation of powers
28 doctrine of the Arizona Constitution.

1 8. Plaintiffs seek and are entitled to a declaratory judgment and a
2 preliminary and permanent injunction to declare the Legal Arizona Workers Act
3 unconstitutional and illegal and to enjoin the County Attorneys and the Attorney
4 General from enforcing the Legal Arizona Workers Act.

5 **PARTIES, JURISDICTION AND VENUE.**

6 9. Plaintiff the Arizona Contractors Association is a non profit corporation
7 incorporated under the laws of the State of Arizona, with its principal place of
8 business located in the State of Arizona.

9 10. The Arizona Contractors Association is an employer that employs
10 employees in the State of Arizona. It transacts business in Arizona and holds what are
11 deemed to be licenses under A.R.S. § 23-211(7).

12 11. The Arizona Contractors Association is an association of members
13 (“Arizona Contractors Association Members”). Arizona Contractors Association
14 Members employ employees in the State of Arizona, transact business in Arizona, and
15 hold licenses and permits from the State and/or its political subdivisions.

16 12. The Arizona Contractors Association serves as a public policy advocate
17 on behalf of its members and urges the Arizona Legislature and Executive Branch
18 agencies to adopt and implement policies that promote a favorable legal and business
19 climate in Arizona for the benefit of its members.

20 13. Plaintiff AZEIR is a non profit corporation incorporated under the laws
21 of the State of Arizona, with its principal place of business located in the State of
22 Arizona.

23 14. AZEIR is an association of members (“AZEIR Members”). AZEIR
24 Members employ employees in the State of Arizona, transact business in Arizona, and
25 hold licenses and permits from the State and/or its political subdivisions.

26 15. AZEIR serves as a public policy advocate on behalf of its members and
27 urges the Arizona Legislature and Executive Branch agencies to adopt and implement
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1 policies that promote a favorable legal and business climate in Arizona for the benefit
2 of its members.

3 16. Plaintiff the U.S. Chamber of Commerce is a non profit corporation
4 incorporated under the laws of the District of Columbia with its principal place of
5 business located in Washington D.C.

6 17. The U.S. Chamber of Commerce is the world's largest federation of
7 businesses, professional organizations, and state and local chambers of commerce.
8 The U.S. Chamber of Commerce represents an underlying membership of more than
9 three million businesses and organizations of every size in every industrial sector and
10 geographic region of the country, including Arizona, and its members transact
11 business in Arizona and hold what are deemed to be licenses under A.R.S. § 23-
12 211(7).

13 18. The U. S. Chamber of Commerce membership includes associations,
14 chambers of commerce and direct business members. The U. S. Chamber of
15 Commerce serves as a public policy advocate on behalf of its members. It advocates
16 the interests of the business community, including advocating the interests of its
17 members in courts across the nation in cases involving issues of national concern to
18 American businesses.

19 19. The U.S. Chamber of Commerce has also been involved heavily in
20 efforts to seek to achieve federal immigration legislation and laws that are uniform,
21 fair, and appropriate to the needs of businesses.

22 20. Plaintiff the Arizona Chamber of Commerce is a non profit corporation
23 incorporated under the laws of the State of Arizona, with its principal place of
24 business located in the State of Arizona.

25 21. The Arizona Chamber of Commerce employ employees in the State of
26 Arizona, transact business in Arizona, and holds what are deemed to be licenses under
27 A.R.S. § 23-211(7).

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1 22. The Arizona Chamber of Commerce is an association of members
2 (“Arizona Chamber of Commerce Members”). Arizona Chamber of Commerce
3 Members employ employees in the State of Arizona, transact business in Arizona, and
4 hold licenses and permits from the State an/or its political subdivision.

5 23. Arizona Chamber of Commerce Members employ employees in the
6 State of Arizona, transact business in Arizona, and hold licenses and permits from the
7 State and/or its political subdivisions.

8 24. The Arizona Chamber of Commerce serves as a public policy advocate
9 on behalf of its members and urges the Arizona Legislature and Executive Branch
10 agencies to adopt and implement policies that promote a favorable legal and business
11 climate in Arizona for the benefit of its members.

12 25. Plaintiff the Arizona Hispanic Chamber of Commerce is a non profit
13 corporation incorporated under the laws of the State of Arizona, with its principal
14 place of business located in the State of Arizona.

15 26. The Arizona Hispanic Chamber of Commerce is an employer that
16 employs employees in the State of Arizona. It transacts business in Arizona and holds
17 what are deemed to be licenses under A.R.S. § 23-211(7).

18 27. The Arizona Hispanic Chamber of Commerce is an association of
19 members (“Arizona Hispanic Chamber of Commerce Members”). Arizona Hispanic
20 Chamber of Commerce Members employ employees in the State of Arizona, transact
21 business in Arizona, and hold licenses and permits from the State and/or its political
22 subdivisions.

23 28. The Arizona Hispanic Chamber of Commerce serves as a public policy
24 advocate on behalf of its members and urges the Arizona Legislature and Executive
25 Branch agencies to adopt and implement policies that promote a favorable legal and
26 business climate in Arizona for the benefit of its members.

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1 29. Plaintiff the Arizona Farm Bureau is a non profit corporation
2 incorporated under the laws of the State of Arizona, with its principal place of
3 business located in the State of Arizona.

4 30. The Arizona Farm Bureau is an employer that employs employees in the
5 State of Arizona. It transacts business in Arizona and holds what are deemed to be
6 licenses under A.R.S. § 23-211(7).

7 31. The Arizona Farm Bureau is an association of members (“Arizona Farm
8 Bureau Members”). Arizona Farm Bureau members employ employees in the State
9 of Arizona, transact business in Arizona, and hold licenses and permits from the State
10 and/or its political subdivisions.

11 32. The Arizona Farm Bureau serves as a public policy advocate on behalf
12 of its members and urges the Arizona Legislature and Executive Branch agencies to
13 adopt and implement policies that promote a favorable legal and business climate in
14 Arizona for the benefit of its members.

15 33. Plaintiff the Arizona Restaurant and Hospitality Association is a non
16 profit corporation incorporated under the laws of the State of Arizona, with its
17 principal place of business located in the State of Arizona.

18 34. The Arizona Restaurant and Hospitality Association is an employer that
19 employs employees in the State of Arizona. It transacts business in Arizona and holds
20 what are deemed to be licenses under A.R.S. § 23-211(7).

21 35. The Arizona Restaurant and Hospitality Association is an association of
22 members (“Arizona Restaurant and Hospitality Association Members”). The Arizona
23 Restaurant and Hospitality Association Members employ employees in the State of
24 Arizona, transact business in Arizona, and hold licenses and permits from the State
25 and/or its political subdivisions.

26 36. The Arizona Restaurant and Hospitality Association serves as a public
27 policy advocate on behalf of its members and urges the Arizona Legislature and
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1 Executive Branch agencies to adopt and implement policies that promote a favorable
2 legal and business climate in Arizona for the benefit of its members.

3 37. Plaintiff the Associated Minority Contractors is a non profit corporation
4 incorporated under the laws of the State of Arizona, with its principal place of
5 business located in the State of Arizona.

6 38. Associated Minority Contractors is an employer that employs
7 employees in the State of Arizona. It transacts business in Arizona and holds what are
8 deemed to be licenses under A.R.S. § 23-211(7).

9 39. Associated Minority Contractors is an association of members
10 (“Associated Minority Contractors Members”). Associated Minority Contractors
11 Members employ employees in the State of Arizona, transact business in Arizona, and
12 hold licenses and permits from the State and/or its political subdivisions.

13 40. Associated Minority Contractors serves as a public policy advocate on
14 behalf of its members and urges the Arizona Legislature and Executive Branch
15 agencies to adopt and implement policies that promote a favorable legal and business
16 climate in Arizona for the benefit of its members.

17 41. Plaintiff the Arizona Roofing Contractors Association is a non profit
18 corporation incorporated under the laws of the State of Arizona, with its principal
19 place of business located in the State of Arizona.

20 42. The Arizona Roofing Contractors Association is an employer that
21 employs employees in the State of Arizona. It transacts business in Arizona and holds
22 what are deemed to be licenses under A.R.S. § 23-211(7).

23 43. The Arizona Roofing Contractors Association is an association of
24 members (“Arizona Roofing Contractors Association Members”). Arizona Roofing
25 Contractors Association Members employ employees in the State of Arizona, transact
26 business in Arizona, and hold licenses and permits from the State and/or its political
27 subdivisions.

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1 44. The Arizona Roofing Contractors Association serves as a public policy
2 advocate on behalf of its members and urges the Arizona Legislature and Executive
3 Branch agencies to adopt and implement policies that promote a favorable legal and
4 business climate in Arizona for the benefit of its members.

5 45. Plaintiff the National Roofing Contractors' Association is a not for
6 profit corporation incorporated under the laws of the State of Illinois, with its
7 principal place of business located in the State of Illinois.

8 46. The National Roofing Contractors' Association is an association of
9 roofing, roof deck, and waterproofing contactors, industry-related associate members,
10 including manufacturers, distributors, architects, engineers, and others. The National
11 Roofing Contractors' Association has more than 4,600 members from all 50 states
12 and 54 countries and is affiliated with 105 local, state, regional and international
13 roofing contractor associates. Its members transact business in Arizona and hold what
14 are deemed to be licenses under A.R.S. § 23-211(7).

15 47. The National Roofing Contractors' Association serves as a public policy
16 advocate on behalf of its members.

17 48. Plaintiff Wake Up Arizona! is a non profit corporation incorporated
18 under the laws of the State of Arizona, with its principal place of business located in
19 the State of Arizona.

20 49. Wake Up Arizona! Transacts business in Arizona and holds what are
21 deemed to be licenses under A.R.S. § 23-211(7).

22 50. Wake Up Arizona! is an association of members ("Wake Up Arizona!
23 Members"). Wake Up Arizona! Members employ employees in the State of Arizona,
24 transact business in Arizona, and hold licenses and permits from the State and/or its
25 political subdivisions.

26 51. Wake Up Arizona! serves as a public policy advocate on behalf of its
27 members and urges the Arizona Legislature and Executive Branch agencies to adopt
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1 and implement policies that promote a favorable legal and business climate in Arizona
2 for the benefit of its members.

3 52. Plaintiff the Arizona Landscape Contractors Association is a non profit
4 corporation incorporated under the laws of the State of Arizona, with its principal
5 place of business located in the State of Arizona.

6 53. The Arizona Landscape Contractors Association is an employer that
7 employs employees in the State of Arizona. It transacts business in Arizona and holds
8 what are deemed to be licenses under A.R.S. § 23-211(7).

9 54. The Arizona Landscape Contractors Association is an association of
10 members (“Arizona Landscape Contractors Association Members”). The Arizona
11 Landscape Contractors Association Members employ employees in the State of
12 Arizona, transact business in Arizona, and hold licenses and permits from the State
13 and/or its political subdivisions.

14 55. The Arizona Landscape Contractors Association serves as a public
15 policy advocate on behalf of its members and urges the Arizona Legislature and
16 Executive Branch agencies to adopt and implement policies that promote a favorable
17 legal and business climate in Arizona for the benefit of its members.

18 56. Defendant Criss Candelaria is the County Attorney for Apache County,
19 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

20 57. Defendant Ed Rheinheimer is the County Attorney for Cochise County,
21 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

22 58. Defendant Terence C. Hance is the County Attorney for Coconino
23 County, Arizona. He is named herein as a Defendant in his capacity as County
24 Attorney.

25 59. Defendant Daisy Flores is the County Attorney for Gila County,
26 Arizona. She is named herein as a Defendant in her capacity as County Attorney.

27 60. Defendant Kenny Angle is the County Attorney for Graham County,
28 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

- 1 61. Defendant Derek D. Rapier is the County Attorney for Greenlee
2 County, Arizona. He is named herein as a Defendant in his capacity as County
3 Attorney.
- 4 62. Defendant Martin Brannan is the County Attorney for LaPaz County,
5 Arizona. He is named herein as a Defendant in his capacity as County Attorney.
- 6 63. Defendant Andrew Thomas is the County Attorney for Maricopa
7 County, Arizona. He is named herein as a Defendant in his capacity as County
8 Attorney.
- 9 64. Defendant Andrew Thomas has entered into an agreement with the
10 Maricopa County Sheriff, Joe Arpaio, under which Thomas has delegated to the
11 Sheriff's office certain investigation and enforcement authority that was conferred
12 upon Thomas in the Legal Arizona Workers Act. The actions of the Maricopa County
13 Sheriff's office in enforcing the Legal Arizona Workers Act are therefore conducted
14 as an agent of Thomas and Thomas is liable for such actions.
- 15 65. Defendant Matthew J. Smith is the County Attorney for Mohave
16 County, Arizona. He is named herein as a Defendant in his capacity as County
17 Attorney.
- 18 66. Defendant James Currier is the County Attorney for Navajo County,
19 Arizona. He is named herein as a Defendant in his capacity as County Attorney.
- 20 67. Defendant Barbara LaWall is the County Attorney for Pima County,
21 Arizona. She is named herein as a Defendant in her capacity as County Attorney.
- 22 68. Defendant James P. Walsh is the County Attorney for Pinal County,
23 Arizona. He is named herein as a Defendant in his capacity as County Attorney.
- 24 69. Defendant George Silva is the County Attorney for Santa Cruz County,
25 Arizona. He is named herein as a Defendant in his capacity as County Attorney.
- 26 70. Defendant Sheila Polk is the County Attorney for Yavapai County,
27 Arizona. She is named herein as a Defendant in her capacity as County Attorney.
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1 71. Defendant Jon Smith is the County Attorney for Yuma County,
2 Arizona. He is named herein as a Defendant in his capacity as County Attorney.

3 72. Defendant Terry Goddard is the Attorney General of the State of
4 Arizona (the "Attorney General"). He is named herein as a Defendant in his capacity
5 as Attorney General.

6 73. Defendant Fidelis V. Garcia is the Director of the Arizona Registrar of
7 Contractors. He is named herein as a Defendant in his capacity as Director of the
8 Arizona Registrar of Contractors.

9 74. Each Plaintiff and the members of each Plaintiff are affected by the
10 actions of the State of Arizona in enacting into law the Legal Arizona Workers Act.

11 75. Each Plaintiff has standing to sue in this action.

12 76. The Due Process, Commerce Clause, and Supremacy/Preemption claims
13 of Plaintiffs arise under the Constitution and laws of the United States. As a result,
14 Plaintiffs have a right to sue arising under 42 U.S.C. § 1983.

15 77. This Court has jurisdiction over the Due Process, Commerce Clause and
16 Supremacy Clause/Preemption claims of Plaintiffs pursuant to 28 U.S.C. §§ 1331 and
17 1343 because they arise under the Constitution and laws of the United States.

18 78. This Court has jurisdiction over the Plaintiffs' state law claims pursuant
19 to 28 U.S.C. § 1367.

20 79. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

21 80. Pursuant to 28 U.S.C. §§ 2201-2202, the Court may issue a declaratory
22 judgment and further necessary or proper relief.

23 **ALLEGATIONS COMMON TO ALL CLAIMS**

24 81. On July 2, 2007, the Honorable Janet Napolitano, the Governor of
25 Arizona, signed into law HB 2779, a bill passed by the Arizona Legislature on June
26 20, 2007, known as the Legal Arizona Workers Act, codified in relevant part at
27 A.R.S. § 23-211 to 23-214.

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1 82. A.R.S. § 23-212(A) prohibits employers from “knowingly” or
2 “intentionally” employing an unauthorized alien.

3 83. A.R.S. § 23-212(B) requires the Arizona Attorney General and the
4 County Attorneys of the several counties in Arizona to investigate all complaints that
5 an employer is knowingly or intentionally employing an unauthorized alien.

6 84. A.R.S. § 23-212(B)-(C) requires County Attorneys to prosecute all
7 complaints that are considered to be “not frivolous.”

8 85. When investigating complaints pursuant to A.R.S. § 23-212(B), the
9 County Attorneys or the Attorney General must verify an individual’s work
10 authorization exclusively by communicating with the federal government pursuant to
11 8 U.S.C. § 1373(c).

12 86. The County Attorneys take an oath of office and are to faithfully uphold
13 and enforce the law.

14 87. Under the Legal Arizona Workers Act, effective January 1, 2008,
15 employers that are deemed to have “knowingly” or “intentionally” hired unauthorized
16 aliens may have their business licenses suspended for a first violation of A.R.S. § 23-
17 212(A) and permanently revoked for a second violation of A.R.S. § 23-212(A).

18 88. A.R.S. § 23-214 requires that after December 31, 2007, every employer
19 must verify the employment eligibility of employees through the federal
20 government’s otherwise voluntary E-Verify Program.

21 89. In order to enroll in E-Verify, Arizona employers must access E-Verify
22 through a computer and the use of the Internet.

23 90. Some of Plaintiffs’ members are small businesses that do not own a
24 computer and do not have Internet access to be able to use E-Verify at their business.

25 91. One or more of Plaintiffs’ Members have already incurred expenses to
26 come into compliance with the Legal Arizona Workers Act’s requirements that
27 employers use E-Verify, including training, equipment, outsourcing the E-Verify
28 process and other expenses.

1 92. Using E-Verify impose burdens on employers, including Plaintiffs and
2 their members. These include the costs for the equipment necessary to use E-Verify
3 and the staff time necessary for training and using E-Verify.

4 93. The annual operating costs for E-Verify is \$1,800.

5 94. Arizona Contractors Association Members, Associated Minority
6 Contractors Members, Arizona Roofing Contractors Association Members, National
7 Roofing Contractors' Association Members and some of the other Plaintiffs' members
8 are contractors that hold contractors licenses from the State of Arizona.

9 95. Pursuant to A.R.S. § 32-1154(a)(12), the failure of a contractor to
10 comply with any labor law of the state government is grounds for revocation or
11 suspension of the Plaintiffs' Members' contractors license. The failure to use E-
12 Verify as required by the Legal Arizona Workers Act would constitute the failure to
13 comply with a labor law.

14 96. On information and belief, County Attorney Criss Candelaria has
15 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'
16 members is employing an unauthorized alien.

17 97. On information and belief, County Attorney Ed Rheinheimer has
18 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'
19 members is employing an unauthorized alien.

20 98. On information and belief, County Attorney Terence Hance has already
21 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
22 is employing an unauthorized alien.

23 99. On information and belief, County Attorney Daisy Flores has already
24 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
25 is employing an unauthorized alien.

26 100. On information and belief, County Attorney Kenny Angle has already
27 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
28 is employing an unauthorized alien.

1 101. On information and belief, County Attorney Derek Rapier has already
2 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
3 is employing an unauthorized alien.

4 102. On information and belief, County Attorney Martin Brannan has already
5 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
6 is employing an unauthorized alien.

7 103. On information and belief, County Attorney Andrew Thomas has
8 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'
9 members is employing an unauthorized alien.

10 104. On information and belief, the Maricopa County Sheriff's Office with
11 whom Maricopa County Attorney Andrew Thomas has signed an agreement that the
12 Sheriff would help investigate complaints pursuant to the Legal Arizona Workers Act,
13 has already received complaints that one or more Plaintiffs or one or more of
14 Plaintiffs members is employing an unauthorized alien.

15 105. On information and belief, County Attorney Matthew J. Smith has
16 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'
17 members is employing an unauthorized alien.

18 106. On information and belief, County Attorney James Currier has already
19 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
20 is employing an unauthorized alien.

21 107. On information and belief, County Attorney Barbara LaWall has
22 already received complaints that one or more Plaintiffs or one or more of Plaintiffs'
23 members is employing an unauthorized alien.

24 108. On information and belief, County Attorney James P. Walsh has already
25 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
26 is employing an unauthorized alien.

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1 109. On information and belief, County Attorney George Silva has already
2 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
3 is employing an unauthorized alien.

4 110. On information and belief, County Attorney Sheila Polk has already
5 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
6 is employing an unauthorized alien.

7 111. On information and belief, County Attorney Jon Smith has already
8 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
9 is employing an unauthorized alien.

10 112. On information and belief, Attorney General Terry Goddard has already
11 received complaints that one or more Plaintiffs or one or more of Plaintiffs' members
12 is employing an unauthorized alien.

13 113. On information and belief, Defendants intend to fully and faithfully
14 prosecute the law and violations of the Legal Arizona Workers Act.

15 114. On information and belief, one or more Defendants intend to investigate
16 and prosecute one or more of Plaintiffs' members after January 1, 2008.

17 115. At least one member of one of the Plaintiff associations employs an
18 undocumented worker, intends not to comply with the Legal Arizona Workers Act
19 and has been threatened with prosecution by the office of the Maricopa County
20 Sheriff and Maricopa County Attorney.

21 116. At least one member of one of the Plaintiff associations has received a
22 voicemail message from a caller identifying himself as being with the Maricopa
23 County Sheriff's office Illegal Immigration Task Force. The caller communicated
24 that the Sheriff's office had received complaints about the employer hiring
25 undocumented workers. The call was part of the investigation and enforcement
26 activities pursuant to the Legal Arizona Workers Act. As previously alleged, any
27 such actions by the Maricopa County Sheriff's office were conducted under the
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1 authority and as an agent of Defendant Andrew Thomas, County Attorney of
2 Maricopa County.

3 117. Defendant Thomas, Maricopa County Attorney, has begun enforcement
4 activities pursuant to the Arizona Legal Workers Act.

5 118. The enforcement activities by Defendant Thomas include receiving
6 complaints and preparing to or actually beginning to investigate those complaints.

7 119. The enforcement activities of Defendant Thomas include preparations
8 to bring claims against employers pursuant to A.R.S. § 23-212.

9 120. The enforcement activities of Defendant Thomas include preparations to
10 investigate and bring claims against Plaintiffs and their members.

11 121. Plaintiffs are entitled to injunctive relief. They have a strong likelihood
12 of success on the merits and will suffer irreparable harm if the Legal Arizona Workers
13 Act is not enjoined and is enforced against employers in Arizona, including Plaintiffs.

14 122. Plaintiffs will suffer irreparable harm as a result of the potential
15 enforcement of the Legal Arizona Workers Act, as a result of the legal uncertainty
16 that they face due to the Legal Arizona Workers Act's vagueness and its provisions
17 that conflict with other laws and the Constitution.

18 123. Plaintiffs are entitled to recover the costs and attorneys' fees of bringing
19 this suit pursuant to 42 U.S.C. § 1988.

20 **FIRST CLAIM FOR RELIEF**

21 **VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES UNDER**
22 **THE U.S. CONSTITUTION**

23 124. Plaintiffs hereby incorporate by this reference all allegations of the
24 preceding paragraphs of this Complaint, as if fully set forth herein.

25 125. Under the Fourteenth Amendment to the U.S. Constitution, state and
26 local governments are prohibited from depriving any person of property without due
27 process of law.

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1 126. Corporations, including Plaintiffs and their members, are persons
2 entitled to due process.

3 127. Licenses or permits from the State of Arizona and/or its political
4 subdivisions are property interests that are subject to the due process protections of
5 the Fourteenth Amendment to the U.S. Constitution.

6 128. The County Attorneys, the Attorney General, the State of Arizona and
7 its political subdivisions and other public officials are prohibited by the Fourteenth
8 Amendment from suspending or revoking business licenses or permits unless the
9 State or its political subdivisions provide due process of law to the holder of the
10 license or permit.

11 129. Due process of law requires, at a minimum, that before any person,
12 whether an individual, corporation or other business entity, may be deprived of a
13 license or permit, the State must provide:

- 14 (a) Notice and a reasonable definite statement of the charges or
15 matters at issue.
- 16 (b) Notice of the time and place of a hearing.
- 17 (c) The right to produce witnesses at a hearing.
- 18 (d) The right to examine witnesses at a hearing.
- 19 (e) The right to a full consideration and determination of the issues
20 based on the evidence.

21 130. The Legal Arizona Workers Act does not provide Plaintiffs, their
22 members, or other employers with due process before the State may deprive them of
23 property interests.

24 131. In contrast to the Legal Arizona Workers Act, federal immigration law
25 contains provisions to provide due process rights to employers. Under federal
26 immigration law, before an employer is found to have violated the law, the employer
27 is provided the following due process rights:
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- 1 (a) A signed, written complaint must be filed with sufficient
2 information to identify the complainant and the potential violator,
3 including names and addresses.
- 4 (b) The federal government investigates only those complaints
5 “which, on their face, have a substantial probability of validity.”
6 8 U.S.C. § 1324a(c)(1)(B).
- 7 (c) After investigation the federal government may issue a Warning
8 Notice or Notice of Intent to Fine.
- 9 (d) The Notice of Intent to Fine must include the basis for the
10 charges, the statutory provisions alleged to have been violated,
11 and the penalty to be imposed.
- 12 (e) The Notice of Intent to Fine must also notify the employer of its
13 rights, including the right to counsel, that any statement may be
14 used against the employer, and the employer’s right to a hearing.
- 15 (f) The respondent employer has a right to request a hearing before a
16 federal administrative law judge. 8 C.F.R. § 274a.9(e) and
17 8 U.S.C. § 1324a(e)(3).
- 18 (g) The employer has the right to an evidentiary hearing, with
19 appellate review, as is customary in other federal
20 administrative/adjudicative proceedings.
- 21 (h) At the hearing, the employer has the right to present evidence
22 and to cross-examine witnesses regarding the evidence presented
23 against it.

24 132. Under the Legal Arizona Workers Act, Plaintiffs, their members, and
25 other employers will not be provided any of the due process rights of federal law set
26 forth in the preceding paragraph.

27 133. Under the Legal Arizona Workers Act, Plaintiffs, their members and
28 other employers will be subject to an enforcement scheme that includes the following:

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- (a) Complaints may be initiated by any person without a signed written complaint, without any standards, without any requirements for the identification of the person(s) who is accused of not being authorized to work in this country, without any disclosure or identification of the basis for the allegation that an employee is not authorized to work, and without any requirement that any basis for the allegation must exist before an investigation must be initiated.
- (b) Complaints may be initiated based solely on or primarily on race, national origin, language ability or characteristics, accent, physical appearance, clothing characteristic of an ethnic group, religious attire, racial or ethnic prejudice or other unlawful factors.
- (c) Complaints may be initiated for reasons unrelated to the enforcement of immigration laws.
- (d) The Attorney General and County Attorneys are compelled to investigate all complaints regardless of the lack of any basis for the complaint.
- (e) The Attorney General and County Attorneys must investigate all complaints, even if the basis for the complaint is racial or ethnic prejudice or discrimination or any other improper unlawful motive.
- (f) There is no notice of the initiation of an investigation to the employer or to the individual who is the subject of the investigation (the "Affected Employee").
- (g) The investigation relating to whether an employee is authorized to work in the United States consists solely of a request by the Attorney General or a County Attorney to the federal government

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- to check federal computer records pursuant to 8 U.S.C. § 1373(c).
- (h) HB 2779 excludes the ability of the Attorney General or County Attorneys to consider any other evidence besides the response from the federal government pursuant to 8 U.S.C. § 1373(c) in determining whether an employee is authorized to work.
 - (i) The County Attorneys are compelled to prosecute the employer in every case in which a complaint was investigated and found “not frivolous.”
 - (j) In any proceedings in Arizona courts to impose penalties under A.R.S. § 23-212(F), including the suspension or revocation of all business licenses or permits of Plaintiffs, their members, and other employers, A.R.S. § 23-212(H) restricts the evidence that may be considered.
 - (k) The Legal Arizona Workers Act provides in part, “On determining whether an employee is an unauthorized alien, the Court shall consider only the federal government’s determination pursuant to 8 U.S.C. § 1373(c).” A.R.S. § 23-212(H). The Legal Arizona Workers Act also states that Arizona courts may take judicial notice of the federal government’s so-called “determination” under 8 U.S.C. § 1373(c). *Id.*
 - (l) The Legal Arizona Workers Act does not give employers the right to call witnesses on their behalf to establish the work authorization of Affected Employees.
 - (m) The Legal Arizona Workers Act does not give Affected Employees the right to call witnesses on their behalf to establish their work authorization.

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- (n) The Legal Arizona Workers Act does not give employers or Affected Employees the right to cross-examine witnesses for the federal or state government on the issue of the Affected Employee's work authorization.
- (o) The Legal Arizona Workers Act does not provide a procedure whereby an employer or Affected Employee may challenge erroneous "determinations" of immigration status.
- (p) Due process rights are not provided to the employer or the Affected Employee under The Legal Arizona Workers Act.
- (q) There is no "determination" made under 8 U.S.C. § 1373(c). The federal government's informational response under 8 U.S.C. § 1373(c) is not a determination, but is merely a reflection of whatever information is in the federal government's database.
- (r) Due process rights are not provided before the federal government furnishes a response under 8 U.S.C. § 1373(c).
- (s) The absence of any "determination" pursuant to 8 U.S.C. § 1373(c) is reflected by the fact that federal immigration law does not provide for any action to be taken by the federal government against a person or employer based upon response under 8 U.S.C. § 1373(c). Determinations by the federal government of whether an employer knowingly employed an unauthorized alien are made pursuant to 8 CFR § 274a.9, and require a hearing and due process, as set forth in paragraph 131 above. Determinations of an alien's status are made pursuant to administrative procedures that provide due process protections. Determinations are not made pursuant to 8 U.S.C. § 1373(c), and the federal immigration system does not provide a final determination of immigration status at the request of a state or local government.

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(t) To find that an Arizona employer knowingly or intentionally employed an unauthorized alien, the Arizona Court will be required to make a determination that the Affected Employee is an unauthorized alien, but the Arizona Court has no authority to determine an alien's immigration status. Such status determinations may be made only by a federal immigration judge. 8 U.S.C. § 1229a(a)(1) and (a)(3). The Legal Arizona Workers Act does not provide due process to Employers and Affected Employees to subject them to a hearing in an Arizona Court that does not have jurisdiction to determine immigration status.

134. The procedures established pursuant to the Legal Arizona Workers Act do not satisfy the due process requirements of the United States Constitution.

135. It is a violation of Plaintiffs' due process rights for the State of Arizona to make mandatory the use of the federal government's otherwise voluntary electronic employment verification system known as E-Verify because the Legal Arizona Workers Act conflicts with federal law and information given to employers by the federal government regarding the voluntary nature of their participation in E-Verify, as alleged more fully in paragraphs 203-225 below.

136. It is a violation of Plaintiffs' due process rights for the Legal Arizona Workers Act to make mandatory the use of the federal government's E-Verify system because the laws of the State of Illinois prohibit the use of E-Verify unless and until it meets performance standards that it currently does not meet, as alleged more fully in paragraphs 220-224 below.

137. The Legal Arizona Workers Act violates the due process rights of members of Plaintiffs who have employees in both Arizona and Illinois because the Legal Arizona Workers Act places employers in the position of violating the laws of

1 either Arizona or Illinois and makes it impossible for such employers to comply with
2 the laws of both states.

3 138. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona
4 Workers Act is unconstitutional because it violates the Fourteenth Amendment to the
5 U.S. Constitution.

6 139. Plaintiffs are entitled to a preliminary and permanent injunction to
7 enjoin the County Attorneys and Attorney General from taking actions to enforce or
8 implement the Legal Arizona Workers Act.

9 **SECOND CLAIM FOR RELIEF**

10 **VIOLATION OF PROCEDURAL DUE PROCESS GUARANTEES OF**
11 **ARIZONA CONSTITUTION**

12 140. Plaintiffs hereby incorporate by this reference all allegations of the
13 preceding paragraphs of this Complaint, as if fully set forth herein.

14 141. Article II, § 4 of the Arizona Constitution prohibits state and local
15 governments from depriving any person of property without due process of law.

16 142. Corporations, including Plaintiffs and their members, are persons
17 entitled to due process.

18 143. Licenses or permits from the State of Arizona and/or its political
19 subdivisions are property interests that are subject to the due process protections of
20 Article II, § 4 of the Arizona Constitution.

21 144. The County Attorneys, the Attorney General, the Registrar of
22 Contractors, the State of Arizona and its political subdivisions and other public
23 officials are prohibited by Article II, § 4 of the Arizona Constitution from suspending
24 or revoking business licenses or permits unless the State or its political subdivisions
25 provide the holder of the license or permit due process of law.

26 145. The Defendants' actions that violate the Fourteenth Amendment to the
27 U.S. Constitution, as alleged in paragraphs 124-139 above, also violate the Arizona
28 Constitution.

1 146. The procedures established by the Legal Arizona Workers Act do not
2 satisfy and are in conflict with provisions of existing Arizona law for the procedures
3 that must be used and due process rights that must be provided in order for
4 Defendants to suspend or revoke licenses or permits.

5 147. The procedures established under the Legal Arizona Worker Act do not
6 satisfy the due process requirements of the Arizona Constitution.

7 148. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona
8 Workers Act is unconstitutional because it violates Article II § 4 of the Arizona
9 Constitution.

10 149. Plaintiffs are entitled to a preliminary and permanent injunction to
11 enjoin the County Attorneys and Attorney General from taking actions to enforce or
12 implement the Legal Arizona Workers Act.

13 **THIRD CLAIM FOR RELIEF**

14 **VIOLATION OF COMMERCE CLAUSE**

15 150. Plaintiffs hereby incorporate by this reference all allegations of the
16 preceding paragraphs of this Complaint, as if fully set forth herein.

17 151. The Commerce Clause of the U.S. Constitution vests Congress with the
18 exclusive authority to “regulate Commerce... among the several states.” U.S.
19 Constitution, Art. I, § 8, cl. 3. The Commerce Clause forbids states and local
20 governments, including the State of Arizona, from regulating or passing laws that
21 restrict or interfere with interstate commerce.

22 152. The Legal Arizona Workers Act purports to and will regulate interstate
23 commerce.

24 153. Although the definition of employer contained in A.R.S. § 23-211(4)
25 provides that the employer must have a license or permit from the State of Arizona, or
26 one of its political subdivisions, and must have at least one employee in Arizona, the
27 definition of employee in A.R.S. § 23-211(3) is limited to employees who were hired
28 or who perform services within Arizona.

1 154. The definition of employee in A.R.S. § 23-211(3) includes “any person
2 who performs employment services for an employer pursuant to an employment
3 relationship between the employee and employer.”

4 155. By its terms, the above definition of employee contained in A.R.S. §
5 23-211(3) includes all employees who work for any business that has one or more
6 employees within the State of Arizona and a license or permit from the State of
7 Arizona or one of its political subdivisions.

8 156. The definition of employee subject to regulation by the Legal Arizona
9 Workers Act includes employees who work exclusively in states other than Arizona,
10 who were hired in states other than Arizona and who have never worked in Arizona,
11 but work for businesses that have at least one employee in Arizona and hold a license
12 or permit from the State of Arizona or one of its political subdivisions.

13 157. The above definition of employee subject to regulation by the Legal
14 Arizona Workers Act includes employees who were hired in states other than Arizona
15 and who later were transferred or relocated to Arizona to perform employment
16 services in Arizona.

17 158. The above definition of employee subject to regulation by the Legal
18 Arizona Workers Act includes employees who were hired in states other than Arizona
19 and who perform work in Arizona on only an occasional basis.

20 159. Under the Legal Arizona Workers Act, the Attorney General or County
21 Attorneys will be required to investigate complaints relating to employees who were
22 hired in states other than the State of Arizona.

23 160. Under the Legal Arizona Workers Act, the Attorney General or County
24 Attorneys will be required to investigate complaints relating to employees who were
25 hired in states other than Arizona and who are residents of states other than Arizona
26 and who perform services in Arizona on only an occasional or temporary basis or not
27 at all.

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1 161. Under the Legal Arizona Workers Act, the Attorney General or County
2 Attorneys will be required to investigate complaints relating to employees who were
3 hired in states other than Arizona and who perform services only in states other than
4 Arizona, as there is nothing in the Legal Arizona Workers Act that restricts the
5 regulation and enforcement of its provisions to employees who are performing
6 services within the State of Arizona.

7 162. Under the Legal Arizona Workers Act, the enforcement actions of the
8 State of Arizona will extend to employees or job sites in states other than Arizona, as
9 there is nothing in the Legal Arizona Workers Act that restricts the regulation and
10 enforcement of its provisions to employees performing services in the State of
11 Arizona or work sites in the State of Arizona.

12 163. Under the Legal Arizona Workers Act, Arizona businesses could lose
13 their Arizona licenses for conduct that occurred wholly outside the State of Arizona
14 and that the State of Arizona has no authority to regulate.

15 164. A.R.S. § 23-214 requires employers to use E-Verify to verify the
16 employment eligibility of its employees after December 31, 2007.

17 165. The requirement that employers use E-Verify to verify the employment
18 eligibility of its employees is not limited to employees in the State of Arizona, but
19 applies to all employees of businesses that have at least one employee in Arizona and
20 a license or permit issued by the State or one of its political subdivisions.

21 166. By requiring that employers use E-Verify to verify the work
22 authorization of employees who do not perform services in Arizona and by extending
23 investigations and enforcement actions to employees outside of Arizona, Arizona is
24 regulating commerce that occurs wholly outside the State of Arizona and that the
25 State of Arizona has no authority to regulate.

26 167. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona
27 Workers Act is unconstitutional because it violates the Commerce Clause of the U.S.
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1 Constitution due to its extraterritorial effects and control of commerce that occurs
2 outside the borders of Arizona.

3 168. Plaintiffs are entitled to a preliminary and permanent injunction to
4 enjoin the County Attorneys and Attorney General from taking actions to enforce or
5 implement the Legal Arizona Workers Act.

6 **FOURTH CLAIM FOR RELIEF**

7 **VIOLATIONS OF SUPREMACY CLAUSE OF U.S. CONSTITUTION AND**
8 **PRE-EMPTION BY FEDERAL IMMIGRATION LAW**

9 169. Plaintiffs hereby incorporate by this reference all allegations of the
10 preceding paragraphs of this Complaint, as if fully set forth herein.

11 170. Under the Supremacy Clause of the U.S. Constitution, federal law may
12 expressly or implicitly preempt state and local laws.

13 171. In accordance with its exclusive power over matters of immigration, the
14 U.S. Congress has adopted, pursuant to the Immigration and Nationality Act, 8 U.S.C.
15 § 1101 et seq., and other laws, a comprehensive system of laws, regulations, and
16 procedures and has created administrative agencies that determine, subject to judicial
17 review, whether and under what conditions individuals may enter, stay in, and work in
18 the U.S. and a system of civil and criminal penalties for those violating the law,
19 including employers who knowingly employ unauthorized aliens.

20 172. When enacting the Immigration Reform and Control Act, Congress
21 expressly pre-empted state and local laws. The Immigration Reform and Control Act
22 provides, in part, as follows: “[Federal law] pre-empts any state or local law
23 imposing similar criminal sanctions (other than through licensing and similar laws)
24 upon those who employ unauthorized aliens.” 8 U.S.C. § 1324a(h)(2).

25 173. The licensing exception was designed and intended to allow state
26 governments to take action against the business license for employers “found to have
27 violated the sanctions provision” of 8 U.S.C. § 1324a – essentially only after the
28 employer had been found by the federal government to have violated the federal law.

1 174. The licensing exception to the preemption clause in 8 U.S.C. §
2 1324a(h)(2) does not allow states to pass laws prohibiting the employment of
3 unauthorized aliens.

4 175. The federal government has enacted broad, comprehensive immigration
5 laws that govern who is eligible to work in the United States and that govern the
6 process by which employers must verify the eligibility of job applicants.

7 176. The federal government has occupied the field of immigration
8 regulation through the Immigration and Nationality Act (“INA”), the Immigration
9 Reform and Control Act of 1986 (“IRCA”), the Illegal Immigration Reform and
10 Immigrant Responsibility Act (“IIRIRA”), and other laws, including occupying the
11 field relating to prohibiting the employment of unauthorized workers and verifying
12 the eligibility of job applicants.

13 177. The immigration laws, procedures, and policies created by the federal
14 government regulate immigration and confer rights in a careful balance reflecting the
15 national interest.

16 178. Congress carefully balanced the requirements and penalties in the
17 federal immigration law with consideration of the tension that immigration
18 compliance and sanctions might cause relating to race, national origin, and citizenship
19 discrimination.

20 179. The Constitution bars Defendants from altering or obstructing the
21 federal government’s carefully crafted comprehensive immigration regime.

22 180. The Constitution bars Defendants from enacting or enforcing laws that
23 conflict with federal law, including federal immigration laws.

24 181. The Legal Arizona Workers Act conflicts with federal law and is
25 therefore preempted by federal law and is unconstitutional pursuant to the Supremacy
26 Clause of the U.S. Constitution.

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1 187. The Legal Arizona Workers Act provides that employers who comply
2 with the federal I-9 requirement have an affirmative defense that they did not
3 knowingly or intentionally employ an unauthorized alien. A.R.S. § 23-212(J).¹

4 188. The affirmative defense provided in A.R.S. § 23-212(J) conflicts with
5 federal limitations on the use of the Form I-9 and thus is preempted by federal law.

6 189. The factors to be considered by Arizona courts in determining whether
7 to suspend business licenses include “whether the employer made good faith efforts to
8 comply with any applicable requirements,” which necessarily will require the
9 consideration of the employer’s compliance with the Form I-9. The foregoing
10 enforcement provisions of A.R.S. § 23-212(F)(1)(d) conflicts with the federal
11 limitations on the use of the Form I-9 and is thus preempted by federal law.

12 190. The federal government has failed to issue tamper-proof and forgery-
13 proof forms of identification to persons that employers may rely upon to confirm with
14 accuracy and reliability the identity of a person or the person’s eligibility to work in
15 the United States.

16 191. The State of Arizona has failed to issue tamper-proof and forgery-proof
17 documents establishing the identity of residents of the State of Arizona.

18 192. Federal immigration law and federal employment discrimination laws
19 prohibit employers from taking action to refuse to hire or discharge employees based
20 upon their citizenship, national origin, race, ethnicity, color or other classifications
21 protected by law.

22 193. The Legal Arizona Workers Act threatens the uniformity and primacy
23 of the federal immigration system and conflicts with federal immigration law.

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26 ¹ A.R.S. 23-212(J) actually provides that good faith compliance with 8 U.S.C. §
27 1324b, the non-discrimination provisions of IRCA, is a good-faith defense. This is a
28 typographical error. The law intended to refer to 8 U.S.C. § 1324a(b), the I-9
employment verification system.

1 194. The Legal Arizona Workers Act stands as an obstacle to the uniform
2 enforcement and application of federal immigration laws and the comprehensive
3 regime created by Congress.

4 195. The Legal Arizona Workers Act imposes penalties on employers for
5 Arizona's state-regulated immigration enforcement measures beyond and different
6 than what the federal government requires.

7 196. The Legal Arizona Workers Act makes unlawful an additional
8 immigration-related employment practice that is not prohibited under federal law, that
9 of "intentionally" employing an unauthorized alien.

10 197. The prohibition in A.R.S. § 23-212(A) against "intentionally"
11 employing an unauthorized alien is preempted by IRCA. It is inconsistent with the
12 uniform enforcement of federal immigration law and Congress has already acted,
13 through IRCA, to occupy the field regarding controlling the employment of aliens.

14 198. The definition of "license" in A.R.S. § 23-211(7) subject to being
15 suspended or revoked includes items that are not licenses within any traditional sense
16 of the word or as the term is used in 8 U.S.C. § 1324a(h)(2).

17 199. Articles of Incorporation, a grant of authority, a Certificate of
18 Partnership, a Partnership Registration and Articles of Organization are not
19 "licenses."

20 200. The Arizona Legislature exceeded the savings clause in 8 U.S.C. §
21 1324a(h)(2) when it defined "license" to include Articles of Incorporation, a grant of
22 authority, a Certificate of Partnership, a Partnership Registration, and Articles of
23 Organization.

24 201. Under The Legal Arizona Workers Act, Arizona courts could order the
25 Arizona Corporation Commission to "suspend" corporations' Articles of
26 Incorporation.

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1 202. There is no legal meaning to “suspending” a corporation’s Article of
2 Incorporation. Either the corporation’s charter exists or it does not. There is no in-
3 between concept of a “suspended” Articles of Incorporation.

4 203. The federal government does not require employers to use E-Verify. It
5 is a strictly voluntary program, except in the few cases where the federal government
6 requires employers that violated the employment verification laws to use E-Verify as
7 part of a settlement with the federal government.

8 204. Authorization for E-Verify expires November 30, 2008 at which time
9 the program expires and will no longer exist without further action by the U.S.
10 Congress before November 30, 2008.

11 205. The fact that the federal government does not require employers to use
12 E-Verify evidences the intent of the federal government that E-Verify remain
13 voluntary and that employers are not to be required to use E-Verify.

14 206. In order to use E-Verify, employers must enter into a contract with the
15 federal government that is contained in a Memorandum of Understanding issued by
16 the federal government.

17 207. The terms of the contract with the federal government for use of E-
18 Verify obligate employers to use E-Verify in accordance with the federal
19 government’s requirements and procedures, including but not limited to the matters
20 set forth in the federal government’s Memorandum of Understanding and a 64-page
21 User’s Manual for E-Verify.

22 208. The federal government provides information to potential and actual
23 users of E-Verify, via a computer internet connection, to inform potential and actual
24 users of E-Verify about the terms and conditions for operation and use of E-Verify.

25 209. The information provided by the federal government to potential and
26 actual users of E-Verify specifically informs them that the use of E-Verify by
27 employers is voluntary.

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1 210. The Legal Arizona Workers Act is preempted by federal law and is
2 unconstitutional under the Supremacy Clause, and is a denial of due process because
3 of the conflicting and inconsistent provisions of the state and federal law and the
4 conflicting and inconsistent information that employers receive from the State of
5 Arizona and the federal government. The State of Arizona, by enacting the Legal
6 Arizona Workers Act, and Defendants, by enforcing it, mandate that Arizona
7 employers must log onto a federal website that provides Arizona employers with
8 information from the federal government that is the opposite of and contradictory to
9 the provisions of the Legal Arizona Workers Act.

10 211. The Legal Arizona Workers Act places Arizona employers, including
11 plaintiffs and their members, at risk of being found to be in violation of Arizona law
12 because Arizona employers followed and complied with the information from the
13 federal government that their use of E-Verify is voluntary, as communicated to them
14 by the federal government on the computer system maintained by the federal
15 government and that is made mandatory by the Legal Arizona Workers Act.

16 212. It is preempted by the federal law, unconstitutional, and a denial of due
17 process for the State of Arizona and Defendants to place Arizona employers in the
18 position of disregarding, ignoring, or not following the information and directions
19 given to them by the federal government on the very computer system that the State
20 of Arizona requires Arizona employers to use in order to participate in E-Verify.

21 213. The federal government's Memorandum of Understanding provides that
22 the federal government may revoke the right of any employer to use E-Verify if they
23 do not comply with all of the federal government's requirements for use of the
24 program.

25 214. Studies by the federal government document that at least half of the
26 users of E-Verify violate the federal government's requirements in the manner in
27 which they use the program.

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1 215. The Memorandum of Understanding that is a contract between
2 employers and the federal government for use of E-Verify obligates the federal
3 government to furnish to the employer the name, address and telephone number of a
4 federal government employee who will available to answer the employer's questions
5 and provide support for the employer's use of E-Verify.

6 216. The State of Arizona does not have the authority to require employers to
7 use E-Verify, and its attempt to do so in the Legal Arizona Workers Act is preempted
8 by federal law.

9 217. The Legal Arizona Workers Act will place burdens on the Executive
10 Branch of the federal government including the Department of Justice, Department of
11 Homeland Security, and Social Security Administration, that will impede the
12 functions of those agencies.

13 218. By requiring that every complaint be investigated and that every
14 investigation must involve querying the federal government under 8 U.S.C. § 1373(c),
15 the Legal Arizona Workers Act places an impermissible burden on the federal
16 government.

17 219. By requiring that every Arizona employer use E-Verify, the Legal
18 Arizona Workers Act places an impermissible burden on the Executive Branch of the
19 federal government, including the Social Security Administration and the Department
20 of Homeland Security, who currently do not have the resources to successfully
21 absorb, support, monitor and enforce the compliance of 139,500 new Arizona users of
22 E-Verify, which currently has approximately 17,000 companies enrolled and only half
23 that many that actively use the program.

24 220. The Legal Arizona Workers Act is preempted by the Constitution and
25 federal law because it places some Arizona employers, including some of the
26 Plaintiffs and some of their members in the position of being compelled to violate the
27 laws of the State of Illinois.

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1 221. The State of Illinois has enacted Public Act 095-0138, that states, in
2 part, “employers are prohibited from enrolling in any employment eligibility
3 verification system, including E-Verify, as authorized by 8 U.S.C. § 1324(a) ... until
4 the Social Security Administration (SSA) and Department of Homeland Security
5 (DHS) databases are able to make a determination on 99% of the tentative non-
6 confirmation notices issued to employers within three days, unless otherwise required
7 by federal law.”

8 222. The Social Security Administration and Department of Homeland
9 Security databases do not meet the performance standards mandated by the State of
10 Illinois, as set forth above.

11 223. Arizona employers who also have employees in Illinois are therefore
12 prohibited by the State of Illinois from using E-Verify, but are compelled by the State
13 of Arizona to use E-Verify under the Legal Arizona Workers Act effective on January
14 1, 2008.

15 224. The Legal Arizona Workers Act violates the Supremacy Clause of the
16 Constitution, is preempted by federal law, and violates due process rights. It places
17 some Arizona employers, including some of the Plaintiffs and their members, in the
18 position of mandating under Arizona law that they violate the laws of the State of
19 Illinois.

20 225. E-Verify is intended to be and has been adopted and implemented by
21 the federal government as a program for which enrollment by participating employers
22 is voluntary.

23 226. The obligations imposed upon employers pursuant to the terms of E-
24 Verify Memorandum of Understanding include the employer’s consent to certain
25 rights of the federal government to inspect the employer’s property and documents.

26 227. As set forth in the Sixth Claim for Relief, under the Fourth Amendment
27 to the U.S. Constitution, the federal government would not possess the right to
28 conduct searches without a warrant of the property and documents of employers who

1 participate in E-Verify without the consent of employers to allow such searches
2 without a warrant.

3 228. E-Verify's requirement that participating employers consent to the right
4 of the federal government to conduct searches of the property and documents of
5 employers who participate in E-Verify requires that the participation of employers in
6 E-Verify must be voluntary on the part of the employers.

7 229. If employers are compelled to participate in E-Verify, they will not have
8 consented to the rights of the federal government to conduct searches of the
9 employers' property and documents.

10 230. The Legal Arizona workers Act compels Arizona employers, including
11 Plaintiffs and their members, to participate in the otherwise voluntary E-Verify
12 systems.

13 231. By compelling participation in E-Verify, the Legal Arizona Workers
14 Act is inconsistent with and negates the voluntariness of E-Verify that is essential for
15 there to be consent to the federal government's right to inspect the participating
16 employers' property and documents without a warrant.

17 232. E-Verify is preempted by federal law and violates the Supremacy
18 Clause of the U.S. Constitution by interfering with, contradicting, and negating the
19 voluntariness of the participating in E-Verify that is essential for the participants in
20 the program having given consent to the federal government's rights under the
21 Memorandum of Understanding to conduct searches of the employers' property and
22 documents without a warrant.

23 233. The requirement in A.R.S. § 32-1154(12) that would deprive Plaintiffs
24 or their members of a contractor's license as a result of their failure to comply with
25 the Legal Arizona Workers Act, including the mandate to enroll in the E-Verify
26 Program, is preempted and conflicts with federal law and imposes a burden on some
27 of the members of Plaintiff associations.

28

1 234. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona
2 Workers Act is unconstitutional because it is preempted by federal law.

3 235. Plaintiffs are entitled to a preliminary and permanent injunction to
4 enjoin the County Attorneys and Attorney General from taking actions to enforce or
5 implement the Legal Arizona Workers Act.

6 236. Plaintiffs are entitled to a preliminary and permanent injunction to
7 enjoin Fidelis V. Garcia from taking any action against any Plaintiff or member of
8 Plaintiff associations on the basis that such Plaintiff or Plaintiff member failed to
9 comply with the Legal Arizona Workers Act.

10 **FIFTH CLAIM FOR RELIEF**

11 **VIOLATION OF THE SEPARATION OF POWERS DOCTRINE OF THE**
12 **ARIZONA CONSTITUTION.**

13 237. Plaintiffs hereby incorporate by this reference all allegations of the
14 preceding paragraphs of this Complaint, as if fully set forth herein.

15 238. The Constitution of Arizona divides the State Government of Arizona
16 into three branches, the executive, legislative and judicial. Article III of the
17 Constitution states as follows:

18 The powers of the government of the State of Arizona shall be divided
19 into three separate departments, the Legislative, the Executive, and the
20 Judicial, and, except as provided in this Constitution, such departments
shall be separate and distinct, and no one of such departments shall
exercise the powers properly belonging to either of the others.

21 239. The Arizona Constitution prohibits each branch of government from
22 exercising the powers that are given by the Constitution to a separate branch of
23 government.

24 240. The Constitution of Arizona prohibits the Legislative Branch of
25 government from exercising executive powers that properly belong to the Executive
26 Branch of government.

27 241. The Legislative Branch has the power to write and pass laws. The
28 Executive Branch has the sole power to carry out the provisions of the law.

1 242. The Legal Arizona Workers Act contains a legislative mandate that the
2 Executive Branch of government investigate every complaint that it receives alleging
3 that an employer is knowingly or intentionally employing an unauthorized alien.
4 A.R.S. § 23-212(A).

5 243. A.R.S. § 23-212(B) dictates the method by which the Executive Branch
6 of government shall investigate each complaint. A.R.S. § 23-212(B) mandates that
7 the investigation regarding an employee's status shall consist solely of an inquiry to
8 the federal government pursuant to 8 U.S.C. § 1373(c).

9 244. A.R.S. § 23-212(B) prohibits the Executive Branch of government
10 from considering information other than a response from the federal government
11 pursuant to 8 U.S.C. § 1373(c) in acting upon each complaint received by the
12 Executive Branch and determining whether an alien is authorized to work in the
13 United States.

14 245. The Legal Arizona Workers Act mandates that the Executive Branch of
15 government prosecute each complaint that is "not frivolous."

16 246. The Legal Arizona Workers Act does not allow the exercise of
17 discretion by the Executive Branch in enforcing the Act. Prosecutors will be required
18 to bring lawsuits that on balance lack merit but do not fall to the level of being
19 "frivolous."

20 247. The Legal Arizona Workers Act mandates that the Executive Branch
21 take each of the above actions regardless of the resources, other duties, professional
22 judgment and other priorities or factors that the Executive Branch would otherwise
23 consider in discharging its duties under the Legal Arizona Workers Act and under all
24 other laws for which it has the responsibility to take action.

25 248. Because of the mandate of the Legal Arizona Workers Act that all
26 complaints under A.R.S. § 23-212(B) must be investigated and all non-frivolous
27 complaints under the Legal Arizona Workers Act must be prosecuted, it is possible
28 that the Executive Branch of the Arizona Government may be unable to discharge

1 other important duties that are the responsibility of the Executive Branch, including
2 but not limited to prosecuting suspects for murder, rape, child molestation, hate
3 crimes, financial fraud, driving while intoxicated, and other crimes.

4 249. The above provisions of the Legal Arizona Workers Act violate the
5 separation of powers clause of the Arizona Constitution. Each of the provisions set
6 forth above constitutes the exercise by the Legislative Branch of powers that are
7 reserved to the Executive Branch.

8 250. Plaintiffs are entitled to a declaratory judgment that the Legal Arizona
9 Workers Act is unconstitutional because it violates the separation of powers of the
10 Arizona Constitution.

11 251. Plaintiffs are entitled to a preliminary and permanent injunction to
12 enjoin the County Attorneys and Attorney General from taking actions to enforce or
13 implement the Legal Arizona Workers Act.

14 **SIXTH CLAIM FOR RELIEF**

15 **VIOLATION OF PROTECTION AGAINST UNREASONABLE SEARCHES** 16 **AND SEIZURES UNDER THE U.S. CONSTITUTION**

17 252. Plaintiffs hereby incorporate by reference all allegations of the
18 preceding paragraphs of this Complaint, as fully set forth herein.

19 253. Pursuant to the Fourth and Fourteenth Amendments of the U.S
20 Constitution, state and local governments are prohibited from conducting
21 unreasonable searches and seizures. The Fourth Amendment provides:

22 The right of people to be secure in their persons, houses, papers, and
23 effects, against unreasonable searches and seizures, shall not be
24 violated, and no Warrants shall issue, but upon probable cause,
25 supported by Oath or affirmation, and particularly describing the place
to be search, and the person or things to be seized.

26 254. The Legal Arizona Workers Act mandates that after December 31,
27 2007, every employer must verify the employment eligibility of employees through
28 the federal government's otherwise voluntary E-Verify.

- 1 because it violates the procedural due process guarantees of the
2 Fourteenth Amendment to the U.S. Constitution.
- 3 B. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
4 declaring that the Legal Arizona Workers Act is unconstitutional
5 because it violates the procedural due process guarantee of Article II § 4
6 of the Arizona Constitution.
- 7 C. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
8 declaring that the Legal Arizona Workers Act is unconstitutional
9 because it is preempted by federal law.
- 10 D. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
11 declaring that the Legal Arizona Workers Act is unconstitutional
12 because it violates the Commerce Clause of the U.S. Constitution.
- 13 E. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
14 declaring that the Legal Arizona Workers Act is unconstitutional
15 because it violates the separation of powers of the Arizona Constitution.
- 16 F. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
17 declaring that the Legal Arizona Workers Act is unconstitutional
18 because it violates the Fourth Amendment to the U.S. Constitution.
- 19 G. A preliminary and permanent injunction to enjoin the County Attorneys,
20 Attorney General and Fidelis V. Garcia from taking actions to enforce
21 or implement the Legal Arizona Workers Act.
- 22 H. An award of attorneys' fees and costs, plus interest, pursuant to 42
23 U.S.C. § 1988.
- 24 I. Such other relief as the Court deems just and proper.
- 25 ///
- 26 ///
- 27 ///
- 28 ///

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1 RESPECTFULLY SUBMITTED this 9th day of December, 2007.

2 BALLARD SPAHR ANDREWS &
3 INGERSOLL, LLP

4
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23 I hereby certify that on the 9th day of
24 December, 2007, I caused the foregoing document:

25 COMPLAINT

26 To be filed electronically with the Clerk of
27 Court through ECF; and that ECF will send
28 an e-notice of the electronic filing to the
following ECF participants:

And to be delivered as a courtesy hard copy
To:

/s/ Kathleen Reynolds