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For Opinion See [2007 WL 1134110](#), [447 F.Supp.2d 379](#), [393 F.Supp.2d 295](#)

United States District Court, D. New Jersey,
Victor ZAVALA, Eunice Gomez, Antonio Flores, Octavio Denasio, Hipolito Palacios,
Carlos Alberto Tello, Maximino Mendez, Arturo Zavala, Filipe Condado, Luis Gutierrez,
Daniel Antonio Cruz, Petr Zednek, Teresa Jaros, Jiri Pfauser, Hana Pfauserova,
Pavel Kunc and Martin Macak, on behalf of themselves and all others similarly situated,
Plaintiffs,
v.
WAL-MART STORES, INC., Defendant.
Civil Action No. 03-Civ.-5309 (JAG).
February 2, 2004.

Revised First Amended Class Action Complaint and Jury Demand
[James L. Linsey](#), [Thomas N. Ciantra](#), Cohen, Weiss and Simon LLP, 206 Claremont Avenue,
Montclair, New Jersey 07042, (973) 509-0011 - and - 330 West 42nd Street, New
York, New York 10036, (212) 563-4100. [Gilberto Garcia](#), Garcia and Kricko, Attorneys
at Law, 560 Sylvan Avenue, Englewood Cliffs, NJ 07632, (201) 343-1124.

FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Victor Zavala, Eunice Gomez, Antonio Flores, Octavio Denasio, Hipolito Palacios, Carlos Alberto Tello, Maximino Mendez, Arturo Zavala, Filipe Condado, Luis Gutierrez, Daniel Antonio Cruz, Petr Zednek, Teresa Jaros, Jiri Pfauser, Hana Pfauserova. Pavel Kunc and Martin Macak, on behalf of themselves and all others similarly situated, by and through their attorneys Cohen, Weiss and Simon LLP, and Garcia and Kricko, for their First Amended Class Action Complaint state as follows:

INTRODUCTION

1. This is an action by plaintiffs on their own behalf and on behalf of all others similarly situated under the Racketeer Influenced Corrupt Organizations Act ("RICO"), [18 U.S.C. §1961](#), et seq., the Civil Rights Act of 1871, [42 U.S.C. §1985\(3\)](#), the Fair Labor Standards Act ("FLSA"), [29 U.S.C. §201](#), et seq., and common law to seek redress for damages directly caused by the exploitative criminal enterprise created by defendant Wal-Mart Stores, Inc. ("Wal-Mart") who, acting in combination with its various janitorial contractors, systematically violated immigration and protective wage and hour laws and other laws for its own profit and benefit.
2. On October 23, 2003, United States Immigration and Customs Enforcement ("USICE") officers raided multiple retail stores owned and operated by Wal-Mart in 21 states across the country, arresting hundreds of janitors for alleged immigration violations (hereinafter "Operation Rollback"). Those arrested were allegedly undocumented immigrants from countries including Mexico, the Czech Republic, Mongolia, Brazil, Uzbekistan, Poland, Russia, Georgia, and Lithuania. Among those arrested were the

named plaintiffs Victor Zavala, Arturo Zavala, Eunice Gomez, Maximino Mendez, Carlos Alberto Tello, Antonio Flores, Hipolito Palacios, Octavio Denisio, Luis Gutierrez, Daniel Antonio Cruz, Pavel Kunc and Martin Macak. Wal-Mart officials reportedly acknowledged that at least 10 of the immigrants arrested during Operation Rollback in Arizona and Kentucky were employed directly by Wal-Mart. The others were employed through various maintenance contractors as part of the criminal enterprise. At the same time it arrested hundreds of janitors, federal agents raided Wal-Mart's corporate headquarters in Bentonville, Arkansas, seizing documents and materials in support of an ongoing criminal investigation by the United States Attorney for the Middle District of Pennsylvania targeting Wal-Mart. Upon information and belief, a federal grand jury has been convened in that district to consider possible criminal indictments.

3. Operation Rollback was but the latest in a series of federal and state law enforcement actions directed at Wal-Mart's systematic violation of labor and immigration laws. These raids have revealed that Wal-Mart, in association with a plethora of maintenance subcontractors, has for over five years relied on the labor of vulnerable immigrants to perform necessary cleaning services in its thousands of stores nationwide. Despite repeated law enforcement actions, Wal-Mart has continued to have undocumented immigrant janitors work well in excess of 40 hours per week in its stores without overtime pay and, in some cases, any pay at all. As outlined below, Wal-Mart was fully aware that undocumented workers were employed in its stores and continued the practice because it was profitable. Wal-Mart disguises its role as employer of undocumented workers through its association with maintenance contractors who systematically violate immigration laws by trafficking, harboring and hiring undocumented workers, who are unaware of their rights, afraid to complain and, thus, easily exploited. This action is directed at compensating plaintiffs for the harm caused to them by this criminal enterprise.

JURISDICTION AND VENUE

4. This Court's jurisdiction is based upon [28 U.S.C. §§1331](#) and [1337](#); [29 U.S.C. §216\(b\)](#); [18 U.S.C. §1964\(c\)](#), and applicable principles of supplemental jurisdiction under [28 U.S.C. §1367\(a\)](#).

5. 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

6. Plaintiffs Victor Zavala, Eunice Gomez, Antonio Flores, Octavio Denisio, Hipolito Palacios, Carlos Alberto Tello, Maximino Mendez, Arturo Zavala and Filipe Condado are residents of the State of New Jersey and are nationals of Mexico. Plaintiffs Luis Gutierrez and Daniel Antonio Cruz are residents of the State of Texas and nation-

als of Mexico. Plaintiff Petr Zednek is a resident of the State of Alabama and is a national of the Czech Republic. Plaintiff Teresa Jaros is a resident of the State of Alabama and a Polish national. Plaintiffs Jiri Pfauser and Hana Pfauserova are residents of Florida and nationals of the Czech Republic. Plaintiff Martin Macak is a resident of Virginia and a national of Slovakia. Plaintiff Pavel Kunc is a resident of the Czech Republic and a Czech national. These plaintiffs (the "Class Representatives") seek to represent a class consisting of thousands of undocumented and recently documented immigrants, currently, formerly, or in the future to be, employed as janitors to clean Wal-Mart stores. Each of the Class Representatives worked for Wal-Mart and one or more of its co-employer maintenance contractors. At material times, plaintiffs Victor Zavala, Eunice Gomez, Antonio Flores, Octavio Denisio, Hipolito Palacios, Carlos Alberto Tello, Maximino Mendez, Arturo Zavala and Filipe Condado were employed within the jurisdiction of this Court.

7. **Victor Zavala** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1975 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Zavala was arrested in the USICE raid on October 23, 2003 of the Wal-Mart store located in Piscataway, New Jersey and is presently released under his own recognizance. He performed cleaning services for Wal-Mart for approximately 36 months. During that time, he was paid weekly in a lump sum of approximately \$500 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Zavala was not provided with workers' compensation, health insurance coverage, sick leave pay, or disability benefits and did not have payroll taxes withheld from his pay.

8. **Eunice Gomez** is a native of Mexico and a resident of New Jersey. She was born on XX/XX/1977 and speaks little or no English. Her immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Gomez was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under her own recognizance. Gomez performed cleaning services for Wal-Mart for 29 months. She was paid weekly in a lump sum of approximately \$500 and was obligated to work seven days a week. She worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked her in the store at night, and she was not able to leave unless and until a Wal-Mart manager appeared with a key. Gomez was not provided with workers' compensation or health insurance coverage, sick leave pay, or disability benefits and did not have payroll taxes withheld from her pay.

9. **Antonio Flores** is a native of Mexico and a resident of the State of New Jersey. He was born on XX/XX/1978 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Flores was arrested in USICE's October 23, 2003 raid in Piscataway, New Jersey and is presently released under his own recognizance. Flores performed cleaning services for Wal-Mart for the 24 months preceding his arrest at Wal-Mart stores in New Jersey. He was paid weekly in a lump sum of approxim-

ately \$400 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. On one occasion, Flores, a diabetic, cut his hand severely while working at a Wal-Mart store, but because he was locked in, he was forced to wait until the next morning to go to a hospital. Flores did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave disability benefits and did not have payroll taxes withheld from his pay.

10. **Octavio Denisio** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1984 and speaks little or no English. Denisio was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under his own recognizance. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Denisio performed cleaning services for Wal-Mart during the time period relevant to this lawsuit. Denisio was paid weekly in a lump sum of approximately \$350 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Denisio was not provided with workers' compensation or health insurance coverage, sick leave pay or disability benefits and did not have payroll taxes withheld from his pay.

11. **Hipolito Palacios** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1979 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Palacios was arrested in USICE's October 23, 2003 raid of the Wal-Mart store located in Piscataway, New Jersey and is presently released under his own recognizance. Palacios performed cleaning services for Wal-Mart for 42 months during the time period relevant to this lawsuit. He was paid weekly in a lump sum of approximately \$350 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Palacios was not provided with workers' compensation or health insurance coverage, sick leave pay or disability benefits and did not have payroll taxes withheld from his pay.

12. **Carlos Alberto Tello** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1979 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Tello was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under his own recognizance. Tello performed cleaning services for Wal-Mart for one year prior to his arrest. He was paid weekly in a lump sum of \$350 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Tello was not provided with workers' compensation or health insurance coverage, was not provided with sick leave

or disability insurance coverage and did not have payroll taxes withheld from his pay.

13. **Maximino Mendez** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1984 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Mendez was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under his own recognizance. Mendez performed cleaning services for Wal-Mart for one year prior to his arrest. He was paid weekly in a lump sum of approximately \$350 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Mendez did not have workers' compensation or health insurance coverage, was not provided with sick leave pay or disability benefits and did not have payroll taxes withheld from his pay.

14. **Arturo Zavala** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1974. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Zavala was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under his own recognizance. He performed cleaning services for Wal-Mart for two months prior to his arrest. Zavala was paid weekly in a lump sum of \$350 and was obligated to work seven days a week. He worked at least 60 hours per week but did not receive overtime pay. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. Zavala did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from his pay.

15. **Felipe Condado** is a native of Mexico and a resident of New Jersey. He was born on XX/XX/1974 and speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Condado was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Old Bridge, New Jersey and is presently released under his own recognizance. Condado performed cleaning services for Wal-Mart for six months prior to his arrest. He was paid weekly in a lump sum of \$350 and was obligated to work seven days a week. Wal-Mart management locked him in the store at night, and he was not able to leave unless and until a Wal-Mart manager appeared with a key. He worked at least 60 hours per week but did not receive overtime pay. Condado did not have workers' compensation or health insurance benefits, was not entitled to receive sick disability benefits and did not have payroll taxes withheld from his pay.

16. Plaintiffs Victor Zavala, Gomez, Flores, Denisio, Palacios, Tello, Mendez, Zavala and Condado worked for Wal-Mart through a variety of firms owned or controlled by Kenneth Clancy or members of his immediate family. These entities included Facility Solutions Incorporated; Facility Solutions International, Mitchell Industries, LLC; Ruth and Sons LLC; JWM Commercial Cleaning; and RT Cleaning.

17. **Luis Gutierrez** is a native of Mexico and a resident of Texas. He speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Gutierrez was arrested in USICE's October 23, 2003 raid of a Wal-Mart store in San Antonio, Texas, and is presently released under his own recognizance. He has performed cleaning services at various Wal-Mart stores in San Antonio, Round Rock, Cedar Park, Marble Falls and Kerrville. Texas beginning in November 2001 and continuing through December 2003. He was paid weekly in a lump sum of \$500 and was obligated to work at least six days a week and often seven days a week. He worked at least 48 hours per week but did not receive overtime pay. Gutierrez did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from his pay.

18. **Daniel Antonio Cruz** is a native of Mexico and a resident of Texas. He speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Cruz was arrested in USICE's October 23, 2003 raid of a Wal-Mart store in San Antonio, Texas, and is presently released under his own recognizance. He performed cleaning services at Wal-Mart stores in San Antonio beginning in May 2003 and continuing through December 11, 2003. He was paid weekly in a lump sum of \$325 and was obligated to work seven days a week. He worked approximately 60 hours per week but did not receive overtime pay. Cruz was not provided with workers' compensation or health insurance coverage, sick leave pay or disability benefits and did not have payroll taxes withheld from his pay.

19. Plaintiffs Guttierrez and Cruz worked for Wal-Mart through firms owned or controlled by Tom Parker. These included Alamo National Service and Alamo Cleaning Services, Inc.

20. **Petr Zednek** is a national of the Czech Republic and a resident of Alabama. He speaks little English. Zednek performed cleaning services at Wal-Mart stores in Bristol, Connecticut; Alma, Michigan; and Monroe, Georgia at times between September 2002 and December 2003. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. He was promised compensation of approximately \$1,500 per month and was obligated to work seven days a week. He worked approximately 70 hours per week but did not receive overtime pay. In Alma, Michigan, Zednek's contractor refused to pay him in retaliation for his refusal to purchase a fraudulent social security number from the contractor. In addition, one of his paychecks (for \$1,492) was returned for "insufficient funds," and he was not paid at all for that month's work. Wal-Mart officials in Michigan and Georgia knew of this situation and of Zednek's undocumented status yet continued to use him to clean their stores. While working as a janitor at Wal-Mart, he was repeatedly abused and told that he could be deported if he complained. Except for only five days when the store at Alma, Michigan was open 24 hours per day for the holiday season, Zednek was locked in at night at all of the Wal-Mart stores where he worked, and could not leave unless and until a Wal-Mart manager appeared with a key. Zednek was not provided with workers' compensation or health insurance coverage, sick leave pay or disability benefits and did not have

payroll taxes withheld from his pay.

21. **Teresa Jaros** is a Polish national and a resident of Alabama. She speaks little or no English. Her immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Jaros performed cleaning services at Wal-Mart stores in Bristol, Connecticut; Alma, Michigan; and Monroe, Georgia at times between September 2002 and December 2003. She was promised compensation of \$1,500 per month and was obligated to work seven days a week. She worked approximately 70 hours per week but did not receive overtime pay. In Alma, Michigan, Jaros' contractor refused to pay her in retaliation for her refusal to purchase a fraudulent social security number from the contractor. Also, one of her paychecks (for \$1,306.40) was returned for "insufficient funds," and she was not paid at all for that month's work. Wal-Mart officials in Michigan and Georgia knew of this situation and Jaros' undocumented status yet continued to use her to clean in their stores. While working as a janitor at Wal-Mart, Jaros was repeatedly abused and told that she could be deported if she complained. Except for only five days when the Wal-Mart store at Alma, Michigan was open for 24 hours per day for the holiday season, Jaros was locked in at night at all of the Wal-Mart stores where she worked, and could not leave unless and until a Wal-Mart manager appeared with a key. Jaros did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from her pay.

22. Plaintiffs Zednek and Jaros worked for Wal-Mart through a variety of firms including: Daniel's Cleaning Service; SCSI Southern Cleaning Services Inc.; United Services Sources; Proline Management, Inc.; KK Unlimited, and Kina Cleaning.

23. **Jiri Pfauser** is a national of the Czech Republic and a resident of Florida. He speaks little or no English. His immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Pfauser performed cleaning services at Wal-Mart stores in Starkville, Mississippi and West Palm Beach, Florida at times between February 2001 and June 2002. He was promised compensation of \$1,500 per month and was obligated to work seven days a week. He worked a minimum of 56 hours per week but did not receive overtime pay. He was required to pay a "security deposit" of \$500 to ensure that he did not leave his work at Wal-Mart without permission. He was never paid this \$500 nor was he paid at all for six weeks' work at Wal-Mart in May and June, 2002. Pfauser did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from his pay.

24. **Hana Pfauserova** is a national of the Czech Republic and a resident of Florida. She speaks little or no English. Her immigration status is that of an undocumented alien who may be subject to deportation from the United States at the initiative of USICE. Pfauserova performed cleaning services at Wal-Mart stores in Starkville, Mississippi and West Palm Beach, Florida at times between February 2001 and June 2002. She was promised compensation of \$1,400 per month and was obligated to work seven days a week. She worked a minimum of 56 hours per week but did not receive overtime pay. She was required to pay a "security deposit" of \$500 to ensure that she did not

leave her work at Wal-Mart without permission. She was never paid this \$500 nor was she paid at all for six weeks' work at Wal-Mart in May and June, 2002. Pfauserova did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from her pay.

25. Pfauser and Pfauserova worked at Wal-Mart through an individual named Walter Budniak.

26. **Martin Macak** is a national of Slovakia and a resident of Virginia. He speaks little or no English. Between 1996 and October 23, 2003 he was a resident of the United States and performed cleaning services at Wal-Mart stores in Winchester, Alexandria and Sterling, Virginia. At relevant times until he was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Sterling, Virginia, Macak's status was that of an undocumented alien subject to deportation from the United States at the initiative of USICE. On October 23, 2003 he was arrested and given a notice to appear by USICE and is presently released upon his own recognizance. He was promised compensation of between \$1,300 and \$2,000 per month for his work at Wal-Mart and was obligated to work seven days a week. He worked approximately 56 hours per week but did not receive overtime pay. In approximately 1999, one of Macak's janitor co-workers, also from Slovakia and undocumented, was summarily fired on false charges of misconduct by Chuck Richards, the Wal-Mart store manager in Winchester, Virginia. Richards ordered Macak's co-worker to stop work immediately and permanently leave the Wal-Mart store and parking lot within 60 seconds' time. Macak did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from his pay. Macak worked at Wal-Mart through a variety of cleaning contractors: Crystal Clear; Handy Man Cleaning Service; Floor Magi; and Bright Management.

27. **Pavel Kunc** is a resident and national of the Czech Republic. He speaks little or no English. Between February 2003 and October 23, 2003 he was a resident of the United States and performed cleaning services at a Wal-Mart store in Madison Heights, Virginia. At relevant times until he was arrested in USICE's October 23, 2003 raid of the Wal-Mart store in Madison Heights, Virginia, Kunc's status was that of an undocumented alien subject to deportation from the United States at the initiative of USICE. His employment at Wal-Mart was arranged for him in the Czech Republic before his entry to the United States. He was promised compensation of approximately \$1,500 per month and was obligated to work seven days a week. Sometimes he did not receive any pay at all for as much as one month's work. He worked approximately 70 hours per week but did not receive overtime pay. One of Kunc's co-workers, also undocumented, specifically advised the Wal-Mart store manager that the cleaners, including Kunc, did not have work authorization. Despite this knowledge, the Wal-Mart store manager continued using Kunc and the others to clean the Wal-Mart store. Kunc did not have workers' compensation or health insurance benefits, was not entitled to receive sick leave or disability benefits and did not have payroll taxes withheld from his pay.

Defendant

28. 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, labor-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 thousands of stores in all fifty states, including locations where Class Representatives and other members of the plaintiff class were employed.

CLASS ACTION ALLEGATIONS

29. Class Representatives bring this action for back pay, damages, including treble and punitive damages, injunctive, declaratory and other relief on their own behalf and on behalf of a class comprised of immigrant janitors who have been, are, or will be employed as janitors at Wal-Mart stores in the United States and who were denied the wages, benefits or other protections to which they are entitled by law. In addition, Victor Zavala, Eunice Gomez, Antonio Flores, Octavio Denisio, Hipolito Palacios, Carlos Alberto Tello, Maximino Mendez, Arturo Zavala, Felipe Condado, Petr Zednek and Teresa Jaros (Subclass Representatives) bring this action on behalf of a subclass comprised of all class members who were falsely imprisoned or otherwise confined by Wal-Mart and its agents' widespread practice of locking employees inside Wal-Mart stores while they worked.

30. The size of the class makes a class action both necessary and efficient, The class consists of thousands of immigrant janitors employed at Wal-Mart stores throughout the United States and an indefinite number of immigrant janitors who were employed or are to be employed in Wal-Mart stores. The size of the subclass is unknown but, on information and belief, consists of at least one hundred janitors. Members of the class and subclass are ascertainable but are so numerous as to make joinder inherently impossible.

31. This case involves common questions of law and fact affecting the rights of all class members, including: (a) the status of plaintiffs as employees of Wal-Mart; (b) whether Wal-Mart employed plaintiffs or suffered or permitted plaintiffs to be employed in its retail stores; (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 joint employer status of Wal-Mart and various contractors who acted as Wal-Mart's agents for the purpose of securing janitorial labor; (e) whether Wal-Mart and its contractors conspired in an effort to bypass and subvert the legal protections to which plaintiffs are entitled; and (f) the relief necessary to remedy Wal-Mart's unlawful conduct as alleged in this Amended Complaint.

32. The claims of the Class Representatives are typical of the claims of the class as a whole. Wal-Mart's illegal wage and labor practices alleged in this Amended Complaint concerning the named plaintiffs are typical of the practices that Wal-Mart applies to class members nationwide. The claims of the Subclass Representatives are typical of the claims of the subclass as a whole. The policy and practice of locking these employees in at Wal-Mart Stores has had a detrimental effect on other members of the subclass nationwide.

33. The Class and Subclass Representatives can adequately and fairly represent the interests of the class and subclass as defined above, because their individual interests are consistent with, not antagonistic to, the interests of the class and subclass.

34. 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.

35. Wal-Mart and its contractors have implemented a scheme and associated to form an enterprise 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 Wal-Mart by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Wal-Mart. 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 Amended Complaint.

ADDITIONAL FACTUAL BASIS FOR CLAIMS

The Wal-Mart Enterprise

36. Wal-Mart and various maintenance contractors identified in this First Amended Complaint and others presently unknown to plaintiffs have created, engaged in and profited from a nationwide criminal enterprise which exploits the plaintiffs and those similarly-situated through wide-scale violation of protective federal and state labor and employment laws. This scheme dates back at least to 1996. Plaintiffs allege, on information and belief, that at material times various contractors were acting as co-conspirators or agents of Wal-Mart to pursue the scheme through an association-in-fact enterprise comprised of Wal-Mart and its various maintenance contractors (the "Wal-Mart Enterprise"). The Wal-Mart Enterprise secured and maintained, by illegal means, the labor of easily-exploitable immigrant janitors for the mutual profit and benefit of its constituents. The participants in the Wal-Mart Enterprise conducted its affairs by employing, harboring, and trafficking in the labor of the plaintiff immigrants, failing to pay their wages and overtime and benefits as required by federal and state law, and concealing their profits and practices from detection. All of the acts of Wal-Mart and the contractors were in furtherance of this conspiracy and in so acting, each contractor and Wal-Mart were acting within the scope of its agency and thus with the authorization of the others.

37. As outlined below, the parties who make up the Wal-Mart Enterprise participated in its affairs through the commission of widespread and systematic violations of the FLSA and multiple criminal acts, including, but not limited to, transporting undocumented aliens, in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(ii\)](#); harboring undocumented aliens in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iii\)](#); encouraging undocumented aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iv\)](#); conspir-

ing to transport, harbor and encourage illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(I\)](#); aiding and abetting the transportation, harboring and encouraging of illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(II\)](#); committing the above offenses for financial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(B\)\(i\)](#); engaging in a pattern and practice of hiring and employing illegal aliens in violation of [8 U.S.C. §1324\(a\)\(3\)\(A\)](#); involuntary servitude in violation of [18 U.S.C. §1584](#); and money laundering (within the meaning of [18 U.S.C. §§1956\(a\)\(1\)\(A\)\(i\)](#), [1956\(a\)\(1\)\(B\)\(i\)](#), [1956\(a\)\(1\)\(B\)\(ii\)](#), [1956\(a\)\(3\)\(A\)](#), [1956\(a\)\(3\)\(B\)](#), and [1956\(a\)\(3\)\(C\)](#)) of the proceeds of the aforesaid criminal acts, as well as mail and wire fraud under [18 U.S.C. §§1341](#) and [1343](#).

38. The Wal-Mart Enterprise operates in and has an effect on interstate commerce.

Exploitation of Alien Labor for Profit

39. The essential elements of the Wal-Mart Enterprise's activities are these. Wal-Mart routinely makes use of the labor of immigrants, including undocumented immigrants, to perform necessary janitorial services at its stores nationwide. Wal-Mart and the contractors target these immigrants who speak little or no English, and have little or no money or mobility to escape work at Wal-Mart. 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 from which it benefits. To facilitate and shelter the illegal employment of the undocumented janitors and to protect the financial gain from its practice of underpaying all janitors. Wal-Mart and its various contractors established the Wal-Mart Enterprise.

40. The Wal-Mart Enterprise is an ongoing organization with a common pattern of organization that has flourished from at least 1996 through 2003, and, upon information and belief, the present. Indeed, as outlined below, Operation Rollback on October 23, 2003 was only the latest in a series of raids conducted by federal authorities which led to the arrests of undocumented aliens who were cleaning Wal-Mart stores. Wal-Mart and its associated contractors continued the Wal-Mart Enterprise despite these earlier concerted law enforcement actions.

41. As outlined below, the Wal-Mart Enterprise involves a web of contractual relationships between Wal-Mart and its maintenance contractors who do business through a welter of shell corporations. But the operation of the Wal-Mart Enterprise is uniform: employment of immigrant janitors under similar (and illegal) terms and conditions of employment to cleaning specifications determined and overseen by Wal-Mart. Immigrant Janitors are: (1) paid in cash or personal checks without appropriate withholding of payroll taxes; (2) obligated to work hours in excess of the FLSA's statutory maximum; (3) obligated to work up to seven days per week; (4) not paid for overtime work as required by law; (5) not given time off; and (6) not provided with workers' compensation benefits, health insurance, sick leave, meal or break time, notwithstanding state law protections. The terms of employment and amounts paid (or promised) to plaintiffs were consistent. Plaintiffs worked in crews of from two to

seven janitors, depending on the size of the store to be cleaned. Crew members were paid between \$325 and \$350 per week with crew leaders receiving slightly more, approximately \$500 per week. Crew leaders typically received a single check from which all members of their crew were to be paid. Plaintiffs worked under these illegal circumstances described herein for all times relevant to this lawsuit. The commission of the predicate acts of racketeering alleged in this First Amended Complaint were a necessary cause of the harm suffered by plaintiffs. Systematic violation of immigration law -- the hiring, harboring, trafficking or transportation of undocumented alien labor -- was the necessary means through which plaintiffs were denied proper compensation, and in some cases physically beat up, unlawfully imprisoned and coerced into continuing to work at Wal-Mart. Systematic violation of immigration law was also the necessary means for participants in the enterprise to profit as they did from exploiting plaintiffs. Use of the mails and wire were, on information and belief, essential to the operation of the scheme. Money laundering also directly harmed plaintiffs inasmuch as it shielded the enterprise from detection and thereby continued its existence.

Trafficking, Transporting and Harboring of Undocumented Aliens

42. The Wal-Mart Enterprise has been under investigation by federal law enforcement authorities for more than five years. Upon information and belief, in 1997 and 1998 federal law enforcement authorities raided Wal-Mart stores in St. Louis, Missouri and arrested a number of janitors alleged to be undocumented. Those raids did not deter Wal-Mart or its contractors. Thus, as set forth in sworn statements of federal law enforcement agents in the action known as *United States v. Express Corporate Servs., Inc., et al.*, No. 3 CV 02-982 (M.D. Pa. June 7, 2002) (the "Forfeiture Action"), federal law enforcement agencies raided Wal-Mart stores in multiple locations on numerous occasions throughout 2001, as follows: East Stroudsburg, Pennsylvania, March 20 and October 30, 2001; Honesdale, Pennsylvania, March 20 and October 30, 2001; Mount Pocono, Pennsylvania, October 30, 2001; Chambersburg, Pennsylvania, October 30, 2001; Ticonderoga, New York, November 1, 2001; East Gate Square Drive, Cincinnati, Ohio, November 6, 2001; Fields Ertel Road, Cincinnati, Ohio, November 6, 2001; Greenville, Ohio, November 6, 2001; Springfield, Ohio, November 6, 2001; Desloge, Missouri, November 14, 2001; O'Fallen, Missouri, November 14, 2001; St. Ann, Missouri, November 14, 2001; Lee's Summit, Missouri, November 14, 2001; Kansas City, Missouri, November 14, 2001; Columbia, Missouri, November 14, 2001. These raids led to the arrests of approximately 80 individual workers alleged to be undocumented, from the countries of Uzbekistan, Georgia, Armenia, Estonia, Russia, Bulgaria, Mongolia, Lithuania, Poland, and the Czech Republic.

43. On June 4, 2001, Miriam Klackova Facemyer, a maintenance contractor who provided undocumented aliens (most from the Czech Republic, Slovakia and Poland) to work as janitors for Wal-Mart stores, plead guilty in the U.S. District Court for the Eastern District of Virginia to harboring illegal aliens and related offenses. Facemyer was sentenced to seven months' imprisonment and/or two years of supervised release, and was required to pay a \$100 special assessment and a \$2,000 fine. Wal-Mart's corporate spokesperson, when questioned about the plea by *The Virginia-Pilot* of Norfolk, Virginia, denied any knowledge of Wal-Mart's use of undocumented labor and

pledged that "[i]f something slips though the cracks, we're going to hold these people accountable, We're not going to stand for illegal actions like that." Notwithstanding that false assurance, Wal-Mart continued its association with its maintenance contractors and continued to employ thousands of undocumented workers in its stores nationwide.

44. Members of the class who are undocumented entered the United States through a variety of means. Some contractors who supplied janitorial labor to Wal-Mart encouraged foreign nationals to enter the United States through promises of employment placed in various media outlets. For example, plaintiff Kunc was encouraged to enter the United States to work illegally through media advertisements run in his native Czech Republic in February 2003 that promised employment in the United States for a fee of \$1,500. When Kunc responded to the ad, a Wal-Mart contractor instructed him to fly to Washington, D.C. Upon his arrival he was met by a Wal-Mart contractor named Patrick (last name unknown) who transported Kunc to suburban Virginia where he was lodged and put to work at Wal-Mart. Wal-Mart management knew that Kunc was an alien without work authorization, yet, consistent with the aims of and tactics employed by the Enterprise, Wal-Mart continued to employ Kunc as a janitor in its stores. On information and belief, this contractor and many others operating in the Wal-Mart Enterprise, encouraged, assisted and facilitated the entry and transport of many other undocumented foreign nationals to the United States and employment in Wal-Mart. This conduct which, upon information and belief, Wal-Mart knew of, and condoned, aided and abetted amounts to multiple instances of encouraging undocumented aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iv\)](#), a conspiracy to transport, harbor and encourage illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(I\)](#), aiding and abetting the transportation, harboring and encouraging of illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(II\)](#), and committing the above offenses for financial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(B\)](#).

Forced Labor and False Imprisonment

45. A component of the Wal-Mart Enterprise is the use of compulsory or forced labor by legal or extra-legal coercion. Contractors used or threatened to use coercion which caused undocumented plaintiffs and other class members reasonably to believe that, given their vulnerable status, they had no alternative but to continue to work at Wal-Mart. Wal-Mart also compelled the labor of the janitors through its widespread and systematic practice of intentionally locking these vulnerable workers into its stores during their shifts. The Subclass Representatives and subclass members knew they were so confined to the stores by Wal-Mart. Such confinement was against their will and resulted in physical and emotional injury of plaintiffs and coerced plaintiffs to work for Wal-Mart whether they wanted to or not.

46. Wal-Mart and many of its contractors at times refused to pay class members anything at all for their work. Others forced janitors to pay a "security deposit." withholding all compensation from them for weeks at a time to insure their continued work as janitors. Janitors complained to Wal-Mart store managers that they had not been paid for their services, but Wal-Mart failed or refused to act and instead tol-

erated and benefitted from these practices. Plaintiffs were told that they could leave their assigned cleaning crews and recover the compensation that had been withheld from them only if they found replacement janitors for Wal-Mart.

47. Other class members were threatened with deportation or other adverse legal action. For example, one janitor complained about his crew's wages and working to Kenneth Clancy, the proprietor of Facility Solutions Incorporated. Facility Solutions International and Mitchell Industries, LLC ("Clancy"). Clancy acted as agents for Wal-Mart in the hiring of plaintiffs to clean the Wal-Mart stores in Bricktown, Old Bridge, Piscataway, Toms River and other locations in New Jersey. In response, and in front of a number of other janitors, Clancy threatened this man with arrest and deportation if he continued to complain and in so doing coerced him and the other janitors who worked with him to continue to work for Clancy and his various cleaning firms. The same threat was made by a Czech contractor known as Michael (last name unknown) at a Wal-Mart store in Bristol, Connecticut to plaintiffs Zednek and Jaros or around October, 2002. On information and belief, many other Wal-Mart contractors used the threat of deportation to frighten undocumented janitors into acquiescence. The continued employment of the janitors in the face of these threats constitutes forced or involuntary servitude prohibited by [18 U.S.C. §1584](#).

48. In the case of some undocumented janitors, to avoid their detection by law enforcement authorities, contractors insisted that janitors obtain false identification documents. Wal-Mart's contractor in New Jersey, Kenneth Clancy, never required any of the New Jersey resident plaintiffs to verify their employment authorization. Shortly before the Operation Rollback raids in October 2003, Clancy asked plaintiff Victor Zavala to accompany him to New York City to obtain fraudulent documents. Plaintiff Zavala refused.

49. Plaintiffs Zednek and Jaros were told in late 2002 by Wal-Mart's contractor at the Alma, Michigan (and other) stores. Adam Daniel of Daniel's Cleaning Service, Inc., that they were required to purchase fraudulent Social Security numbers from him for \$300 each to continue working. Zednek and Jaros refused Daniel's demand and the contractor refused to pay them for their work. Zednek and Jaros complained that they were not paid to a Wal-Mart manager in Alma who knew that they were undocumented. They still were not paid and their continued complaints of non-payment led Daniel to contact the local police who evicted Zednek and Jaros from an apartment in which they lived that was rented in Daniel's name, but whose rent was paid by these plaintiffs. When Daniel finally delivered paychecks to these plaintiffs for work they had performed, the checks bounced.

50. Zednek and Jaros complained that they had not been paid for their work as janitors at Wal-Mart to Wal-Mart officials in Michigan, and in Georgia where they were subsequently employed to clean another Wal-Mart store. Those officials were fully informed of the fact that these plaintiffs were undocumented. The Wal-Mart officials failed to help them and continued to employ them as janitors in Wal-Mart stores.

51. As part of their role in the Wal-Mart Enterprise, contractors with knowledge of the janitors' undocumented status, including Vincent Romano, of Roselle, Illinois,

the proprietor of maintenance contractors CSSI, Inc., and DJR, Inc., transported janitors between various Wal-Mart locations where they provided maintenance services. For example, plaintiff Kunc was harbored and was transported by Wal-Mart contractors to his cleaning job in suburban Virginia. Such conduct amounts to a conspiracy to transport, harbor and encourage illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(I\)](#), aiding and abetting the transportation, harboring and encouraging of illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(II\)](#) and committing the above offenses for financial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(B\)](#).

Wal-Mart's Role as Employer

52. Wal-Mart acted as an employer or joint employer of its janitorial services personnel within the meaning of FLSA §3(d), [29 U.S.C. §203\(d\)](#), and [29 C.F.R. §791.2](#) Wal-Mart exercised meaningful control over the work performed by plaintiffs; the hiring and firing of plaintiffs; the amount paid to them as wages; their hours and working conditions; and the tasks they performed, including quality and quantity standards, speed, scheduling and sequence. Wal-Mart required plaintiffs perform work that is an integral part of Wal-Mart's business, such that all members of the class are or were dependent upon Wal-Mart as a matter of economic reality. Indeed, Wal-Mart controlled the hours and working conditions of members of the subclass to such a degree that it locked these janitors in the stores during their work hours until their shifts were over and frequently longer. Wal-Mart, together with the contractors, shared 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. On information and belief, Wal-Mart dictates the price it will pay associated contractors for janitorial services; these prices are set below the amount Wal-Mart would expect to pay were it to employ the janitors directly and to meet all wage and hour, tax, workers' compensation and other employment-related costs.

53. Thus, Wal-Mart retains control over the essential elements of the employment relationship, namely the power to hire and fire, the direction of personnel in the tasks they are to perform, the standards of their performance and the hours and terms of their work.

Wal-Mart's Retail Operations

54. Wal-Mart management personnel at the store and regional levels are and were aware that Wal-Mart stores were cleaned by immigrants including undocumented immigrants who were denied lawful compensation. Indeed, in 1997 and 1998 federal authorities raided Wal-Mart stores in St. Louis, Missouri and arrested a number of undocumented janitors. Again, in 2001 (before Operation Rollback), federal authorities conducted multiple raids on Wal-Mart stores at 21 locations in at least four states, arresting approximately 80 janitors who were alleged to be undocumented. Additionally, Wal-Mart managers, assistant managers and even a regional vice president were specifically told that janitors lacked proper documentation to work in the United States, and had not been paid their lawful wages yet Wal-Mart continued to employ

them to clean its stores. Wal-Mart was fully aware of and aided and abetted the rampant violation of immigration and labor laws with respect to its janitorial staff for its own financial gain.

55. Moreover, the work of the janitors is integral to Wal-Mart's retail operations and has traditionally been performed by direct employees. Maintenance is coordinated with Wal-Mart's sales operations and other necessary functions such as merchandising and related stock operations. 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. This knowledge comes in part from first-hand observation by on-site managers and in part based on per-square foot payroll costs of direct janitorial employees. These costs are recorded and reported on a regular and periodic basis to Wal-Mart headquarters. The only commodity furnished to Wal-Mart by the contractors is plaintiffs' labor. Since Wal-Mart and the contractors do not provide the plaintiffs with health, retirement, insurance, vacation, sick or bereavement benefits in connection with their employment, and do not withhold or remit social security taxes to federal and state governments, nearly all of the monies paid by Wal-Mart to the contractors goes to pay the plaintiffs, with the remainder profiting the contractors. The amounts paid to the contractors for plaintiffs' labor were so low that Wal-Mart should have known from this alone that the plaintiffs were routinely underpaid in violation of law.

56. Wal-Mart is aware or should reasonably have known of the systematic violation of immigration, wage and hour labor laws by its contractors and Wal-Mart colluded with its contractors in these violations.

Use of Multiple Contractors As a Shield

57. From Wal-Mart's perspective, a principal benefit of the Wal-Mart Enterprise is the ability to disguise its role -- and legal obligations -- as an employer of its janitors through the contractors. Wal-Mart purposefully contracts for maintenance and janitorial services through ostensibly independent entities in a fraudulent effort to shield Wal-Mart from the obligation to pay the immigrant janitors specified wages for their work, including overtime, and benefits required by federal and state law, and rampant violations of immigration and other laws. The contractors themselves typically establish and ostensibly operate through multiple entities, which, as set out above and in the sworn statements of law enforcement agents filed in the *Forfeiture Action*, are in reality shell corporations and fronts. The use of such shell corporations and business fronts also acts to hide undocumented janitors and the profits of the scheme from detection. The precise structure, operation and identity of all of the many additional shell corporations and fronts used by the contractors in the scheme with Wal-Mart are known only by defendant and the contractors (and possibly federal law enforcement officials in connection with the ongoing grand jury proceedings) at this time, and plaintiffs' counsel was unable to obtain that information despite numerous interviews with named plaintiffs, members of plaintiff class and others both in the United States and abroad. Thus, more specific information will require some discovery in this case.

58. In addition to the contractors identified above who employed the named plaintiffs, the United States, in the *Forfeiture Action*, identified a myriad of corporations and other entities which provided undocumented immigrant janitorial labor to Wal-Mart. Those entities are: Express Corporate Services, Inc.; Cleanmax International Associates, Inc.; Cleanmax Associates, Inc.; IMC Associates, Inc.; IMC Maintenance; Intensive Maintenance Associates; IMC Systems Associates, Inc.; Intensive Maintenance Care, Inc.; National Cleaning Management Inc.; National Floor Management, Inc.; American Floor Care Associates, Inc.; American Cleaning Services; Pinnacle Management, Inc.; Pinnacle Floor Care Associates, Inc.; Pinnacle Floor Care System, Inc.; Atlas Building Services, Inc.; Precision Cleaning Inc.; Comet Floor Care Associates Inc.; Comet, Inc.; Ironman Maintenance Associates Inc.; Ironman Maintenance; Ironman Maintenance, Inc.; Champion Floor Care Associates Inc.; Allied Floor Care Services Inc.; World Clean Inc.; Mercury Floor Care Associates; Mercury Floor Maintenance Inc.; Florida Floor Care, Inc.; DJR Cleaning Enterprises, Inc.; CMS of Qucensbury, Inc., and Drjak Cleaning Services, Inc. A number of these corporations and entities were owned or controlled by Vincent Romano or Christopher Walters and were operated as shells and fronts as part of the scheme. In the *Forfeiture Action*, the United States alleges that Wal-Mart maintenance contractors engaged in money laundering of the proceeds of a variety of criminal acts within the meaning of [18 U.S.C. §§ 1956\(a\)\(1\)\(A\)\(i\), 1956\(a\)\(1\)\(B\)\(i\), 1956\(a\)\(1\)\(B\)\(ii\), 1956\(a\)\(3\)\(A\), 1956\(a\)\(3\)\(B\), and 1956\(a\)\(3\)\(C\)](#); transporting undocumented aliens in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(ii\)](#); harboring undocumented aliens in violation of [§1324\(a\)\(1\)\(A\)\(iii\)](#); encouraging undocumented aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iv\)](#); the conspiracy to transport, harbor and encourage illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(I\)](#); aiding and abetting the transportation, harboring and encouraging of illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(II\)](#); committing the above offenses for financial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(B\)](#); and engaging in a pattern and practice of hiring and employing illegal aliens in violation of [§1324\(a\)\(3\)\(A\)](#). Thus, upon information and belief, by the earlier raids in 1997 and 1998, the raids in 2001 and the detailed verified allegations of the federal government in the *Forfeiture Action*, Wal-Mart knew of the activities of the contractors yet continued to collude and associate with and use them in the Wal-Mart Enterprise in the commission of the offenses listed above.

59. On information and belief, contractors who joined with Wal-Mart in the Wal-Mart Enterprise maintain (or maintained) books, records, ledgers, receipts, or notes relating to the purchase of financial instruments or the transfer of funds and other papers relating to the proceeds of the unlawful employment of the janitors and the profit derived therefrom. On information and belief, contractors who joined with Wal-Mart in the Wal-Mart Enterprise used electronic equipment such as computers, facsimile or telex machines, pagers and telephone answering machines to generate, record, or store information concerning their operations and associated finances. On information and belief, contractors who joined with Wal-Mart in the Wal-Mart Enterprise attempted to legitimize their profits from the illegal scheme through money laundering activities involving banks and their attendant services, brokers, profes-

sionals such as attorneys or accountants, and in violation of [18 U.S.C. §§1956\(a\)\(1\)\(A\)\(i\)](#), [1956\(a\)\(1\)\(B\)\(i\)](#), [1956\(a\)\(1\)\(B\)\(ii\)](#), [1956\(a\)\(3\)\(A\)](#), [1956\(a\)\(3\)\(B\)](#), and [1956\(a\)\(3\)\(C\)](#). The documents and specific information as to all of these materials is within the exclusive possession and control of Wal-Mart and the contractors at this time (and possibly federal law enforcement officials in connection with the ongoing grand jury proceedings), and plaintiffs' counsel was unsuccessful in efforts to these data and documents despite interviews with numerous named plaintiffs and members of the plaintiff class both in the United States and abroad. Thus, specific allegations as to that information by plaintiffs will have to await some discovery in this case.

60. On information and belief, Wal-Mart and the contractors it associated with furthered the aims and goals of the Wal-Mart Enterprise through the routine use of the mails and means of wire communications. This conduct was in furtherance of a scheme to defraud both the janitors (through denial of lawful compensation and other mandatory employment protections) and federal and state taxing authorities who were not paid withholding and other employment-related taxes. On information and belief, contracts for janitorial services, movies, invoices, written and oral communications related to the provision of janitorial services were routinely sent by either mail or wire transmissions in interstate commerce throughout the time the Wal-Mart Enterprise flourished. The use of the mails and wire transmissions are integral to the operation of the enterprise and the means participants in the Enterprise use to avoid detection and safeguard the proceeds of their illegal activities. The documents and more specific information as to these mailings and wire transmissions are in the exclusive possession and control of Wal-Mart and its contractors (and possibly federal law enforcement officials in connection with the ongoing grand jury proceedings), and plaintiffs' counsel was unsuccessful in efforts to obtain these documents and data despite interviews with numerous named plaintiffs, members of the plaintiff class and others both in the United States and abroad. Thus, more specific allegations as to this information by plaintiffs will have to await some discovery in this case.

COUNT ONE

RICO

61. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 60 as if fully set forth herein.

62. At all relevant times, each of the plaintiffs was a "person" within the meaning of RICO, [18 U.S.C. §§1961\(3\)](#) and [1964\(c\)](#).

63. At all relevant times, Wal-Mart and its various contractors were "persons" within the meaning of RICO, [18 U.S.C. §§1961\(3\)](#) and [1962\(c\)](#).

64. At all relevant times, Wal-Mart and its contractors 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, referred to as the "Wal-Mart Enterprise." The Wal-Mart Enterprise was an "enterprise" within the meaning of RICO, [18 U.S.C.](#)

[§1961\(4\)](#).

65. At all relevant times, the Wal-Mart Enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, [18 U.S.C. §1962\(c\)](#).

66. 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 [§1962\(c\)](#).

67. Specifically, at all relevant times, Wal-Mart and its various maintenance contractors identified in this First Amended Complaint (and others presently unknown to plaintiffs) engaged in "racketeering activity" within the meaning of [18 U.S.C. §1961\(1\)](#) by engaging or aiding and abetting in the acts set forth above, and, in particular, in paragraphs 42-51, 57-60. The acts set forth in these paragraphs constitute a violation of one or more of the following statutes: transporting undocumented aliens, in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(ii\)](#); harboring undocumented aliens in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iii\)](#); encouraging undocumented aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(iv\)](#); conspiring to transport, harbor and encourage illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(I\)](#); aiding and abetting the transportation, harboring and encouraging of illegal aliens to reside in the United States in violation of [8 U.S.C. §1324\(a\)\(1\)\(A\)\(v\)\(II\)](#); committing the above offenses for financial gain in violation of [8 U.S.C. §1324\(a\)\(1\)\(B\)\(i\)](#); engaging in a pattern and practice of hiring and employing illegal aliens in violation of [8 U.S.C. §1324\(a\)\(3\)\(A\)](#); involuntary servitude in violation of [18 U.S.C. §1584](#); money laundering (within the meaning of [18 U.S.C. §§1956\(a\)\(1\)\(A\)\(i\)](#), [1956\(a\)\(I\)\(B\)\(i\)](#), [1956\(a\)\(1\)\(B\)\(ii\)](#), [1956\(a\)\(3\)\(A\)](#), [1956\(a\)\(3\)\(B\)](#), and [1956\(a\)\(3\)\(C\)](#)) of the proceeds of the aforesaid criminal acts, and mail and wire fraud under [18 U.S.C. §§1341](#) and [1343](#). Each of the foregoing acts are "predicate" acts within the meaning of [18 U.S.C. §1961\(1\)](#). The conspirators, i.e., each of the contractors identified in this First Amended Complaint (as well as others presently unknown to plaintiffs) and Wal-Mart, committed themselves, or aided and abetted in the commission of, at least two or more of these predicate acts of racketeering activity over the period of time the Wal-Mart Enterprise has existed.

68. The acts of racketeering activity referred to in the previous paragraph constitute 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, common victims (the plaintiff class), a common method of commission, a common purpose, and a common result of denying to the plaintiff class the protections of wage and hour and other labor laws in order to enrich Wal-Mart at the plaintiffs' expense. The Wal-Mart Enterprise was run through this pattern of predicate acts of racketeering since at least 1996 and continuing through to the present.

69. As a result of Wal-Mart's violation of [18 U.S.C. §1962\(c\)](#), plaintiffs and those similarly situated have suffered damages, and Wal-Mart has profited, in an amount

not yet determined but believed to be hundreds of millions of dollars.

70. As a result of its misconduct, Wal-Mart is liable to plaintiffs for their losses in an amount to be determined at trial.

71. Pursuant to RICO, [18 U.S.C. §1964\(c\)](#), plaintiffs are entitled to recover threefold their damages plus costs and attorneys' fees from Wal-Mart.

COUNT TWO

RICO CONSPIRACY

72. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 71 as if fully set forth herein.

73. At all relevant times, the plaintiffs and those similarly situated were "persons" within the meaning of RICO, [18 U.S.C. §§1961\(3\)](#) and [1964\(c\)](#).

74. At all relevant times, Wal-Mart and its contractors were each a "person" within the meaning of RICO, [18 U.S.C. §§1961\(3\)](#) and [1962\(d\)](#).

75. At all relevant times, Wal-Mart and its contractors formed an association-in-fact enterprise 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\(4\)](#).

76. 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\(c\)](#).

77. 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 [18 U.S.C. §1962\(c\)](#).

78. At all relevant times, Wal-Mart and its contractors 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, Wal-Mart and its contractors agreed to commit two or more of the acts of racketeering specified in paragraph 67.

79. 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 42-51, 57-60.

80. 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 hundreds of millions of dollars.

81. As a result of the conspiracy, Wal-Mart is liable to plaintiffs for their losses

in an amount to be determined at trial.

82. Pursuant to RICO. [18 U.S.C. §1964\(c\)](#), plaintiffs are entitled to recover threefold their damages plus costs and attorneys' fees from Wal-Mart.

COUNT THREE

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

83. Plaintiffs repeat and reallege paragraphs 1 through 82 hereof as set forth fully herein.

84. By their actions described above, defendant Wal-Mart and its contractors conspired and acted with class-based, invidiously discriminatory animus toward the plaintiffs, all recent immigrants, including undocumented persons as described above, 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, that they not be subjected to involuntary servitude, forced labor and false imprisonment, and that they enjoy minimum benefits such as workers' compensation protection and other benefits required by law, including equal protection of the laws. 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 for its violation of the Civil Rights Act of 1871, [42 U.S.C. §1985\(3\)](#).

COUNT FOUR

FAIR LABOR STANDARDS ACT

85. Plaintiffs repeat and reallege paragraphs 1 through 84 hereof as set forth fully herein.

86. 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, Wal-Mart failed and refused to pay plaintiffs minimum wage for all hours worked and failed and refused to pay plaintiffs the overtime premiums required by the FLSA to plaintiffs' damage in amounts to be proven at trial. The Class Representatives consent to be parties to this action pursuant to [29 U.S.C. §256](#).

87. Wal-Mart's failure to provide required compensation for all hours worked by plaintiffs with the knowledge, consent, and expectation of Wal-Mart's supervisors and other managing agents constitutes a willful violation of the FLSA within the

meaning of [29 U.S.C. §255\(a\)](#).

88. 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." [29 U.S.C. §203\(d\)](#). The verb "employ" is defined expansively to mean "suffer or permit to work." [29 U.S.C. §203\(g\)](#). All members of the class are or were employees of Wal-Mart, for which they performed services within these definitions. At all material times, Wal-Mart has acted as plaintiffs' "employer" and is or was "employing" them within the meaning of the FLSA and under principles of common law.

89. As plaintiffs' employer, Wal-Mart is liable for the plaintiffs' back pay, liquidated damages, and other relief under the FLSA.

90. By virtue of Wal-Mart's 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. Wal-Mart is liable to the members of the class for class members' unpaid wages, liquidated damages under FLSA [§216\(b\)](#), attorneys' fees and costs.

COUNT FIVE

FALSE IMPRISONMENT

91. Plaintiffs repeat and allege paragraphs 1 through 90 hereof as if set forth fully herein.

92. Defendant Wal-Mart intentionally engaged in a widespread and systematic practice of locking janitors in at Wal-Mart stores during their shifts against their will. Subclass representatives and members were aware of their confinement by this practice and suffered severe physical and emotional harm from it. Wal-Mart thus falsely imprisoned the members of the subclass.

93. As a proximate result of said conduct, plaintiffs have suffered and continue to suffer bodily injury, extreme mental distress, humiliation and anguish, and other emotional and physical injuries, all to their damage in amounts to be proven at trial. Defendant committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring plaintiffs from an improper and evil motive, amounting to malice and in conscious disregard of plaintiffs' rights. Subclass Plaintiffs thus are entitled to recover punitive damages from Defendant in amounts to be proven at trial.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

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 appropriate preliminary and permanent injunctive relief prohibiting Wal-Mart from further violations of law;
 - (4) Awarding the plaintiffs back wages and other damages, including compensatory, treble and punitive damages, in an amount to be determined at trial;
 - (5) Awarding plaintiffs liquidated damages under FLSA §16(b);
 - (6) Awarding plaintiffs their reasonable attorneys' fees and costs; and
 - (7) Awarding plaintiffs such further relief as the Court may deem appropriate.
- Respectfully submitted.

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2004 WL 3659549 (D.N.J.)

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