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Senorino Ramirez Cruz, Leocadio de la Rosa, Liborio Santiago Pérez, Felipe Nava, Ignacio Macias, and Rafael Nava on behalf of themselves and all others similarly situated, bring this action against defendants for breach of contract, breach of trust/fiduciary duty, accounting, unjust enrichment, conversion, violation of Cal. Bus. & Prof. Code ' 17200, et seq., and damages.

INTRODUCTION

1. Plaintiffs are former contract workers and heirs of contract workers who came to the United States from Mexico during the years 1942 through at least 1949, to work in fields and on railroads pursuant to bilateral agreements between the United States and Mexico. Pursuant to those agreements, over three hundred thousand Mexican workers, known as Abraceros@ (from the Spanish word, Abrazo,@ i.e., arm) entered the United States to do grueling work, often under appalling conditions. To ensure that the braceros would not be destitute upon their return to Mexico, these agreements provided that ten percent of the wages of these laborers would be withheld from them and transferred via United States and Mexican banks to individual Savings Fund accounts for each bracero. Millions of dollars were withheld from braceros= wages, but as a result of Defendants= actions, Plaintiffs have to date received nothing.

2. Plaintiffs seek the immediate return of the wages and bank deposits that Defendants wrongfully retained and converted, plus prejudgment interest on such monies, punitive damages, a full and complete accounting and disgorgement of all monies, costs, attorneys= fees, and such other and further relief as this Court determines to be just and equitable.

JURISDICTION

3. This Court has subject matter jurisdiction with respect to claims against the United States pursuant to 28 U.S.C. ' ' 1331, and 1346(a)(2)-1346(b)(1).

4. This Court has subject matter jurisdiction with respect to claims against Mexico and Defendant Mexican banks Banco de Mexico, S.A., Banco Nacional de Credito Rural, S.N.C., and Patronato del Ahorro Nacional, pursuant to 28 U.S.C. ' ' 1330, 1331 and 1605-1606.

5. This Court has supplemental jurisdiction with respect to state law claims against Defendants pursuant to 28 U.S.C. ' 1367.

VENUE

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6. Venue is proper in this Court pursuant to 28 U.S.C. ' 1391(e), because Wells Fargo Bank, is a corporation that conducts business and is subject to personal jurisdiction in this District, pursuant to 28 U.S.C. ' 1391(c), and thus resides here; because a substantial part of the events and omissions giving rise to Plaintiffs' claim occurred in this District; and because plaintiffs Senorino Ramirez Cruz, Leocadio de la Rosa, and Ignacio Macias reside in this District and no real property is involved in this case.

7. Venue is also proper with respect to Defendants Estados Unidos Mexicanos, Banco de Mexico, Banco Nacional de Credito Rural, S.N.C., and Patronato del Ahorro Nacional, under 28 U.S.C. ' 1391(f)(1) because a civil action against a foreign state as defined in 28 U.S.C. ' 1603(a) may be brought in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

8. Venue in this Court is particularly appropriate given the substantial ties between this District and the events giving rise to the lawsuit. Moreover, a Mexican court would not be an appropriate forum because Mexico does not permit class actions. A class action is the only effective means of fairly resolving this controversy, particularly given (1) the many thousands of class members, and (2) the relatively small size of each individual claim. Most class members made an hourly wage of less than \$1.00 an hour, and on information and belief, worked as braceros an average of less than two years. Ten percent of each bracero's wages were withheld in the purported Savings Fund that is the subject of this lawsuit.

INTRADISTRICT ASSIGNMENT

9. This action arises in Sonoma County as a substantial part of the events or omissions which give rise to the claim occurred therein. Therefore, this action is properly assigned to the San Francisco Division of the Northern District of California.

PARTIES

Plaintiffs

10. Plaintiff SENORINO RAMIREZ CRUZ was employed as an agricultural

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laborer under the Bracero program from 1944 to 1947. He currently resides in Sonoma County, California in the Northern District of California.

11. Plaintiff LEOCADIO de la ROSA was employed as both an agricultural and railroad laborer under the bracero program for six months beginning in 1945, after which he returned to Mexico. He currently resides in the Northern District of California.

12. Plaintiff LIBORIO SANTIAGO PÉREZ was employed as an agricultural laborer under the bracero program from 1942 to 1962. He currently resides in Mexico.

13. Plaintiff FELIPE NAVA was employed as a track laborer and in other capacities for the New York Central Railroad under the bracero program from 1943 to 1945. He currently resides in Northern Illinois.

14. Plaintiff IGNACIO MACIAS was employed as an agricultural laborer under the bracero program from 1944 to 1947. He currently resides in Sonoma County, California in the Northern District of California.

15. Plaintiff RAFAEL NAVA was employed as a track laborer and in other capacities from 1944 to 1948. He currently resides in Mexico.

16. On information and belief, members of the prospective class reside in California and throughout the United States, and in Mexico.

Defendants

17. Defendant UNITED STATES OF AMERICA (AUNITED STATES@) is a sovereign nation that entered into agreements with Mexico and with other Defendants for the purposes, *inter alia*, of safeguarding and protecting the rights of braceros, and was charged with collecting savings fund amounts and transferring them to defendant banks.

18. Defendant ESTADOS UNIDOS MEXICANOS (AMEXICO@) is a sovereign nation that entered into agreements with the United States creating the Savings Fund at issue here, and undertook to ensure the security of that fund and the protection of its nationals in the bracero program.

19. Defendant WELLS FARGO BANK is a banking corporation that has a number of business offices in San Francisco and elsewhere in the Northern District of California.

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25. On April 29, 1943, a similar shortage of railroad laborers led to the signing of an agreement to import railroad workers into the United States. Pursuant to these agreements, and their subsequent amendments, between September 1942 and December 1947, over 300,000 workers came from Mexico to work in fields and railroads in the United States. A large proportion of the agricultural braceros worked in this District and elsewhere throughout the State of California. Braceros harvested many billions of dollars worth of crops in the United States. For example, in 1944 the total estimated value of the crops harvested by the agricultural braceros in the United States was \$432 million; over half of that amount was in California.

26. By the time the United States entered into those negotiations, there had been a long history of employment of Mexican nationals in the United States in the agriculture and railroad industries, as well as other industries. Mexico knew that its nationals had often been exploited and subjected to substandard wages, poor housing conditions, and discrimination in the United States. During the Depression of the 1930=s, the United States had forcibly repatriated a number of impoverished Mexican nationals.

27. Braceros did stoop labor, harvesting sugar beets and corn, and picking apples, cherries, cotton, and other crops under the broiling sun of the Southwest and in the freezing weather of the Midwest and Northwest, for wages that provided a bare subsistence. At the end of the workday, the bracero doing stoop labor would have difficulty standing up, and many suffered lasting back injuries. Working at breakneck speed to meet their quotas, many also lost fingers to the machete. Braceros working in agriculture were shifted from farm to farm as needed. Braceros also worked in the construction and maintenance of railroad tracks, living in isolation and in unheated boxcars. Braceros were often held in virtual captivity during their contract periods and when there was no work, they were sent back to Mexico, sometimes forcibly.

28. In light of this history, as well as its own need for labor, Mexico was reluctant to agree to the United States= request for workers. On the other hand, Mexico wanted to assist in the joint war effort. Mexico insisted on a number of provisions to protect its nationals, including payment of wages on the same terms as American nationals, the provision of adequate housing, and a prohibition of all forms of discrimination. In an attempt to prevent the repetition of past abuses,

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these United States-Mexico agreements provided that braceros working in agriculture would be considered to be employees of the United States government. With respect to braceros working on the railroads, the United States was designated as the Patron of the worker. The responsible agency or department of the United States entered into (1) a six-month contract with each individual bracero under the supervision of the Mexican Government, and (2) a contract with each employer for which the bracero worked. A bracero's contract could be renewed if that was mutually agreeable to the United States, Mexico, the employer, and the bracero. The United States government was to be responsible for all living and transportation expenses. Housing and sanitary conditions were to be adequate. Braceros working in agriculture would receive a minimum wage of 30 cents per hour. Braceros who were employed for less than 75% of the time contracted were to receive a subsistence allowance of three dollars per day for such time. Braceros working on the railroads were to receive 46 cents per hour.

29. In addition, to ensure that its nationals did not return home penniless, as was the case with the forced repatriations of the 1930's, Mexico insisted that ten percent of each worker's earnings be deposited in a Savings Fund, to be paid to him upon his return to Mexico.

30. The August 4, 1942 agreement and its subsequent amendments provided that ten percent of the wages of each bracero working in agriculture were to be deducted for deposit in a Savings Fund payable to the worker upon his return to Mexico. The agreement contained the following provision, entitled "Savings Fund":

a) The respective agency of the Government of the United States shall be responsible for the safekeeping of the sums contributed by the Mexican workers toward the formation of their Rural Savings Fund, until such sums are transferred to the Mexican Agricultural Credit Bank which shall assume responsibilities for the deposit, for their safekeeping and for their application, or, in the absence of these, for their return.

b) The Mexican Government through the Banco de Credito Agricola will take care of the security of the savings of the workers to be used for payment of the agricultural implements, which may be made available to the Banco de Credito Agricola in accordance with exportation permits for shipment to Mexico with the understanding that the Farm Security Administration will recommend priority treatment for such implements.

31. On September 10, 1942, representatives of both countries drafted the first

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A Standard Contract to be used when hiring agricultural workers. Clause 5.a. of the Standard Contract established that 10 percent of each bracero's check (gross wages) would be deducted and placed in a worker Savings Fund. The first Mexican workers transported under the Bracero program arrived in the United States on or about September 29, 1942.

32. The United States government, through the Farm Security Administration (AFSA), acted as the employer for the braceros working in agriculture, while the growers or their associations were subcontractors. The FSA entered into Individual Work Agreements with braceros, which mirrored the Standard Contract. The FSA also entered into contracts with the growers or their associations, called Cooperative Employment Agreements, which obligated the United States government to provide the growers with braceros in return for the growers' promises to comply with the protections of the Standard Contract.

33. On April 26, 1943, the agreement between the United States and Mexico was amended. The Savings Fund provision was revised to specify the roles of the Wells Fargo Bank, the Union Trust Company of San Francisco, and the Bank of Mexico:

The respective agencies of the Government of the United States shall be responsible for the safekeeping of the sums contributed by the Mexican workers toward the formation of their Rural Savings Fund, until such sums are transferred to the Wells Fargo Bank and Union Trust Company of San Francisco for the account of the Bank of Mexico, S.A., which will transfer such amounts to the Mexican Agricultural Credit Bank. This last shall assume responsibility for the deposit, for the safekeeping and for the application, or in the absence of these, for the return of such amounts.

34. Under these agreements and contracts, deductions made by growers or their associations for the Savings Fund were to be sent to the FSA. The FSA required that these associations submit semi-monthly payroll reports stating each bracero's earnings and hours of employment. Lists identifying braceros, and the amounts owed to them were compiled by the United States government, and entrusted to Wells Fargo Bank, Union Trust Company of San Francisco, Bank of Mexico, S.A., and the Mexican Agricultural Credit Bank, to ensure reimbursement, as agreed upon, to braceros upon their return to Mexico. The funds were to be returned to the braceros at the exchange rate as of the day the Banco de Credito Agricola received the money from the United States banks. Many agricultural braceros never received their Savings

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Fund monies. Millions of dollars were withheld from agricultural braceros= earnings pursuant to the Savings Fund provision of the agreements between the United States and Mexico. According to a report by the United States Department of Agriculture, between September 29, 1942 and March 1, 1946 alone, \$15,997,062.95 was withheld.

35. In 1943, administration of the agricultural Bracero program was taken from the FSA and vested with the War Food Administration, then an agency of the United States. After the conclusion of World War II, the War Food Administration was abolished, but the agricultural Bracero program continued to be administered by various agencies and departments of the United States.

36. The August 4, 1942 agreement between Mexico and the United States as to agricultural workers, provided that:

It is understood that, with reference to the departure from Mexico of Mexican workers, who are not farm laborers, there shall govern in understandings reached by agencies of the respective Governments the same fundamental principles which have been applied here to the departure of farm labor.

37. On April 29, 1943, the two nations entered into an agreement concerning the importation of braceros to work on the railroads. This agreement contained a similar Savings Fund provision, which, however, involved different agencies of the United States government, and in which the Banco del Ahorro Nacional, S.A. was substituted for the Banco de Credito Agricola:

The War Manpower Commission assumes responsibility for the safekeeping of amounts contributed by Mexican workers for the formation of the Savings Fund until such amounts are credited to the Bank of Mexico in such agency or agencies of said bank in the United States and which agencies will be determined by means of an exchange of notes. The Bank of Mexico for its part will transfer the sums in question to the Banco del Ahorro Nacional, S.A.

Whenever the War Manpower Commission shall have made the deposits referred to in the previous paragraph it shall send directly to the Banco del Ahorro Nacional, S.A., a list containing the names of the beneficiaries and the amount corresponding to each of them for the above-mentioned fund.

38. The bracero agreements covering railroad and agriculture workers provided that

The Mexican Consuls, assisted by the Mexican Labor Inspectors, . . . will take all possible measures of protection in the interest of the Mexican workers in all questions affecting them

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39. Braceros working on the railroads were employed by approximately 32 different companies in the United States. A substantial proportion of these braceros worked in this District or elsewhere in California.

40. The part of the bracero program for railroad workers was administered by the War Manpower Commission. Financial administration of this part of the program was delegated to the Railroad Retirement Board, which maintained a separate file for each bracero. Detailed lists of repatriated braceros working on the railroad were sent to the U.S. Embassy in Mexico to be forwarded to the Secretaria de Trabajo y Prevision Social (the Mexican Department of Labor) and to the Banco del Ahorro Nacional.

41. According to a document issued by the United States Employment Service (AUSES@), a total of 136,090 railroad braceros were imported into the United States between June 10, 1943 and August 24, 1945 to work on the railroads. On information and belief, by approximately March 1946, the use of railroad workers under the Bracero program had been discontinued and all railroad braceros had been returned to Mexico.

42. According to the USES document, Savings Fund deductions were made from wages of braceros working on the railroad until January 1946, at which time they were discontinued at the request of the Mexican government. According to the same document, a report to the United States Department of Commerce estimated the railroad braceros= total earnings as \$161,447,440, of which \$16,144,744 (10%) was withheld, ostensibly for the Savings Fund.

43. In addition to the ten percent Savings Fund deduction, railroad workers also had money deducted under the Railroad Retirement Act. The U.S. government wrote to Mexico:
With regard to the funds deducted from the salaries of these Mexican workers in accordance with the provisions of the Railroad Retirement Act of the United States, the Government of the United States is aware that when the agreement of April 29, 1943, was in the process of negotiation, the position of the Mexican representatives was that the workers= salaries should be exempt from such deductions because they considered that the accompanying benefits could not be administered effectively once the workers had departed from the United States. It was found, however, that because of the terms of the Railroad Retirement Act it was impossible to provide in the agreement for such an exemption without delaying indefinitely the entire program.

44. An unknown, but readily ascertainable number of ex-bracero workers who

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2 returned to the United States resumed railroad employment. Some of these workers were employed
3 for the requisite years for pension vesting purposes under the Railroad Retirement Act, or would
4 have had the requisite number of years necessary for pension vesting had their service under the
5 bracero program been counted toward their years of service. Upon information and belief, the
6 Railroad Retirement Board (ARRB) failed and refused to credit these workers with time spent as
7 railroad workers under the bracero program, owing to the special nature of the circumstances of their
8 employment. Consequently, the funds deducted from the salaries of these workers and paid to the
9 RRB were not considered normal pension contributions and should be disgorged.

10 45. An unknown, but readily ascertainable, number of ex-bracero workers who
11 were employed by the railroads returned to the United States and began working in employment
12 covered by the Social Security Act. Some of these workers were employed for the requisite quarters
13 necessary for benefit vesting purposes under the Social Security Act, or would have had the requisite
14 number of years necessary for benefit vesting had their service under the bracero program been
15 counted toward their years of service. Upon information and belief, the Social Security
16 Administration failed and refused to credit these workers with time spent as railroad workers under
17 the bracero program, owing to the special nature of the circumstances of their employment.
18 Consequently, the funds deducted from the salaries of these workers and paid to the RRB were not
19 considered normal pension contributions and should be disgorged.

20 46. Accordingly, the claims of Plaintiff railroad braceros concern not only the ten
21 percent deduction taken from the workers for the Savings Fund, but also reimbursement of amounts
22 taken under the Railroad Retirement Act and the Social Security Act. Many railroad braceros
23 received no monies from any of the sources.

24 47. On February 21, 1948, the United States and Mexico amended the agreement
25 regarding agricultural braceros. Pursuant to this amended agreement, each grower would, at the
26 conclusion of each bracero's contract, issue him a certified check or cashier's check for the total
27 amount of Savings Fund monies withheld. In order for the check to be negotiable, it had to be
28 stamped by the United States Immigration and Naturalization Service at the time the bracero crossed
the border to return to Mexico. This amendment further provided that the United States

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- b. the amounts transmitted to Wells Fargo and the Mexican banks; and,
- c. the disposition of funds upon return of those monies to Mexico.

52. Defendants= duties to the braceros, including Plaintiffs, pursuant to the agreements between the UNITED STATES and MEXICO as described herein, are continuing. Defendants= breaches of those duties in failing to return class members= assets and other property, and through repeated denials of information to Plaintiff and class members, constitute deliberate, continuous and ongoing violations which span the last fifty years. Additionally, the extraordinary circumstances of this case, including: (a) the fact that many of the braceros came from very poor rural areas of Mexico, were illiterate, and lacked resources to pursue their claims; (b) the fact that the braceros were dispersed after the conclusion of their bracero contracts; and (c) the fact that this program was carried out pursuant to international agreements between the governments of Mexico and the United States, warrant application of the doctrine of equitable estoppel.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated throughout the United States and Mexico as members of a proposed Plaintiff Class pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

54. The Class is defined as follows:
All persons who worked in the Bracero program operated by the United States and Mexican governments at any time between September 1942 and December 1949 and the successors or heirs of such persons who are now deceased.

55. The proposed class is so numerous that individual joinder of its members is impracticable. Tens of thousands of persons are members of the class, rendering the class so numerous that joinder of individual members is impracticable, as required by Fed. R. Civ. P. 23(a)(1).

56. Common questions of law and fact predominate over any individual issues that may exist as to the class, meeting the requirements of Fed. R. Civ. P. 23(a)(2). These common questions of fact and law include, *inter alia*, the following:

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a. Whether defendant UNITED STATES, wrongfully and in breach of its contractual obligations, failed to collect and/or to transmit monies withheld from the braceros= wages, thereby resulting in the Plaintiffs being unable to collect those monies;

b. Whether defendant UNITED STATES failed accurately to identify the braceros who were due money, and the amount due to each, thereby resulting in the Plaintiffs being unable to collect those monies;

c. Whether Defendant MEXICO failed to assure that the other Defendants, including the defendant banking institutions that were wholly owned by MEXICO, properly collect, receive, deposit, account for, and disburse withheld wages due to Plaintiffs and class members, as required by treaties and agreements between MEXICO and the UNITED STATES;

d. Whether Defendant WELLS FARGO BANK wrongfully and in breach of its contractual obligations, failed to return or promptly transmit monies withheld from the braceros= wages to the BANCO de MEXICO, thereby resulting in the plaintiffs being unable to collect those monies;

e. Whether Defendant WELLS FARGO BANK failed to furnish the BANCO de MEXICO, with documentation adequately describing each bracero who was to receive money, and the amount due him, thereby resulting in the Plaintiffs being unable to collect those monies;

f. Whether Defendant BANCO de MEXICO, wrongfully and in breach of its agreements failed to return or promptly transmit monies withheld from the braceros= wages to the Banco de Credito Agricola, S.A. or the Banco del Ahorro Nacional, S.A., thereby resulting in the Plaintiffs being unable to collect those monies;

g. Whether Defendant BANCO de MEXICO, failed to furnish the Banco de Credito Agricola, S.A. or the Banco del Ahorro Nacional, S.A. with documentation adequately describing each bracero who was to receive money, and the amount due him, thereby resulting in the Plaintiffs being unable to collect those monies;

h. Whether Banco de Credito Agricola, S.A. and/or its successor in

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interest, Defendant BANCO NACIONAL de CREDITO RURAL, S.N.C. wrongfully and in breach of its agreements failed to establish and maintain proper records showing each bracero who was owed money, and the amounts thereof, thereby making Plaintiffs unable to collect those monies;

i. Whether Banco de Credito Agricola, S.A. and/or its successor in interest, Defendant BANCO de CREDITO RURAL, S.A., wrongfully and in breach of its agreements failed to return money to braceros and their heirs;

j. Whether Banco del Ahorro Nacional, and/or its successor in interest, Defendant PATRONATO del AHORRO NACIONAL, failed to establish and maintain proper records showing each bracero who was owed money, and the amounts thereof, thereby making Plaintiffs unable to collect those monies;

k. Whether Banco del Ahorro Nacional, S.A. and/or its successor in interest, Defendant PATRONATO del AHORRO NACIONAL, wrongfully and in breach of its agreements failed to return money to braceros and their heirs;

l. Whether there are deposits of class members held by any of the Defendant Banks that should be returned to class members;

m. Whether Defendants unjustly profited by the retention of monies and by how much;

n. Whether Defendants owed Plaintiffs and class members a fiduciary/trust duty or other duty;

o. Whether Defendants breached their fiduciary/trust duty or other duty to Plaintiffs and class members;

p. Whether there are assets in the possession of the Defendants that cannot be traced to any particular class member, but that should be deposited in a common fund for equitable distribution among class members; and

q. Whether principles of equitable tolling and estoppel apply to the claims of all class members.

57. As required by Fed. R. Civ. P. 23(a)(3), the named plaintiffs' claims are typical of the claims of the class members. All members of the plaintiff class have been similarly

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2 affected by the Defendants= course of conduct, which has resulted in each named Plaintiff and each
3 class member being deprived of the Savings Fund monies to which he is entitled.

4 58. The representative parties will fairly and adequately represent the interests of
5 the plaintiff class. *See* Fed. R. Civ. P. 23 (a)(4). They do not have interests that are antagonistic to
6 the interests of other class members. The class representatives have retained attorneys experienced
7 in prosecuting complex litigation, including class actions for unpaid wages and class actions for
8 groups of Mexican nationals and Americans of Mexican descent involving failure to properly
9 transmit funds owned by such persons, and class actions seeking recovery of Swiss, French, German
10 and Austrian bank assets looted during the Holocaust. Plaintiffs and their counsel are committed to
11 vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so.
12 Neither Plaintiffs nor their counsel have any interests adverse to those of the Class.

13 59. The Court can and should certify this lawsuit as a class action pursuant to Fed.
14 R. Civ. P. 23(b)(3). A class action is superior to other methods for the fair and efficient adjudication
15 of this controversy. Absent a class action, most members of the Class likely would find the cost of
16 litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the
17 relatively small size of the individual class member=s claims, few class members likely could afford
18 to seek legal redress for the Defendants= misconduct. A class action is the only feasible mechanism
19 that allows the plaintiffs an opportunity for legal redress and justice. Absent a class action, Plaintiffs
20 and the members of the Class will continue to suffer harm as a result of Defendants= unlawful and
21 wrongful conduct.

22 60. Individual litigation if feasible would unduly burden the courts, and would
23 magnify the delay and expense to all parties in resolving the controversies engendered by
24 Defendants= actions. The class action device allows a single court to provide the benefits of unitary
25 adjudication, judicial economy, and fair and equitable handling of Plaintiffs= claims in a single
26 forum. Conducting this lawsuit as a class action conserves the resources of the parties and the
27 judicial system, and protects the rights of each class member.

28 61. In addition, the lawsuit may also be certified as a class action under Fed. R.
Civ P. 23(b)(1) and/or 23(b)(2) because:

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a. Inconsistent or varying adjudications with respect to individual members of the Plaintiff class would establish incompatible standards of conduct for the Defendants toward the classes;

b. Adjudications of individual class members= claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, and could substantially impair or impede those persons= ability to protect their interests; and

c. The Defendants have acted and refused to act on grounds generally applicable to the Plaintiff classes, thereby making equitable relief with respect to each class as a whole appropriate.

FIRST CAUSE OF ACTION
(Breach of Contract C United States)

62. Plaintiffs incorporate herein by reference the factual allegations set forth above as if fully set forth herein.

63. Defendant UNITED STATES owed the braceros working in agriculture, including plaintiffs, a contractual duty pursuant to its August 4, 1942 agreement and subsequent agreements with MEXICO, and its contracts with each individual bracero. That duty required the UNITED STATES to account for all monies withheld by the individual growers and growers= associations from the braceros= paychecks; collect all such monies promptly; transmit such monies promptly to the Banco de Credito Agricola (and later, after the April 26, 1943 amendment of the agreement with MEXICO, to Wells Fargo Bank and Union Trust Company); and accurately identify each bracero who was to receive money, and the amount due him.

64. Plaintiffs and plaintiff class members were the express and intended third party beneficiaries of the agreements between the UNITED STATES and MEXICO.

65. Plaintiffs and plaintiff class members performed all of their obligations under the agreement between the UNITED STATES and MEXICO in that they were recruited to work and did work in the United States as braceros and they had money deducted from their salaries for the Savings Fund.

66. On information and belief, the UNITED STATES breached its duty to the

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2 braceros, including the plaintiffs, and to MEXICO for the benefit of these braceros, in the following
3 ways:

- 4 a. delay in collecting monies from growers and growers= associations;
5 b. failure to collect all monies due the braceros;
6 c. delay in transmitting the braceros= money to the Banco de Credito
7 Agricola and/or to Wells Fargo Bank and Union Trust Company;
8 d. failure, in transmitting monies, to clearly and correctly identify each
9 individual bracero and the money due to him; and
10 e. failure, in the 1947-49 period, to ensure that growers paid Savings
11 Fund monies to the Banco de Credito Agricola and/or to individual
12 braceros.

13 67. Defendant UNITED STATES owed the braceros working for the railroads a
14 contractual duty pursuant to its April 29, 1943 agreement with MEXICO in that these braceros were
15 the express and intended third party beneficiaries of that agreement. That duty required the
16 UNITED STATES to account for all monies withheld by the railroad companies from the braceros=
17 paychecks, and ensure that such monies were promptly deposited into the appropriate bank account,
18 and that each railroad bracero and the amount due him were accurately identified.

19 68. On information and belief, the UNITED STATES breached one or more of
20 the above-described duties to MEXICO for the benefit of the braceros, including plaintiffs.

21 69. As a result of the UNITED STATES= breach, the plaintiffs and members of
22 the class were damaged in that they failed to receive the Savings Fund monies due them.

23 **SECOND CAUSE OF ACTION**
24 **(Breach of Fiduciary or Trust Duty C United States)**

25 70. Plaintiffs incorporate herein the factual allegations set forth above as if fully
26 set forth herein.

27 71. Defendant UNITED STATES owed the braceros working in agriculture a
28 fiduciary duty pursuant to its August 4, 1942 agreement with MEXICO, and subsequent agreements.

72. Additionally or in the alternative, defendant UNITED STATES owed these
braceros a trust duty pursuant to its August 4, 1942 agreement with MEXICO, and subsequent

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agreements.

73. The fiduciary and/or trust duty that the UNITED STATES owed to these braceros required it to account for all monies withheld by the individual growers and growers= associations from the braceros= paychecks; collect all such monies promptly; transmit such monies promptly to the Banco de Credito Agricola (and later, after the April 26, 1943 amendment of the agreement with MEXICO, to Wells Fargo Bank and Union Trust Company); and accurately identify each bracero who was to receive money, and the amount due him.

74. On information and belief, the UNITED STATES breached its duty to these braceros, including the plaintiffs, in the following ways:

- a. delay in collecting monies from growers and growers= associations and/or failure to collect all monies due the agricultural braceros;
- b. delay in transmitting the braceros= money to the Banco de Credito Agricola and/or to Wells Fargo Bank and Union Trust Company;
- c. failure, in transmitting monies, to clearly and correctly identify each individual bracero and the money due to him; and
- d. failure, in the 1947-49 period, to ensure that growers paid Savings Fund monies to the Banco de Credito Agricola or to individual bracero.

75. Defendant UNITED STATES owed the braceros working for the railroads a fiduciary duty pursuant to its April 29, 1943 agreement with MEXICO, and subsequent agreements.

76. Additionally or in the alternative, defendant UNITED STATES owed these braceros a trust duty pursuant to its April 29, 1943 agreement with MEXICO.

77. The fiduciary and/or trust duty that the UNITED STATES owed to these braceros required it to account for all monies withheld by the railroad companies from the braceros= paychecks, and ensure that such monies were promptly deposited into the appropriate bank account, and that each bracero and the amount due him were accurately identified.

78. On information and belief, the UNITED STATES breached one or more of the above-described duties to the braceros, including plaintiffs.

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79. As a result of the UNITED STATES= breach, the plaintiffs and members of the class were damaged in that they failed to receive the Savings Fund monies due them.

80. In order to achieve relief for the individual plaintiffs and the members of the plaintiff class, it is necessary for them to obtain an accounting of each participant in the Bracero program administered by the UNITED STATES, the amount of money withheld from his wages pursuant to the Savings Fund provision of the agreements between the UNITED STATES and MEXICO, and information concerning the UNITED STATES= collection of such monies and transmission of them to the Defendant banks.

THIRD CAUSE OF ACTION
(Resulting Trust C United States)

81. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

82. The agreements pursuant to which the UNITED STATES took control of monies deducted from the salaries of plaintiffs and the plaintiff class show that the UNITED STATES was not intended to take any beneficial interest in the sums deducted, but rather was simply to transfer those funds for the ultimate benefit of Plaintiffs and the plaintiff class.

83. Additionally, and in the alternative, these agreements evidence the existence of a resulting trust.

84. On information and belief, the UNITED STATES breached its duty to the braceros, including the Plaintiffs, in failing to transfer to the braceros the Savings Fund monies due them.

85. As a result of the UNITED STATES= breach, the Plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

86. In order to achieve relief for the individual plaintiffs and the members of the plaintiff class, the UNITED STATES must transfer any Savings Fund monies in its possession to the Plaintiffs and the class.

FOURTH CAUSE OF ACTION
(Breach of Contract C Mexico)

87. Plaintiffs incorporate herein the factual allegations set forth above, as if fully set forth herein.

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88. The agreements between the UNITED STATES and MEXICO governing the employment of braceros required MEXICO, through its consuls and their representatives, to Atake all possible measures of protection in the interest of the Mexican workers in all questions affecting them. Defendant MEXICO owed the braceros a contractual duty pursuant to its agreements with the UNITED STATES, as Plaintiffs and plaintiff class members were the express and intended third party beneficiaries of the agreements between the UNITED STATES and MEXICO.

89. Plaintiffs and plaintiff class members performed all of their obligations under the agreement between the UNITED STATES and MEXICO in that they were recruited to work and did work in the United States as braceros and they had money deducted from their salaries for the Savings Fund.

90. On information and belief, MEXICO breached its duty to the UNITED STATES for the benefit of braceros, including the Plaintiffs, in the following ways:

- a. failing to ensure that growers paid Savings Fund monies to individual braceros working in agriculture;
- b. failing to intercede with the UNITED STATES to rectify growers working in agriculture failure to pay Savings Fund monies to individual braceros;
- c. failure to account for all monies transmitted on behalf of the individual braceros working for the railroads;
- d. failure to ensure that such monies were promptly deposited into the appropriate bank account;
- e. failure to ensure that the interests of braceros in the United States were properly protected; and
- f. failure to ensure that each bracero received the funds owed to him.

91. As a result of Mexico=s breach, the plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary or Trust Duty by Mexico)

92. Plaintiffs incorporate herein the factual allegations set forth above, as if fully

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set forth herein.

93. Defendant MEXICO owed the braceros a fiduciary duty pursuant to its agreements with the UNITED STATES.

94. Additionally or in the alternative, Defendant MEXICO owed the braceros a trust duty pursuant to its agreements with the UNITED STATES.

95. On information and belief, MEXICO breached its duty to the braceros, including the Plaintiffs in the following ways:

- a. failing to ensure that growers and railroad companies paid Savings Fund monies to individual braceros, as required by the agreements;
- b. failing to intercede with the UNITED STATES to rectify failures to pay Savings Fund monies to individual braceros, as required by the agreements; and
- c. failing to ensure that the monies were properly accounted for, deposited in the appropriate bank accounts, and returned to the individual braceros by the BANCO de MEXICO, the BANCO NACIONAL de CREDITO AGRICOLA, S.A., or its successor, Banco De Credito Rural, S.N.C., and the BANCO DEL AHORRO NACIONAL, S.A., or its successor, the Patronato del Ahorro Nacional.

96. As a result of MEXICO=s breach, the Plaintiffs and members of the class were damaged in that they failed to receive the Savings Fund monies due them.

SIXTH CAUSE OF ACTION
(Resulting Trust C Mexico)

97. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

98. The agreements pursuant to which MEXICO took control of monies deducted from the salaries of Plaintiffs and the plaintiff class show that MEXICO was not intended to take any beneficial interest in the sums deducted, but rather was simply to transfer those funds for the ultimate benefit of Plaintiffs and the plaintiff class.

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99. Additionally, and in the alternative, these agreements evidence the existence of a resulting trust.

100. On information and belief, MEXICO breached its duty to the braceros, including the Plaintiffs, in failing to transfer to the braceros the Savings Fund monies due them.

101. As a result of MEXICO=s breach, Plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

102. In order to achieve relief for the individual Plaintiffs and the members of the plaintiff class, MEXICO must transfer any Savings Fund monies in its possession to the plaintiffs and the class.

SEVENTH CAUSE OF ACTION
(Breach of Contract C Wells Fargo Bank)

103. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

104. On information and belief, WELLS FARGO BANK (known until December 20, 1954 as Wells Fargo Bank and Union Trust Company) had contracts with the UNITED STATES and MEXICO through MEXICO=s central bank, the BANCO de MEXICO, S.A.

105. In the alternative, WELLS FARGO BANK was the agent for transmission of savings fund deductions of the UNITED STATES and MEXICO under the agreements creating and implementing the Bracero program.

106. Plaintiffs and class members were the express and intended third party beneficiaries of the agreements among the UNITED STATES, MEXICO, WELLS FARGO, and BANCO de MEXICO.

107. Plaintiffs and plaintiff class members performed all of their obligations under the agreement between the UNITED STATES and MEXICO in that they were recruited to work and did work in the United States as braceros, and they had money deducted from their salaries for the savings fund.

108. On information and belief, pursuant to those contracts and/or its role as agent, WELLS FARGO BANK owed a duty to the plaintiffs to (1) promptly deposit all relevant monies received from the UNITED STATES into the account of the BANCO de MEXICO for the ultimate

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2 benefit of the braceros, and (2) furnish the BANCO de MEXICO with documentation adequately
3 describing each bracero who was to receive money, and the amount due him.

4 109. On information and belief, WELLS FARGO BANK breached one or more of
5 the above-described duties.

6 110. As a result of WELLS FARGO Bank=s breach, the Plaintiffs failed to receive
7 the Savings Fund monies due them.

8 **EIGHTH CAUSE OF ACTION**
9 **(Breach of Fiduciary Duty C Wells Fargo Bank)**

10 111. Plaintiffs incorporate herein the factual allegations set forth above as if fully
11 set forth herein.

12 112. Defendant WELLS FARGO was selected by Defendants UNITED STATES
13 and MEXICO for the specific and limited purpose of transmitting funds placed with it by defendant
14 UNITED STATES or others for the benefit of Plaintiffs and class members.

15 113. On information and belief, Plaintiffs and plaintiff class members had no role
16 in the selection of defendant WELLS FARGO as the agent or contractor of Defendants UNITED
17 STATES and MEXICO to perform this function, and had no ability to select an alternative method
18 for transmission of monies deducted from their salaries.

19 114. On information and belief, Defendant WELLS FARGO was an undisclosed
20 agent of Defendants UNITED STATES and MEXICO as a third party who received funds deducted
21 from the salaries of plaintiffs and class members for ultimate transmission to the Defendant Mexican
22 banks.

23 115. Because of the special, limited and undisclosed nature of the relationship
24 between the bank and its principals, and because of the lack of an ordinary bank-depositor
25 relationship between Defendant WELLS FARGO and Plaintiffs and class members, Defendant
26 WELLS FARGO owed to Plaintiffs and class members a fiduciary or trust duty.

27 116. The fiduciary or trust duty required WELLS FARGO to account for all
28 monies transmitted on behalf of the individual braceros, to ensure that such monies were promptly
deposited into the appropriate bank account, and to ensure that each bracero received the funds owed
to him.

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117. On information and belief, WELLS FARGO BANK breached one or more of the above-described duties owed to the braceros, including Plaintiffs.

118. As a result of WELLS FARGO Bank=s breach, the Plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

NINTH CAUSE OF ACTION
(Resulting Trust c Wells Fargo Bank)

119. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

120. The agreements pursuant to which WELLS FARGO BANK took control of monies deducted from the salaries of Plaintiffs and the plaintiff class show that WELLS FARGO BANK was not intended to take any beneficial interest in the sums deducted, but rather was simply to transfer those funds for the ultimate benefit of Plaintiffs and the plaintiff class.

121. Additionally, and in the alternative, these agreements evidence the existence of a resulting trust.

122. On information and belief, WELLS FARGO BANK breached its duty to the braceros, including the Plaintiffs, in failing to transfer to the braceros the Savings Fund monies due them.

123. As a result of WELLS FARGO BANK=s breach, the Plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

124. In order to achieve relief for the individual Plaintiffs and the members of the plaintiff class, WELLS FARGO BANK must transfer any Savings Fund monies in its possession to the Plaintiffs and the class.

TENTH CAUSE OF ACTION
(Breach of Contract c Banco de Mexico)

125. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

126. On information and belief, BANCO de MEXICO was assigned duties as a wholly owned agency of Mexico pursuant to the agreements between the UNITED STATES and MEXICO.

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127. Plaintiffs and class members were the express and intended third party beneficiaries of the agreements between the UNITED STATES and MEXICO.

128. Plaintiffs and plaintiff class members performed all of their obligations under the agreement between the UNITED STATES and MEXICO in that they were recruited to work and did work in the United States as braceros, and they had money deducted from their salaries for the Savings Fund.

129. Pursuant to the agreements between the United States and Mexico, BANCO de MEXICO, as the Mexican central bank and as a wholly owned agency of MEXICO, owed a contractual duty to the braceros.

130. That duty required BANCO de MEXICO to (1) promptly transmit monies withheld from the braceros= wages to the Banco de Credito Agricola, S.A. and the Banco del Ahorro Nacional, S.A. for the benefit of the braceros and (2) furnish the Banco de Credito Agricola, S.A. and the Banco del Ahorro Nacional, S.A. with documentation adequately describing each bracero who was to receive money, and the amount due him.

131. On information and belief, BANCO de MEXICO breached one or more of the above-described duties.

132. As a result of BANCO de MEXICO=s breach, the Plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them.

ELEVENTH CAUSE OF ACTION
(Breach of Fiduciary Duty C Banco de Mexico)

133. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

134. Pursuant to the agreements between the United States and Mexico, defendant BANCO de MEXICO owed a fiduciary duty to the braceros.

135. Additionally or in the alternative, defendant BANCO de MEXICO owed the braceros a trust duty pursuant to the April 26, 1943 agreement between the United States and Mexico.

136. The fiduciary and/or trust duty that BANCO de MEXICO owed to the braceros required it to (1) promptly transmit monies withheld from the braceros= wages to the

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2 Banco de Credito Agricola, S.A. and to the Banco del Ahorro Nacional, S.A. for the benefit of the
3 braceros and (2) furnish the Banco de Credito Agricola, S.A. and the Banco del Ahorro Nacional,
4 S.A. with documentation adequately describing each bracero who was to receive money, and the
5 amount due him.

6 137. On information and belief, BANCO de MEXICO breached one or more of the
7 above-described duties owed to the braceros, including the plaintiffs.

8 138. As a result of BANCO de Mexico=s breach, the Plaintiffs and class members
9 were damaged in that they failed to receive the Savings Fund monies due them.

10 139. In order to achieve relief for the individual plaintiffs and the members of the
11 class, it is necessary for them to obtain an accounting of each participant in the Bracero program,
12 including the Plaintiffs and members of the class, the amounts withheld from his wages pursuant to
13 the Savings Fund provision of the agreements between the United States and Mexico, and
14 information concerning BANCO de MEXICO=s receipt and disposition of such monies.

15 **TWELFTH CAUSE OF ACTION**

16 **(Resulting Trust C Banco de Mexico)**

17 140. Plaintiffs incorporate herein the factual allegations set forth above as if fully
18 set forth herein.

19 141. The agreements pursuant to which the BANCO de MEXICO took control of
20 monies deducted from the salaries of Plaintiffs and the class members show that the BANCO de
21 MEXICO was not intended to take any beneficial interest in the sums deducted, but rather was
22 simply to transfer those funds for the ultimate benefit of Plaintiffs and the members of the class.

23 142. Additionally, and in the alternative, these agreements evidence the existence
24 of a resulting trust.

25 143. On information and belief, BANCO de MEXICO breached its duty to the
26 braceros, including Plaintiffs, in failing to transfer the Savings Fund monies due them.

27 144. As a result of the BANCO de MEXICO=s breach, the plaintiffs and members
28 of the class were damaged in that they failed to receive the Savings Fund monies due them.

145. In order to achieve relief for the individual Plaintiffs and the members of the
plaintiff class, the BANCO de MEXICO must transfer any Savings Fund monies in its possession to

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2 the plaintiffs and the class.

3 **THIRTEENTH CAUSE OF ACTION**
4 **(Breach of Contract C Banco Nacional de Credito Rural, S.N.C.)**

5 146. Plaintiffs incorporate herein the factual allegations set forth above as if fully
6 set forth herein.

7 147. On information and belief, Banco De Credito Agricola, S.A. (the corporate
8 predecessor to Defendant BANCO NACIONAL de CREDITO RURAL, S.N.C.) was assigned duties
9 as a wholly owned agency of MEXICO pursuant to the agreements between the UNITED STATES
10 and MEXICO.

11 148. Plaintiffs and class members were the express and intended third party
12 beneficiaries of the agreements between the UNITED STATES and MEXICO.

13 149. Pursuant to the August 4, 1942 agreement between the United States and
14 Mexico, and subsequent agreements between those countries, Banco de Credito Agricola, S.A. owed
15 a contractual duty to the braceros working in agriculture. That duty required it to (1) deposit
16 Savings Fund monies received for the braceros working in agriculture from the other Defendants;
17 (2) safeguard such monies; (3) apply such monies, and pay interest thereon; (4) establish and
18 maintain proper records showing each bracero working in agriculture who was owed money, and the
19 amount thereof; and (5) return such money to a bracero working in agriculture or his heir who
20 requested it.

21 150. On information and belief, Banco de Credito Agricola, S.A. breached one or
22 more of the above-described duties owed to these braceros, including the plaintiffs.

23 151. As a result of Banco de Credito Agricola, S.A.'s breach, these braceros failed
24 to receive the Savings Fund monies due them.

25 152. Defendant BANCO NACIONAL de CREDITO RURAL, S.N.C., as the
26 corporate successor to Banco de Credito Agricola, S.A., is liable for the above-described breaches of
27 duties owed to these braceros, including the Plaintiffs.

28 **FOURTEENTH CAUSE OF ACTION**
(Breach of Fiduciary or Trust Duty C Banco Nacional de Credito Rural, S.N.C.)

153. Plaintiffs incorporate herein the factual allegations set forth above as if fully

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2 set forth herein.

3 154. Pursuant to the August 4, 1942 agreement between the United States and
4 Mexico, and subsequent agreements between those countries, Banco de Credito Agricola, S.A. owed
5 a fiduciary duty to the braceros working in agriculture, including the plaintiffs.

6 155. Additionally or in the alternative, Banco de Credito Agricola, S.A. owed the
7 braceros working in agriculture a trust duty pursuant to the August 4, 1942 agreement between the
8 United States and Mexico, and subsequent agreements between those countries.

9 156. The fiduciary and/or trust duty that Banco de Credito Agricola, S.A. owed to
10 the braceros working in agriculture required it to (1) deposit Savings Fund monies received for the
11 braceros working in agriculture from the other Defendants; (2) safeguard such monies; (3) apply
12 such monies, and pay interest thereon; (4) establish and maintain proper records showing each
13 bracero working in agriculture who was owed money, and the amount thereof; and (5) return such
14 money to an bracero working in agriculture or his heir who requested it.

15 157. On information and belief, Banco de Credito Agricola, S.A. breached one or
16 more of the above-described duties owed to these braceros working in agriculture, including the
17 Plaintiffs.

18 158. As a result of Banco de Credito Agricola, S.A.'s breach, these braceros,
19 including the plaintiffs were damaged in that they failed to receive the Savings Fund monies due
20 them.

21 159. Defendant BANCO NACIONAL de CREDITO RURAL, S.N.C., as the
22 corporate successor to Banco de Credito Agricola, S.A., is liable for the above-described breaches.
23 In order to achieve relief for the individual plaintiffs and the members of the class, it is necessary for
24 them to obtain an accounting of each participant in the Bracero program who was employed as an
25 agricultural laborer, the amounts withheld from his wages pursuant to the Savings Fund provision of
26 the agreements between the United States and Mexico, and information concerning receipt and
27 disbursement of such monies by Banco de Credito Agricola, S.A. and/or BANCO NACIONAL de
28 CREDITO RURAL, S.N.C.

FIFTEENTH CAUSE OF ACTION
(Resulting Trust C Banco Nacional de Credito Rural, S.N.C.)

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160. Plaintiffs incorporate herein the factual allegations set forth above, as if fully set forth herein.

161. The agreements pursuant to which the Banco de Credito Agricola, S.A. took control of monies deducted from the salaries of Plaintiffs and members of the class show that the BANCO NACIONAL de CREDITO AGRICOLA, S.A. was not intended to take any beneficial interest in the sums deducted, but rather was simply to transfer those funds for the ultimate benefit of Plaintiffs and members of the class.

162. Additionally, and in the alternative, these agreements evidence the existence of a resulting trust.

163. On information and belief, BANCO NACIONAL de CREDITO RURAL, S.N.C., or its predecessor, Banco de Credito Agricola, S.A., breached its duty to the braceros, including plaintiffs, in failing to transfer the Saving Fund monies to them.

164. Defendant BANCO NACIONAL de CREDITO RURAL, S.N.C., as the corporate successor to Banco de Credito Agricola, S.A., is liable for the above-described breaches.

165. As a result of the breach, the plaintiffs and class members failed to receive the Savings Fund monies due them.

166. In order to achieve relief for the individual plaintiffs and the members of the class, BANCO NACIONAL de CREDITO RURAL, S.N.C. must transfer any Savings Fund monies in its possession to the plaintiffs and the class.

SIXTEENTH CAUSE OF ACTION
(Breach of Contract C Patronato del Ahorro Nacional)

167. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

168. On information and belief, Banco del Ahorro Nacional, S.A. (the corporate predecessor to defendant PATRONATO del AHORRO NACIONAL) was assigned duties as a wholly owned agency of MEXICO pursuant to the agreements between the UNITED STATES and MEXICO.

169. Pursuant to the April 29, 1943 agreement between the United States and Mexico, Banco del Ahorro Nacional, S.A. owed a contractual duty to the braceros working for the

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2 railroads in that they are express and intended beneficiaries of those agreements. That duty required
3 it to (1) deposit Savings Fund monies received for these braceros from the other Defendants; (2)
4 safeguard such monies; (3) pay interest thereon; (4) establish and maintain proper records showing
5 each bracero who was owed money, and the amount thereof; and (5) return such money to a bracero
6 or his heir who requested it.

7 170. On information and belief, Banco del Ahorro Nacional, S.A. breached one or
8 more of the above-described duties owed to these braceros, including Plaintiffs, as third party
9 beneficiaries.

10 171. As a result of Banco del Ahorro Nacional, S.A.'s breach, these braceros,
11 including Plaintiffs, were damaged in that they failed to receive the Savings Fund monies due them.

12 172. Defendant PATRONATO del AHORRO NACIONAL, as the corporate
13 successor to Banco del Ahorro Nacional, S.A., is liable for the above-described breaches.

14 **SEVENTEENTH CAUSE OF ACTION**
15 **(Breach of Fiduciary or Trust Duty *C* Patronato del Ahorro Nacional)**

16 173. Plaintiffs incorporate herein the factual allegations set forth above as if fully
17 set forth herein.

18 174. Pursuant to the April 29, 1943 agreement between the United States and
19 Mexico, Banco del Ahorro Nacional, S.A. owed a fiduciary duty to the braceros working for the
20 railroads, including the Plaintiffs.

21 175. Additionally or in the alternative, Banco del Ahorro Nacional, S.A. owed
22 these braceros, including the Plaintiffs, a trust duty pursuant to the April 29, 1943 agreement
23 between the United States and Mexico.

24 176. The fiduciary and/or trust duty that Banco del Ahorro Nacional, S.A. owed to
25 these braceros required it to (1) deposit Savings Fund monies received for the railroad braceros from
26 the other Defendants; (2) safeguard such monies; (3) pay interest thereon; (4) establish and maintain
27 proper records showing each bracero who was owed money, and the amount thereof; (5) return such
28 money to a bracero or his heir who requested it.

 177. On information and belief, Banco del Ahorro Nacional, S.A. breached one or
more of the above-described duties.

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178. As a result of Banco del Ahorro Nacional, S.A.'s breach, these braceros, including the Plaintiffs, were damaged in that they failed to receive the Savings Fund monies due them.

179. Defendant PATRONATO del AHORRO NACIONAL, as the corporate successor to Banco del Ahorro Nacional, S.A., is liable for the above-described breaches.

180. In order to achieve relief for the individual bracero and the members of the plaintiff class who were employed as railroad laborers, it is necessary for them to obtain an accounting of each participant in the Bracero program who was employed as a railroad laborer, the amounts withheld from his wages pursuant to the Savings Fund provision of the agreement between the United States and Mexico, and information concerning receipt and disbursement of such monies by Banco del Ahorro Nacional, S.A. and/or PATRONATO del AHORRO NACIONAL.

EIGHTEENTH CAUSE OF ACTION
(Resulting Trust C Patronato del Ahorro Nacional)

181. Plaintiffs incorporate herein the factual allegations set forth above as if fully set forth herein.

182. The agreements pursuant to which the Banco del Ahorro Nacional, S.A. took control of monies deducted from the salaries of Plaintiffs and members of the class show that the Banco del Ahorro Nacional, S.A. was not intended to take any beneficial interest in the sums deducted, but rather was simply to transfer those funds for the ultimate benefit of Plaintiffs and the class members.

183. Additionally, and in the alternative, these agreements evidence the existence of a resulting trust.

184. On information and belief Banco del Ahorra Nacional, S.A. breached its duty to the braceros, including Plaintiffs, in failing to transfer the Savings Fund monies to them.

185. Defendant PATRONATO del AHORRO NACIONAL, as the corporate successor to Banco del Ahorro Nacional, S.A., is liable for the above-described breaches.

186. As a result of breach, the plaintiffs and class members were damaged in that they failed to receive the Savings Fund monies due them. In order to achieve relief for the individual plaintiffs and the members of the class, PATRONATO del AHORRO NACIONAL must

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2 transfer any Savings Fund monies in its possession to the Plaintiffs and the class.

3 **NINETEENTH CAUSE OF ACTION**
4 **(Accounting C Against All Defendants)**

5 187. Plaintiffs incorporate herein the factual allegations set forth above as if fully
6 set forth herein.

7 188. Pursuant to bilateral agreements between the United States and Mexico, and
8 further pursuant other agreements and contracts by and between Plaintiffs and Defendants and
9 among Defendants, Defendants were entrusted with monies earned by, and belonging to, Plaintiff
10 braceros in the form of a Savings Fund.

11 189. Defendants have failed to return monies from Savings Fund to their rightful
12 owners, or to make available records pertaining to the current location or status of those assets and
13 property, or to otherwise provide an accounting.

14 190. Defendants have also failed to provide Plaintiffs and the Class with any
15 information as to the status of those monies or accounts, and have not offered any restitution or
16 compensation to Plaintiffs or to members of the Class to reimburse them or compensate them in any
17 way for Defendants= unlawful retention of those monies and for their unjustifiable non-disclosure of
18 records pertaining to them.

19 191. Plaintiffs retain sufficient interest as owners of those accounts to demand a
20 full explanation as to their current status or disposition. An accounting is necessary to determine the
21 rights of Plaintiffs and the Class because the Defendant Banks are in the best position to provide the
22 relevant information regarding Plaintiffs= assets.

23 **TWENTIETH CAUSE OF ACTION**
(Unjust Enrichment C Against All Defendants)

24 192. Plaintiffs incorporate herein the factual allegations set forth above as if fully
25 set forth herein.

26 193. Defendants wrongfully retained, and/or failed to collect and/or to safeguard,
27 monies belonging to Plaintiffs and class members. By virtue of these actions, Defendants have
28 gained benefits and advantages. These benefits and advantages have been at the expense of
Plaintiffs and class members who have been deprived of the use and enjoyment of their money.

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2 Defendants= retention and failure to give to Plaintiffs said monies was and is unlawful and without
3 justification.

4 194. Defendants have been unjustly enriched through the retention and use of said
5 monies, as well as through the profits and interest earned thereon over half a century.

6 195. The continued retention of the benefits and advantages obtained by
7 Defendants from their misconduct would be unjust. Accordingly, Plaintiffs and class members are
8 entitled to disgorgement and restitution of the monies; additionally, to the extent that distribution of
9 the monies to individual class members is impossible, Plaintiffs and the class are entitled to
10 disgorgement of the monies, or the benefit of the class, under *cy pres*, fluid recovery or other
11 appropriate equitable mechanisms.

12 **TWENTY-FIRST CAUSE OF ACTION**
13 **(Conversion C Against All Defendants)**

14 196. Plaintiffs incorporate herein the factual allegations set forth above as if fully
15 set forth herein.

16 197. At all relevant times, Plaintiffs had on deposit with one or more of the
17 Defendant Banks, Savings Fund amounts belonging to them, or to which they otherwise had rights
18 of ownership and/or possession.

19 198. Defendants wrongfully retained these monies belonging to Plaintiff and class
20 members, without justification and in violation of the law.

21 199. Defendants= wrongful assumption, retention and exercise of the rights of
22 ownership over monies belonging to Plaintiffs is inconsistent with Plaintiffs= rights, and the
23 Defendants= withholding of said monies from the true owners is without justification, and
24 constitutes conversion.

25 200. The Defendant Banks= conversion of property included conversion of
26 specific sums of money capable of identification in that Defendants wrongfully exercised dominion
27 over sums specifically allocated to named braceros.

28 201. By their misconduct, the defendants have injured all class members by
depriving them of their money and the use and enjoyment thereof and of any interest which could
have been earned thereon. Plaintiffs demand the return of the monies and other equitable relief in an

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2 amount to be determined at trial.

3 **TWENTY-SECOND CAUSE OF ACTION**
4 **(Violation of the Unfair Competition Act, Cal. Bus. & Prof. Code ' 17200, et seq. C**
5 **Against Defendant Banks)**

6 202. Plaintiffs incorporate herein the factual allegations set forth above as if fully
7 set forth herein.

8 203. Plaintiffs assert this cause of action on behalf of themselves individually, and
9 as members of and on behalf of the general public, including the California competitors of
10 Defendant Banks, as well as on behalf of other braceros and their heirs whose Savings Fund
11 deductions were unlawfully handled and/or retained by Defendant Banks.

12 204. As described herein, Defendants= conduct amounts to unfair competition
13 within the meaning of ' 17200, *et seq.*, insofar as the Unfair Competition Act (UCA) prohibits
14 any unlawful, unfair or fraudulent business act or practice. At all relevant times, the conduct of
15 Defendant Banks was and is in violation of law as set forth above.

16 205. Defendant Banks= conduct also amounts to an unfair business practice
17 insofar as the UCA forbids all ongoing wrongful business activities in any context in which they
18 appear. Defendant Banks continue to violate the UCA by persisting in their failure and refusal to
19 account for or disgorge these assets and profits. They have never properly accounted for nor
20 returned such assets to the Plaintiffs or to other braceros, and have unlawfully and unfairly profited
21 and enriched themselves from the use of such assets over the last half century. The impact of the
22 Defendants= practices is in no way mitigated by any justifications, reasons or motives. The
23 Defendants= failure to account for and return braceros= savings has no utility when compared to the
24 egregious harm done to the Plaintiff and others similarly situated.

25 206. Under the UCA, A[a]ny person who engages, has engaged or proposes to
26 engage in unfair competition may be enjoined in any court of competent jurisdiction. The UCA
27 imposes strict liability for such conduct and the Plaintiff is not required to demonstrate that
28 Defendants intended to injure anyone. Plaintiff seeks injunctive relief from the Court in this action
requiring Defendants to provide restitution to Plaintiff, and to other victims of the Defendants=
wrongdoing, including the general public, and to disgorge all profits and gains made from their

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Bank, Banco de Mexico, Banrural, as successor in interest to the Banco de Credito Agricola, S.A., and Patronato del Ahorro Nacional, as successor in interest to the Banco del Ahorro Nacional, S.A. from continuing wrongfully to withhold monies belonging to the Plaintiffs; and all those similarly situated;

F. Award Plaintiffs and class members appropriate compensatory and punitive damages and prejudgment interest;

G. Order the creation of a constructive trust and the disgorgement of any and all wrongfully withheld assets, including all interest accrued thereon and all profits derived therefrom;

H. Award Plaintiffs and class members their reasonable attorneys= fees and costs of litigation; and

I. Grant Plaintiffs and class members such other relief as is just and necessary.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs and the Class demand a trial by jury of all issues so triable in the matter.

DATED: July 9, 2001

Respectfully submitted,

By: _____
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