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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

----- X  
VICTOR ZAVALA, ARTURO ZAVALA, EUNICE  
GOMEZ, MAXIMILIANO MENDEZ, CARLOS  
ALBERTO TELLO, ANTONIO FLORES, HIPOLITO  
PALACIOS and OCTAVIO DENISIO, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

-against-

WAL-MART CORPORATION, FACILITY  
SOLUTIONS INCORPORATED, FACILITY  
SOLUTIONS INTERNATIONAL, MITCHELL

**FILED**

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Civil Action No.  
03-Civ.-5309 (JAG)

**CLASS ACTION  
COMPLAINT AND  
JURY DEMAND**

INDUSTRIES, LLC, RUTH AND SONS, LLC, JWM  
COMMERCIAL CLEANING, RT CLEANING,  
KENNETH CLANCY, GIOVANNI ALABENA,  
FELIPE SOTO, RAUL TIJERINO, and DOES 1-500,

Defendants.

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**CLASS ACTION COMPLAINT**

Plaintiffs Victor Zavala, Arturo Zavala, Eunice Gomez, Maximiliano Mendez, Carlos Alberto Tello, Antonio Flores, Hipolito Palacios, and Octavio Denisio, on behalf of themselves and all others similarly situated, by and through their attorneys Cohen, Weiss and Simon LLP, Garcia and Kricko, and Bahan and Associates, for their complaint state as follows:

**INTRODUCTION**

1. On October 23, 2003, United States Immigration and Customs Enforcement officers raided multiple Wal-Mart Corporation ("Wal-Mart") retail locations in 21 states across the country arresting hundreds of janitors on alleged immigration violations, including the named plaintiffs Victor Zavala, Arturo Zavala, Eunice Gomez, Maximiliano Mendez, Carlos Alberto Tello, Antonio Flores, Hipolito Palacios, and Octavio Denisio. Simultaneously, on information and belief, federal agents raided Wal-Mart's corporate headquarters in Bentonville, Arkansas seizing documents and materials as part of an on-going criminal investigation. On information and belief, Wal-Mart officials subsequently confirmed that the company has been advised by the U.S. Attorney for the Middle District of Pennsylvania that Wal-Mart is the object of a federal criminal investigation. This is an action by plaintiffs on their behalf and on behalf of all others similarly situated in the United States, under the

Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.*, 42 U.S.C. §1985(3), the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C. § 1985(3), the New Jersey Wage and Hour Law ("NJWHA), N.J.S.A. 34:11-4.1 *et seq.*, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, and common law to seek redress for damages directly caused by the exploitative criminal enterprise created by Wal-Mart and various of its janitorial contractors to systematically violate immigration and protective wage and hour laws and other laws for their own profit and benefit.

### **JURISDICTION AND VENUE**

2. This Court's jurisdiction is based upon 28 U.S.C. §§1331 and 1337; 18 U.S.C. §1964(c), and applicable principles of supplemental jurisdiction under 28 U.S.C. §1367(a).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and (d); and 18 U.S.C. §1965.

### **THE PARTIES**

#### **Plaintiffs**

#### **The Class Representatives**

4. Plaintiffs Victor Zavala, Arturo Zavala, Eunice Gomez, Maximiliano Mendez, Carlos Alberto Tello, Antonio Flores, Hipolito Palacios, and Octavio Denisio, are residents of the State of New Jersey and are nationals of Mexico. These plaintiffs (the "Class Representatives") seek to represent a class consisting of thousands of janitors, currently, formerly, or in the future to be, employed to clean Wal-Mart stores. Each of the Class Representatives worked for Wal-Mart and one of its co-employer Contractor Defendants. At

material times, the Class Representatives were employed within the jurisdiction of this Court.

5. **Octavio Denisio** is a native of Mexico. He was born on November 11, 1984. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of the U.S. Citizenship and Immigration Bureau of the Department of Homeland Security ("USCIS"). Denisio is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid by USCIS of the Wal-Mart store located at Old Bridge, New Jersey. Denisio has performed cleaning services for Wal-Mart for one year. Denisio was paid a lump sum weekly compensation of \$350.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Denisio did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

6. **Hipolito Palacios** is a native of Mexico. He was born on August 13, 1979. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. He is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid made by USCIS in the Wal-Mart store located at Piscataway, New Jersey. Palacios performed cleaning services for Wal-Mart for 42 months. He was paid a lump sum weekly compensation of \$350.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Palacios did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

7. **Antonio Flores** is a native of Mexico. He was born on June 13, 1978.

His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. Flores is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid by USCIS of the Wal-Mart store located at Piscataway, New Jersey. Flores has performed cleaning services for Wal-Mart for the preceding 24 months at Wal-Mart stores in New Jersey. He was paid a lump sum weekly compensation of \$400.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Flores did not have worker compensation or health insurance benefits, was not entitled to receive sick leave disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

8. **Carlos Alberto Tello** is a native of Mexico. He was born on September

9, 1979. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. Tello is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid made by USCIS in the Wal-Mart stores located at Old Bridge, New Jersey. Tello has performed cleaning services for Wal-Mart for one year. He was paid a lump sum weekly compensation of \$350.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Tello did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

9. **Maximiliano Mendez** is a native of Mexico. He was born on May 11,

1984. His immigration status is that of an undocumented alien who may be subject to deportation

from the United States at the initiative of USCIS. Mendez is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid by USCIS in the Wal-Mart store located at Old Bridge, New Jersey. Mendez has performed cleaning services for Wal-Mart for one year. He was paid a lump sum weekly compensation of \$350.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Mendez did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

10. **Eunice Gomez** is a native of Mexico. She was born on August 30, 1977. Her immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. Gomez is presently released under her own recognizance and was arrested pursuant to the October 23, 2003 raid made by USCIS in the Wal-Mart store located at Old bridge, New Jersey. Gomez performed cleaning services for Wal-Mart for 29 months. She was paid a lump sum weekly compensation of \$500.00 and was obligated by defendants to work 7 days a week. She worked at least 60 hours per week but did not receive overtime pay. Gomez did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from her pay.

11. **Victor Zavala** is a native of Mexico. He was born on May 9, 1975. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. Victor Zavala is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid by USCIS in the Wal-Mart

store located at Piscataway, New Jersey. He has performed cleaning services for Wal-Mart for 36 months. He was paid a lump sum weekly compensation of \$500.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Victor Zavala did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

12. **Arturo Zavala** is a native of Mexico. He was born on February 10, 1974. His immigration status is that of an undocumented alien who may be and subject to deportation from the United States at the initiative of USCIS. Arturo Zavala is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid by USCIS in the Wal-Mart stores located at Old Bridge, New Jersey. He has performed cleaning services for Wal-Mart for two months. Arturo Zavala was paid a lump sum weekly compensation of \$350.00 and was obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Arturo Zavala did not have worker compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

13. **Felipe Condado** is a native of Mexico. He was born on April 20, 1974. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USCIS. Condado is presently released under his own recognizance and was arrested pursuant to the October 23, 2003 raid made by USCIS in the Wal-Mart stores located at Old Bridge, New Jersey. Condado has performed cleaning services for Wal-Mart for six months. He was paid a lump sum weekly compensation of \$350.00 and was

obligated by defendants to work 7 days a week. He worked at least 60 hours per week but did not receive overtime pay. Condado did not have worker compensation or health insurance benefits, was not entitled to receive sick disability benefits and did not have taxes or F.I.C.A. withheld from his pay.

**Defendants**

14. On information and belief, Wal-Mart is a Corporation formed under the laws of the State of Delaware with principal corporate offices in Bentonville, Arkansas. Wal-Mart has aggressively followed a low cost, union-hostile, high volume sales strategy that has led it to become the largest employer in the United States and the largest retailer in the world. Wal-Mart operates hundreds of stores in all 50 states, including in Old Bridge, Bricktown and Piscataway, New Jersey, where the named plaintiffs were employed.

15. Defendants Facility Solutions Incorporated, Facility Solutions International and Mitchell Industries, LLC, are companies formed under the laws of the State of New Jersey with principal offices located at 44 Blackbone Hills, Glasborough, New Jersey.

16. On information and belief, defendant Kenneth Clancy is the owner or proprietor (together in some cases with Brandon Clancy, Tyler Clancy or other family members) of Facility Solutions Incorporated, Facility Solutions International and Mitchell Industries, LLC.

17. On information and belief, defendant Ruth and Sons, LLC, is, on information and belief a company formed under the law of the State of New Jersey. Defendant Giovanni Alabena is a principal of Ruth and Sons LLC.

18. On information and belief, defendant JWM Commercial Cleaning is a company formed under the laws of the State of New Jersey and its principal place of business is



located at 35 Union Street, Dover, New Jersey.

19. On information and belief, defendant Felipe Soto is the owner of defendant JWM Commercial Cleaning and resides at 35 Union Street, Dover, New Jersey.

20. On information and belief, defendant RT Cleaning is a company formed under the laws of the State of New Jersey and its principal place of business is located at 22 Charles Street, Apt. A-1, New Brunswick, New Jersey.

21. On information and belief, defendant Raul Tijerino is the owner of RT Cleaning and resides at 35 Charles Street, Apt. A-1, New Brunswick, New Jersey.

22. Defendants Kenneth Clancy, Facility Solutions Incorporated, Facility Solutions International, Mitchell Industries, LLC, Ruth and Sons, LLC, JWM Commercial Cleaning, RT Cleaning, Giovanni Alabena, Felipe Soto and Raul Tijerino are referred to collectively as the "Clancy Companies." The Clancy Companies acted as agents for defendant Wal-Mart in the hiring of plaintiffs to perform cleaning services at the Wal-Mart stores in Bricktown, Old Bridge and Piscataway, New Jersey.

23. Plaintiffs did not know the true names and capacities of the defendants sued in this complaint as Does 1-500, and therefore sue these defendants by such fictitious names and capacities. Plaintiffs will amend this Complaint with their true names and capacities when they are learned. On information and belief, each of Does 1-500 have acted as agents for defendant Wal-Mart Corporation in the hiring and working of class members to perform cleaning services at Wal-Mart stores across the United States.

24. Defendants Facility Solutions Incorporated, Facility Solutions International, Mitchell Industries, LLC, JWM Commercial Cleaning, RT Cleaning, Felipe Soto,

Kenneth Clancy, Raul Tijerino, and Does 1-500 are referred to collectively as the "Contractor Defendants").

### CLASS ACTION ALLEGATIONS

25. The named plaintiffs, as class representatives, bring this action for damages, injunctive and declaratory relief on their own behalf and on behalf of a class comprised of all persons who have worked as janitors in the United States for one or more of the defendants and who were denied overtime pay and otherwise not provided the wages, benefits or protections to which they are entitled by law.

26. The size of the class makes a class action both necessary and efficient. The class consists of thousands of janitors employed at Wal-Mart stores throughout the United States and an indefinite number of janitors who were employed or are to be employed in Wal-Mart stores. Members of the class are ascertainable but are so numerous as to make joinder inherently impossible.

27. This case involves common questions of law and fact affecting the rights of all class members, including: (a) the status of plaintiffs as employees; (b) Wal-Mart's status as a joint employer of plaintiffs; (c) whether Wal-Mart knew or should have known of the widespread violations of federal and state law suffered by janitors working in its stores; (d) the status of the Contractor Defendants who acted as Wal-Mart's agents for the purpose of securing janitorial labor; (e) whether Wal-Mart and the Contractor Defendants conspired in an effort to bypass and subvert the legal protections to which plaintiffs are entitled, and (f) the relief necessary to remedy the defendants' unlawful conduct as alleged in this Complaint.

28. The claims of the named plaintiffs are typical of the claims of the class as

a whole. The illegal wage practices that defendants have followed, as alleged in this Complaint concerning the named plaintiffs in New Jersey, are typical of the illegal wage practices that have and will continue to operate to the detriment of other class members nationwide.

29. The individual plaintiffs can adequately and fairly represent the interests of the class as defined above, because their individual interests are consistent with, not antagonistic to, the interests of the class.

30. Counsel for plaintiffs possess the requisite resources and ability to prosecute this case as a class action and are experienced labor and employment attorneys who have successfully litigated other cases involving similar issues.

31. Defendants have implemented a scheme which is generally applicable to the plaintiff class, making it appropriate to issue final injunctive relief and corresponding declaratory relief with respect to the class as a whole. Class certification is also appropriate because the common questions of law and fact predominate over any questions affecting only individual members of the class. Further, the prosecution of separate actions against defendants by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for defendants. For all these and other reasons, a class action is superior to other available methods for the fair and efficient adjudication of the controversy set forth in this Complaint.

### **FACTUAL BASIS FOR CLAIMS**

#### **The Fraudulent Scheme**

32. Wal-Mart and the Contractor Defendants have engaged in and profited from a nationwide fraudulent scheme designed to defraud the United States government through

the non-payment of taxes and injure and exploit the plaintiffs and those similarly situated through widescale violation of protective federal and state labor and employment law. This scheme dates back to at least 2000. Plaintiffs allege, on information and belief, that at material times each Contractor Defendant was acting as a co-conspirator or agent of at all times Wal-Mart and, at various times, with other Contractor Defendants to pursue the scheme. On information and belief, beginning in or before 2000, Wal-Mart entered into a conspiracy or conspiracies with Contractor Defendants, similar in material respects to the conspiracy Wal-Mart entered into with the Clancy Companies for the provision of janitorial services in several locations in New Jersey.

33. The essential elements of the fraudulent scheme are these. Wal-Mart routinely makes use of the labor of undocumented immigrants and recent documented immigrants legal immigrants to perform necessary janitorial services nationwide. These workers come from across the globe and present a ready pool of easily exploited labor. Driven by poverty and the lack of economic opportunities at home, they enter the United States where they become part of a labor force Wal-Mart has fostered and benefits from. On information and belief, Wal-Mart has, as the joint employer of its janitorial services personnel, knowingly hired in excess of 10 illegal aliens each year for the duration of the fraudulent scheme. The fraudulent scheme relies on the employment of plaintiff immigrants, failing to pay their wages and overtime and benefits as required by federal and state law, and concealing their practices from detection. All of defendants' acts were in furtherance of this conspiracy and in so acting, each defendant was acting within the scope of its agency and thus with the authorization of the remaining defendants.

34. An essential component of the scheme is an effort to disguise Wal-Mart's role as a joint employer of its janitors. Wal-Mart purposefully contracts maintenance and

janitorial services through the Contractor Defendants, who are ostensibly independent entities, in an effort to shield itself from the systematic labor law and immigration violations that are the routine elements of how it obtains necessary janitorial services. On information and belief, Wal-Mart is and was fully aware of and acted to aid and abet the rampant violation of federal and state law by the Contractor Defendants.

35. At all times material to this Complaint, Wal-Mart and the Clancy Companies have acted as joint employers with respect to the named plaintiffs, and Wal-Mart has on information and belief acted as joint employer with Contractor Defendants with respect to the class of janitors as a whole. Wal-Mart and particular Contractor Defendants have jointly exercised meaningful control over the work performed by plaintiffs; jointly exercised meaningful control over plaintiffs' wages, hours and working conditions, including quality and quantity standards, speed, scheduling and of the tasks plaintiffs performed; jointly required that plaintiffs perform work that is an integral part of defendants' business and jointly exercised control over the plaintiffs such that all members of the class are dependent upon Wal-Mart as a matter of economic reality and that Wal-Mart, together with the relevant Contractor Defendant(s), share the power to set the plaintiffs' wages and determine their working conditions and jointly reap the benefits from the underpayment of plaintiffs wages and non-compliance with other statutory provisions governing their employment. Thus, while Wal-Mart employs a myriad of janitorial contractors, it retains de facto control over the essential elements of the employment relationship, namely, the decision to hire and fire, the direction of personnel in the tasks they are to performed, the standards of their performance and the hours of their work.

36. Wal-Mart was fully aware of and aided and abetted the rampant violation

of immigration and labor law and other laws by its various janitorial contractors. As a practical matter, the only commodity sold to Wal-Mart by the Contractor Defendants is plaintiffs' labor. Since the plaintiffs receive no health, retirement, insurance, vacation, sick or bereavement or Social Security benefits in connection with their employment, nearly all of the cost of defendants' contracts with Wal-Mart go to pay the plaintiffs, with the remainder profiting the Contractor Defendants. On information and belief, Wal-Mart is aware of the number of man-hours necessary to clean its facilities to its standards, the staffing levels, the hours worked by the plaintiffs on their premises and of the number of janitors employed at each location to do so. On information and belief, Wal-Mart employs personnel whose duties include review, inspection and oversight of janitorial services provided by plaintiffs. Thus, on information and belief, Wal-Mart knows or should know that plaintiffs have been routinely underpaid for their labor.

37. On information and belief, Wal-Mart is aware or should reasonably have known of the systematic violation of immigration law by the Contractor Defendants. Wal-Mart management personnel are in continual contact with plaintiffs in connection with their review and supervision of plaintiffs' work and are aware of the level of services provided and the hours regularly worked by these employees and the costs of the underlying janitorial contracts. As is alleged in paragraphs 38-56, *infra*, Wal-Mart was aware that janitorial contractors in New Jersey were systematically hiring and employing illegal aliens at multiple locations in that state.

**Wal-Mart Enlists The Clancy Companies in New Jersey**

38. Pursuant to this fraudulent scheme, Wal-Mart contracted as an agent in New Jersey the Clancy Companies to perform cleaning services at a number of different locations over the past three years. On information and belief, the Clancy Defendants were able

to underbid other cleaning service companies since their practice is to hire undocumented immigrant workers who are paid less compensation than documented workers who are employed in the industry. On information and belief, the Clancy Companies were formed with the intent and knowledge to hire foreign undocumented workers willing to perform cleaning services for far less compensation than required under the FLSA or NJWHA. Furthermore, the Clancy Companies, as part of the scheme, failed and refused to withhold or pay any payroll or income taxes as required by New Jersey and federal law. Under circumstances such as the ones described herein, the Clancy's Companies were able to obtain janitorial contracts for several of the stores Wal-Mart Corporation operated in the State of New Jersey.

39. On information and belief, Wal-Mart joined with the Clancy Companies knowing that the Clancy Defendants would defraud the United States government and the persons employed to clean Wal-Mart's New Jersey stores. Wal-Mart employed and contracted the companies owned by Kenneth Clancy with full knowledge that these companies would enter into cleaning service agreements with Wal-Mart for far less monetary consideration that Wal-Mart would pay a company that hired only documented workers. On information and belief, Wal-Mart officers in charge of cleaning service contracts had knowledge that the Clancy Defendants employed undocumented aliens since Kenneth Clancy was not able to produce any documentation for his employees.

40. Wal-Mart decided to hide behind the curtain that the Clancy Companies would create by having the Clancy Companies, as Wal-Mart's agent, be facially responsible for hiring plaintiffs with the intention that liability would rest with the Clancy Companies for any labor or immigration law violations. As outlined below, in an attempt to further distance Wal-

Mart from liability, Kenneth Clancy used different subcontractors to oversee the operation and the employment performance of the plaintiffs.

**Development of the Scheme in New Jersey**

41. Three years ago, in or about October of 2000, an individual, known as "El Caballito," who was working at the Wal-Mart store at Manahawkin, New Jersey, offered plaintiff Victor Zavala employment as a cleaner at that store. An agent of Kenneth Clancy and of the Clancy Companies, known as Roberto (last name unknown), himself a Colombian national, then offered Victor Zavala another contract at a Wal-Mart store in Bricktown, New Jersey.

42. A number of undocumented immigrants worked at the Bricktown Wal-Mart facility throughout the time Victor Zavala worked there. Victor Zavala initially worked for less than the minimum wage required by the FLSA and NJWHL. The payment for his services was in cash. All of the other illegal aliens working at the Bricktown location were also paid in cash. The manager of the Wal-Mart store located in Manahawkin, New Jersey, Stephan G, knew that there were undocumented immigrants working without employment authorization at his store.

43. In or about July of 2001, Kenneth Clancy hired a new supervisor Giovanni Alabena, of Ruth and Sons, LLC. Alabena offered Victor Zavala the opportunity to use a crew to perform the cleaning services at the Wal-Mart store in Old Bridge, New Jersey. Alabena and Kenneth Clancy knew and intended that Victor Zavala would rely upon undocumented Mexican nationals to staff the Old Bridge operation. Indeed, Alabena and Kenneth Clancy knew and intended that the operation be so staffed, to permit the Clancy Companies to obtain Wal-Mart's business to their mutual profit and benefit.



44. In or about February of 2003, Albena, offered Victor Zavala the opportunity to contract another crew of workers at the Wal-Mart store in Piscataway. Albena and Kenneth Clancy knew and intended that Victor Zavala would rely upon undocumented Mexican nationals to staff the Piscataway operation. Indeed, Albena and Kenneth Clancy knew and intended that the operation be so staffed, to permit the Clancy Companies to obtain Wal-Mart's business to their mutual profit and benefit.

45. On information and belief, during all these relevant times, Kenneth Clancy and the Clancy Companies, with the knowledge of Wal-Mart employees and managers, continued to hire and employ undocumented workers in excess of 10 per year.

46. On information and belief, defendants furthered the aims and goals of the conspiracy to defraud through the routine use of the mails and means of wire communications. On information and belief, defendants use of the mails and means of wire communication would be reflected in the business records of the Contractor Defendants and Wal-Mart which would be in the possession of defendants, if not in the custody of federal authorities. In particular, on information and belief, contracts for janitorial services, invoices and correspondence related to the provision of janitorial services were routinely sent by either mail or wire throughout the time the conspiracy flourished.

47. Kenneth Clancy made the agreements for performance of services with Wal-Mart and then through the Clancy Companies hired sub-contractors which in turn paid the undocumented aliens to perform the cleaning services in the Wal-Mart stores.

48. The named plaintiffs as described above, worked from three years to three months and during this time 1) were paid in cash or with checks that did not have income, Social

Security or Medicare taxes withheld, 2) were obligated to work a minimum of 60 hours per week, 3) were obligated to work seven days per week, 4) were not paid for overtime work as required by law; 5) were not given vacation time; 6) were not provided with workmen's compensation benefits, health insurance or sick leave, notwithstanding the fact that workplace accidents occurred and some of the plaintiffs suffered from chronic illnesses. Plaintiffs worked under these illegal and discriminatory circumstances described herein for a period of time, commencing in or about October of 2000 and ending only with federal law enforcement raids on October 23, 2003. During all this time, defendant Kenneth Clancy carried on his operation without providing any of the benefits plaintiffs were entitled to under federal and New Jersey law. Officers, managers and agents of Wal-Mart knew that the above illegal and discriminatory practices were occurring in the stores where plaintiffs worked and, to further the conspiracy between the Clancy Defendants and in furtherance of the fraudulent scheme described herein, chose to continue doing business with Kenneth Clancy and the Clancy Companies.

#### **The Scheme Begins to Unravel in New Jersey**

49. During August 2003, on information and belief, Wal-Mart corporate officials notified Kenneth Clancy that imminent action was pending by USCIS. In an effort to harbor the illegal aliens and protect the scheme, Clancy then arranged that the source of payment to the plaintiffs would be changed to another entity. In particular, Kenneth Clancy contracted with JWM Commercial Cleaning to supervise the work of the plaintiffs employed at the Wal-Mart stores located at Old Bridge and Piscataway, New Jersey. Felipe Soto acted as direct supervisor of the plaintiffs. His responsibilities included making the payments to the plaintiffs for their services, dealing directly with any problems that arose with Wal-Mart supervisors,

repair of machinery and all their administrative duties related to the servicing contracts.

50. In a further effort to preserve the scheme and harbor the illegal aliens, Kenneth Clancy also contracted with RT Cleaning, a company owned by Raul Tijerino to supervise the performance of Felipe Soto.

51. Soto or Tijerino would pick up the named plaintiffs and drive them to their places of work, at Wal-Mart stores in either Old Bridge or Piscataway, New Jersey.

52. Also beginning in August of 2003, and for the very first time, defendant Kenneth Clancy began to exhibit some concerns regarding the immigration status of plaintiffs. Heretofore, neither Kenneth Clancy nor any other management officials of the Clancy Companies ever asked any of the named plaintiffs for any information regarding compliance with laws and requirements regarding employment of aliens.

53. At one point, in or about August of 2003, Felipe Soto and Raul Tejerino frantically began to ask plaintiffs for identification documents and social security numbers that could be used to establish a legal right to work in the United States. This was in furtherance of the conspiracy among Wal-Mart and the Clancy Companies and was intended to harbor the plaintiffs -- and the conspirators -- from detection by law enforcement officials. When plaintiffs confirmed that they did not have and could not obtain such documentation, Soto and Tejerino instructed them to buy fraudulent identification documents in New York City to protect their employment. Soto and Tejerino gave plaintiffs an October 24, 2003 deadline to come up with identification documents.

54. Kenneth Clancy offered to take plaintiffs from New Jersey to New York City to buy the fraudulent identification documents. Kenneth Clancy advised plaintiff Victor

Zavala that he should use his van and they would all go to New York to buy the false identification and social security cards for the plaintiffs.

55. Plaintiffs refused to do so.

56. On October 23, 2003, federal law enforcement agents raided Wal-Mart stores in 17 states, arresting close to 300 maintenance and janitorial personnel on immigration violations, including plaintiffs.

### COUNT ONE - RICO

57. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 56 as if fully set forth herein.

58. At all relevant times, each of the plaintiffs were a "persons" within the meaning of RICO, 18 U.S.C. §§1961(3) and 1964(c).

59. At all relevant times, Wal-Mart and the Contractor Defendants were "persons" within the meaning of RICO, 18 U.S.C. §§1961(3) and 1962(c).

60. At all relevant times, Wal-Mart and the Contractor Defendants formed an association-in-fact for the purpose of profiting from a systematic violation of immigration and labor, wage and hour laws and other laws. This association-in-fact was an "enterprise" within the meaning of RICO, 18 U.S.C. §1961(4).

61. At all relevant times, this enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. §1962(c).

62. At all relevant times, each of the conspirators associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C.

§1961(5), in violation of RICO, 18 U.S.C. §1962(c).

63. Specifically, at all relevant times, Wal-Mart, the Clancy Defendants and Does 1-500 engaged in "racketeering activity" within the meaning of 18 U.S.C. §1961(1) by engaging in the acts set forth above, and, in particular, in paragraphs 33, 36, 37, 39, 45, 46, 47, 48, 52, 53 and 54. The acts set forth in these paragraphs constitute a violation of one or more of the following statutes: Mail Fraud, 18 U.S.C. §1341, Wire Fraud, 18 U.S.C. §1343 and Bringing In or Harboring Certain Aliens under 8 U.S.C. §§1324(a)(1)(A)(iii) and 1324(a)(1)(A)(v)(I) and (II). Each of the Conspirators committed and/or aided and abetted the commission of two or more of these acts of racketeering activity.

64. The acts of racketeering activity referred to in the previous paragraph constituted a "pattern of racketeering activity" within the meaning of 18 U.S.C. §1961(5). The acts alleged were related to each other by virtue of common participants, a common victim (the plaintiffs and those similarly situated to them), a common method of commission and the common purpose and common result of denying to plaintiffs the protections of wage and hour and other prophylactic labor laws and enriching Wal-Mart and the Contractor Defendants at the plaintiffs' expense. The fraudulent scheme continued for over three years until October 2003 and threatened to continue longer but for a criminal investigation by the United States government.

65. As a result of the Defendants violation of 18 U.S.C. §1962(c), plaintiffs and those similarly situated to them have been harmed in the amount of many millions of dollars.

66. As a result of their misconduct, are liable to plaintiffs for their losses in an amount to be determined at trial.

67. Pursuant to RICO, 18 U.S.C. §1964(c), plaintiffs are entitled to recover

threefold its damages plus costs and attorneys' fees from defendants.

**COUNT TWO**

**RICO CONSPIRACY**

68. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 67 as if fully set forth herein.

69. At all relevant times, the plaintiffs and those similarly situated to them was each a "person" within the meaning of RICO, 18 U.S.C. §§1961(3) and 1964(c).

70. At all relevant times, Wal-Mart and the Contractor Defendants were each a "person" within the meaning of RICO, 18 U.S.C. §§1961(3) and 1962(d).

71. At all relevant times, Wal-Mart and the Contractor Defendants formed an association-in-fact for the purpose of defrauding and injuring the plaintiffs and those similarly situated to them. This association-in-fact was an "enterprise" within the meaning of RICO, 18 U.S.C. §1961(4).

72. At all relevant times, this enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. §1962(c).

73. As set forth in Count One, at all relevant times, each of the persons associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. §1961(5), in violation of RICO, 18 U.S.C. §1962(c).

74. At all relevant times, Wal-Mart and the Contractor Defendants were each associated with the enterprise and agreed and conspired to violate 18 U.S.C. §1962(c), that is, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the

aforementioned enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(d). In particular, each of these defendants agreed to commit two or more of the acts of racketeering specified in paragraph 63.

75. The conspirators committed and caused to be committed a series of overt acts, in furtherance of the conspiracy and to affect the objects thereof, including but not limited to, the acts set forth above and, in particular, in paragraphs 33, 36, 37, 39, 45, 46, 47, 48, 52, 53 and 54.

76. As a result of the Conspirators' violations of 18 U.S.C. §1962(d), the plaintiffs and those similarly situated were damaged in an amount equal to many millions of dollars.

77. As a result of the conspiracy, Wal-Mart and the Contractor Defendants are liable to plaintiffs for their losses in an amount to be determined at trial.

78. Pursuant to RICO, 18 U.S.C. §1964(c), plaintiffs are entitled to recover threefold its damages plus costs and attorneys' fees from these defendants.

### **COUNT THREE**

#### **CONSPIRACY TO VIOLATE CIVIL RIGHTS UNDER 42 U.S.C. §1985(3)**

79. Plaintiffs repeat and reallege paragraphs 1 - 78 hercof as set forth fully herein.

80. By their actions described above, defendant Wal-Mart and the Contractor Defendants conspired and acted with animus toward the plaintiffs as undocumented and documented immigrants with the purpose of hindering and preventing federal and state officials from performing their affirmative obligations to the plaintiffs, including but not limited to the

obligations of these officials to insure that all employees in the United States are paid federal and applicable state statutory minimum wages and overtime, and that they enjoy minimum benefits such as workers' compensation protection and Social Security coverage. Plaintiffs have been injured in their persons and property and have been deprived of rights and privileges guaranteed by the laws and Constitution of the United States. Accordingly, plaintiffs seek compensatory damages and punitive damages from Wal-Mart and the Contractor Defendants for their violation of the Civil Rights Act of 1871, 45 U.S.C. § 1985(3).

**COUNT FOUR:**

**FAIR LABOR STANDARDS ACT**

81. Plaintiffs repeat and reallege paragraphs 1 - 80 hereof as set forth fully herein.

82. Sections 6 and 7 of the FLSA, 29 U.S.C. §§ 206 and 207, establish the right of all persons who are "suffered or permitted to work" to be paid a minimum wage for all hours worked and overtime pay at one and one-half times the person's regular rate for all hours worked in excess of forty hours per week. Section 16(b) of the FLSA, 29 U.S.C. § 216(b), entitles such persons to recover all unpaid wages plus interest, an equivalent amount as liquidated damages, and reasonable attorneys' fees and costs. At all times relevant to this action, defendants, and each of them, failed and refused to pay plaintiffs minimum wage for all hours works and the overtime premiums required by the FLSA, to plaintiffs' damage in amounts to be proven at trial. Plaintiffs Victor Zavala, Arturo Zavala, Eunice Gomez, Maximiliano Mendez, Carlos Alberto Tello, Antonio Flores, Hipolito Palacios, and Octavio Denisio consent to be



parties to this action pursuant to FLSA 29 U.S.C §256.

83. Defendants' failure to provide compensation for all hours worked by plaintiffs with the knowledge, consent, and expectation of defendants' supervisors and other managing agents constitutes a deliberate and willful violation of the FLSA.

84. The term "employee" is defined in the FLSA as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). An "employer" is defined broadly as "any person acting directly or indirectly in the interest of an employer in relation to an employee." *Id.* § 203(d). The verb "employ" is defined expansively to mean "suffer or permit to work." *Id.* § 203(g). All members of the class are or were employees of one of the Contractor Defendants as well as of Wal-Mart, for which he or she performed services within these definitions. At all material times, defendants have acted as plaintiffs' "employers" and are or were "employing" them within the meaning of the FLSA and under principles of common law.

85. As plaintiffs' joint employer, under common law and statutory definitions, Wal-Mart is jointly and severally liable for the plaintiff janitors' back pay, liquidated damages, and other relief under the FLSA.

86. By virtue of defendants' unlawful failure and refusal to pay plaintiffs overtime wages and other wages and benefits to which they are entitled, plaintiffs have lost wages due to them in amounts to be proven at trial. Defendants are liable to the members of the class for class members' unpaid wages and liquidated damages under FLSA § 216(b), attorneys' fees and costs.

**COUNT FIVE:**

**NEW JERSEY WAGE AND HOUR LAW**

**(By those Plaintiffs Employed in New Jersey Against  
the Clancy Companies and Wal-Mart)**

87. Plaintiffs repeat and reallege paragraphs 1 - 86 hereof as set forth fully herein.

88. Section 5 of the NJWHL, N.J.S.A. §34:11-56a4 establishes the right of all “employees” to be paid a minimum wage for all hours worked and overtime pay at one and one-half times the person’s regular rate for all hours worked in excess of forty hours per week. Section 26 of the NJWHL, N.J.S.A. §34:11-56a25, entitles such persons to recover in a civil action all unpaid wages plus interest and reasonable attorneys’ fees and costs. At all times relevant to this action, defendants, and each of them, failed and refused to pay plaintiffs minimum wage for all hours works and the overtime premiums required by the NJWHL, to plaintiffs’ damage in amounts to be proven at trial.

89. The term “employee” is defined in the NJWHL to include as “any individual employed by an employer.” N.J.S.A. § 34:11-56a1(h). An “employer” is defined broadly as “any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.” *Id.* §34:11-56a1(g). The verb “employ” is defined expansively to mean “suffer or permit to work.” *Id.* § 34:11-56a1(i). All named plaintiffs are or were employees of one of the Clancy Companies as well as of Wal-Mart, for which he or she performed services within these definitions. At all material times, defendants have acted as plaintiffs’ “employers” and are or

were "employing" them within the meaning of the NJWHA and under principles of common law.

90. As plaintiffs' joint employer, under common law and statutory definitions, Wal-Mart is jointly and severally liable for the plaintiffs' back pay, interest thereon and attorneys' fees under the NJWHA.

91. By virtue of defendants' unlawful failure and refusal to pay plaintiffs overtime wages and other wages and benefits to which they are entitled, plaintiffs have lost wages due to them in amounts to be proven at trial. Defendants are liable to the members of the class for class members' unpaid wages, interest and attorneys' fees under Section 26 of the N.J.S.A. §34:11-56a25.

**COUNT SIX:**

**NEW JERSEY LAW AGAINST DISCRIMINATION**

**(By those Plaintiffs Employed in New Jersey Against  
the Clancy Companies and Wal-Mart)**

92. Plaintiffs repeat and reallege paragraphs 1 - 91 hereof as set forth fully herein.

93. The New Jersey Law Against Discrimination (the "LAD"), N.J.S.A. 10:5-1 *et seq.*, provides that it is unlawful discrimination for an employer, because of, *inter alia*, national origin or nationality to discriminate against individuals in compensation or in terms, conditions or privileges of employment. N.J.S.A. 10:5-12 In the event of unlawful discrimination, the LAD provides for compensatory and punitive damages. N.J.S.A. 10:5-3.

94. At all material times, defendants have acted as plaintiffs' "employer" and are or were employing plaintiffs with the meaning of the LAD and under principles of common

law.

95. At all times relevant to this action, defendants, and each of them, failed and refused to pay plaintiffs minimum wage for all hours worked and failed and refused to pay plaintiffs overtime premiums as required by law. Through these and other actions specified above, defendants willfully violated the LAD by discriminating against plaintiffs in compensation, terms, conditions and privileges of employment by virtue of plaintiffs' status as Mexican nationals.

96. As plaintiffs' joint employer, under common law and statutory definitions Wal-Mart is jointly and severally liable for the plaintiffs' compensatory and punitive damages.

97. By virtue of defendants' unlawful discriminatory acts, plaintiffs have suffered economic losses due to lost wages owed to them in amounts to be proven at trial, as well as damages due to physical and emotional stress.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a jury trial on all issues so triable.

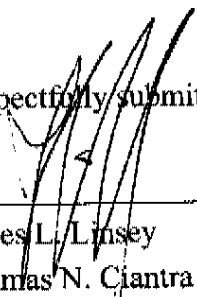
**WHEREFORE**, Plaintiffs pray for relief in their favor:

- (1) Certifying this case as a class action;
- (2) Entering a judgment declaring the rights of the parties;
- (3) Entering preliminary and permanent injunctive relief prohibiting defendants from further violations of law;
- (4) Awarding the plaintiffs and all those similarly situated damages, including compensatory, treble and punitive damages, in an amount to be determined at trial;
- (5) Awarding plaintiffs and all those similarly situated liquidated damages under Section 216(b) of the FLSA;

- (6) Awarding plaintiffs and all those similarly situated their reasonable attorneys' fees; and
- (7) Awarding plaintiffs and all those similarly situated such further relief as the Court may deem appropriate.

Dated: Montclair, New Jersey  
November 10, 2003

Respectfully submitted,

  
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