

1 THOMAS E. PEREZ  
 Assistant Attorney General  
 2 LORETTA KING (DCBN 347583)  
 Acting Chief  
 3 ESTHER G. LANDER (DCBN 461316)  
 Deputy Chief  
 4 HILARY J. FUNK (VABN 46872)  
 Senior Trial Attorney  
 5 AMY M. KURREN (CABN 270423)  
 Trial Attorney

6 U.S. Department of Justice  
 7 Civil Rights Division  
 Employment Litigation Section  
 8 950 Pennsylvania Avenue, NW, PHB 4015  
 Washington, DC 20530  
 9 Telephone: (202) 353-8054  
 Facsimile: (202) 514-1005  
 10 Hilary.Funk@usdoj.gov

11 Attorneys for Plaintiff Miguel Orozco Garduño

12  
 13 IN THE UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 MIGUEL OROZCO GARDUÑO,  
 16 Plaintiff,  
 17 v.  
 18 TITAN LABORATORIES, INC. and  
 HARVEY BERGER,  
 19 Defendants.  
 20

No. C 10-05281 HRL JF  
 CONSENT DECREE

21  
 22 This matter is before the Court for entry of judgment by consent of the parties to  
 23 effectuate a compromise and settlement of all claims in the above-captioned case.

24 1. Plaintiff Miguel Orozco Garduño (“Orozco”) commenced the above-captioned  
 25 action in the United States District Court for the Northern District of California, alleging that  
 26 Defendants Titan Laboratories, Inc. and Harvey Berger (“Defendants”) violated the Uniformed  
 27 Services Employment and Reemployment Rights Act of 1994 (“USERRA”) by terminating  
 28 Orozco’s employment because of his obligation to perform service in the Armed Forces and

CONSENT DECREE

1 failing to reemploy Orozco in the position of employment in which he would have been  
2 employed if Orozco's continuous employment with Defendants had not been interrupted by  
3 military service.

4 2. Defendants deny each and every allegation of a violation of USERRA made against  
5 them by Orozco in this lawsuit.

6 3. Nevertheless, Orozco and Defendants (collectively referred to as the "Parties"), as  
7 a result of settlement discussions, have resolved their differences and have agreed that this action  
8 should be settled by entry of this Consent Decree (the "Decree"). It is the intent of the Parties  
9 that this Decree be a final and binding settlement in full disposition of any and all claims alleged  
10 in the Complaint filed in this case.

11 **STIPULATIONS**

12 4. Pursuant to USERRA, the Parties acknowledge the jurisdiction of the United  
13 States District Court for the Northern District of California over the subject matter of this action  
14 and the Parties to this case for the purpose of entering this Decree and, if necessary, enforcing  
15 this Decree.

16 5. Venue is proper in this district for purposes of this Decree and any proceedings  
17 related only to this Decree. Defendants agree that all statutory conditions precedent to the  
18 institution of this lawsuit have been fulfilled.

19 **FINDINGS**

20 6. Having examined the terms and provisions of the Decree, the Court finds the  
21 following:

- 22 a. The Court has jurisdiction over the subject matter of this action and the  
23 Parties to this action.
- 24 b. The terms and provisions of this Decree are fair, reasonable, and just. The  
25 rights of the Parties are protected adequately by this Decree.
- 26 c. This Decree conforms with the Federal Rules of Civil Procedure and  
27 USERRA, and is not in derogation of the rights and privileges of any  
28

1 person. The entry of this Decree will further the objectives of USERRA  
2 and other applicable laws and will be in the best interests of the Parties.

3 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**  
4 **FOLLOWS:**

5 **NON-ADMISSION**

6 7. This Decree is being entered with the consent of the Parties and shall not  
7 constitute an adjudication or finding on the merits of the case or be construed as an admission by  
8 Defendants of any violations of USERRA, or any other law, rule, or regulation dealing with, or  
9 in connection with, equal employment opportunities.

10 **COMPLIANCE WITH USERRA**

11 8. Defendants shall comply with all of the provisions of USERRA and shall not take  
12 any action against any person, including but not limited to Orozco, that constitutes retaliation or  
13 interference with the exercise of such person's rights under USERRA, or because such person  
14 gave testimony or assistance or participated in any manner in any investigation or proceeding.

15 **REMEDIAL REQUIREMENTS**

16 9. Without admitting the allegations set forth in the Complaint, and in settlement of  
17 the claims raised in this case, Defendants shall, within two (2) weeks from the date of entry of  
18 this Decree, pay Orozco a total monetary award of **Twenty One Thousand Dollars (\$21,000)** in  
19 back pay from which appropriate income tax withholdings and other statutory deductions shall  
20 be made by Defendants. Defendants shall pay their portion of any Social Security tax on the  
21 back pay portion of the amount separately and shall not deduct their portion of such tax from the  
22 amount paid to Orozco.

23 Defendants shall pay the required amount to Orozco by mailing a check addressed as  
24 follows:

25 Miguel Orozco Garduño  
26 9505 River Rose Way  
27 Sacramento, California 95827

1 Defendants shall provide documentary evidence of having paid Orozco by sending,  
2 within ten (10) days of payment to Orozco, a photocopy of the check evidencing payment via  
3 electronic mail to Hilary Funk at Hilary.Funk@usdoj.gov or to the following address:

4 Hilary Funk  
5 United States Department of Justice  
6 950 Pennsylvania Avenue, NW  
7 Civil Rights Division  
8 Employment Litigation Section, PHB, Room 4015  
9 Washington, DC 20530

10 10. Defendants shall respond to any reference requests regarding Orozco's  
11 employment by providing only Orozco's position and dates of employment.

12 11. For and in consideration of the relief being provided to him as described in  
13 paragraphs 9 and 10 of this Decree, Orozco releases and discharges Defendants from the claims  
14 identified in the Complaint filed in this case and the complaint Orozco filed with the Department  
15 of Labor, complaint number CA-2010-00051-10-R. This release and discharge of claims is  
16 subject only to Defendants' compliance with the terms of this Decree.

17 **MISCELLANEOUS**

18 12. All Parties shall bear their own costs and expenses of litigation, including  
19 attorneys' fees.

20 13. This Decree constitutes the entry of final judgment within the meaning of Rule 54  
21 of the Federal Rules of Civil Procedure on all claims asserted in this action, but shall not be  
22 construed as a judgment against Defendants. The Court retains jurisdiction over this action,  
23 however, for the purpose of entering appropriate orders enforcing this Decree.

24 14. The terms of this Decree shall be binding upon the present and future directors,  
25 employees, agents, administrators, successors, representatives, and assigns of Defendants and  
26 upon the heirs, successors, and assigns of Orozco.


1 15. This Decree constitutes the entire agreement and commitments of the Parties.  
2 Any modifications to this Decree must be mutually agreed upon and memorialized in writing  
3 signed by all Parties.


4 EFFECTIVE DATE

5 16. The effective date of this Decree shall be the date it is entered by the Court.

6 17. This Decree shall expire, and this action shall be dismissed with prejudice,  
7 without further order of this Court, twelve (12) months after entry of this Decree. Orozco may  
8 move, for good cause, to extend the Decree. The Decree will not be extended, however, unless  
9 the Court grants Orozco's motion.


10  
11 APPROVED and ORDERED this 21st day of January, 2011.

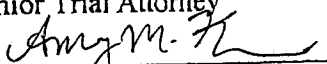
12   
13 HOWARD R. LLOYD JEREMY FOGEL  
14 United States Magistrate Judge  
District

15   
16 LORETTA KING (DCBN 347583)  
Acting Chief

17   
18 MIGUEL OROZCO GARDUNO

19   
20 ESTHER G. LANDER (DCBN 461316)  
Deputy Chief

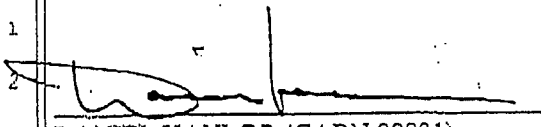
21   
22 HILARY J. FUNK (VABN 46872)  
Senior Trial Attorney

23   
24 AMY M. KURREN (CABN 270423)  
Trial Attorney

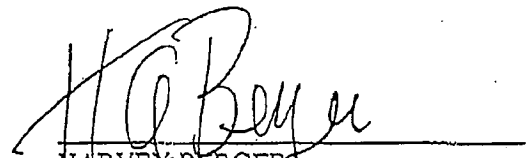
25 U.S. Department of Justice  
26 Civil Rights Division  
27 Employment Litigation Section  
950 Pennsylvania Ave., NW, PHB 4015  
Washington, DC 20530  
Telephone: (202) 353-8054  
Facsimile: (202) 514-1005  
Email: Hilary.Funk@usdoj.gov

28 On Behalf of Plaintiff Miguel Orozco Garduño

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



DANIEL KAYLOR (CABN 99831)  
Harrison & Kaylor  
16400 Lark Ave., Ste. 250  
Los Gatos, CA 95032  
Telephone: (408) 358-7700  
Facsimile: (408) 358-7701  
Email: dankaylor@earthlink.net



HARVEY BERGERO

*On Behalf of Defendants Titan Laboratories, Inc. and Harvey Berger*