UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, et al., Plaintiffs, v. WAL-MART STORES, INC., Defendant.	CIVIL ACTION NO. 03-CIV-05309 (GEB) DOCUMENT ELECTRONICALLY FILED **NOTICE OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF FELIPE CONDADO, EUNICE GOMEZ, JIRI PFAUSER, HANA PFAUSEROVA, CARLOS TELLO, AND VICTOR ZAVALA TORRES**

PLEASE TAKE NOTICE that on April 4, 2011 at 9:00 a.m. or as soon thereafter as counsel may be heard, Willkie Farr & Gallagher LLP, attorneys for defendant Wal-Mart Stores, Inc., and Garcia and Kricko, attorneys for plaintiffs, will move before this Court, at the Clarkson S. Fisher Building and U.S. Courthouse in Trenton, New Jersey, for an Order approving settlement and dismissal of claims of Felipe Condado, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, Carlos Tello, and Victor Zavala Torres.

IN SUPPORT of this motion, defendant and plaintiffs shall rely upon the supporting Memorandum of Law filed herewith. A proposed form of Order is also submitted.

Respectfully submitted,

By:__________________________

Gilberto Garcia
GARCIA AND KRICKO
68 Summit Avenue
Hackensack, NJ 07601

Attorneys for Plaintiffs

By: /s/ Thomas H. Golden
Thomas H. Golden

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
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Of Counsel:

David P. Murray (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

Attorneys for Defendant

Dated: March 11, 2011

Respectfully submitted,

By:______________________________

James L. Linsey
Thomas N. Ciantra
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, NY 10036

By:______________________________

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Attorneys for Plaintiffs

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Attorneys for Defendant

Dated: March __, 2011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, et al., Plaintiffs, v. WAL-MART STORES, INC., Defendant.	CIVIL ACTION NO. 03-CIV-05309 (GEB) DOCUMENT ELECTRONICALLY FILED **MEMORANDUM IN SUPPORT OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF FELIPE CONDADO, EUNICE GOMEZ, JIRI PFAUSER, HANA PFAUSEROVA, CARLOS TELLO, AND VICTOR ZAVALA TORRES**

Plaintiffs Felipe Condado, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, Carlos Tello, and Victor Zavala Torres ("the Settling Plaintiffs") and Defendant Wal-Mart Stores, Inc. (together, "the Parties"), through counsel of record, respectfully submit this Memorandum in Support of Joint Motion to Approve Settlement and Dismiss Claims of Felipe Condado, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, Carlos Tello, and Victor Zavala Torres.

The Parties hereby jointly move for the Court to approve the settlement of any and all claims asserted by or on behalf of the Settling Plaintiffs at any time in this proceeding, as embodied in the Settlement Agreements attached as Exhibit A hereto. The Settlement Agreements were reached through several months of settlement discussions under the Court's supervision. Each of the Settlement Agreements is a fair, reasonable, and adequate resolution of a bona fide dispute of claims arising from the Settling Plaintiffs' alleged work on third-party floor maintenance crews in Wal-Mart stores.

Plaintiffs initially filed this case in November 2003 as a putative class action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO"), RICO conspiracy, civil rights,

Fair Labor Standards Act ("FLSA") and false imprisonment counts.[1] At all times Wal-Mart has denied that it has any liability as to any plaintiff or putative opt-in participant. The Court has supervised settlement discussions between the Parties at various times since this case was filed, including in settlement conferences on August 11, 2010 and October 1, 2010. Pursuant to the Court's instructions at the August 11, 2010 settlement conference, on August 27, 2010, Wal-Mart provided to plaintiffs' counsel settlement offer letters for each of the ten remaining plaintiffs. On September 27, 2010, plaintiffs' counsel reported acceptances of the settlement offers by Felipe Condado, Octavio Denicia, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, and Victor Zavala Torres.[2] Plaintiffs' counsel subsequently advised that plaintiff Carlos Tello accepted the settlement terms offered. Plaintiffs' counsel reported that named plaintiffs Petr Zednik and Teresa Jaros rejected the respective settlement offers addressed to them.

The Settlement Agreements embody the same payment amounts and other material terms as the settlement offer letters provided under the Court's supervision and accepted by the Settling Plaintiffs. Each Settlement Agreement provides for payment of a one-time Settlement Sum that includes (1) a payment to plaintiff in the amount of the respective plaintiff's alleged overtime damages (as documented in the offer letters provided to each Settling Plaintiff), and (2) a payment of $20,000 as reasonable attorneys' fees and costs payable to plaintiffs' legal counsel, Garcia and Kricko. (The $20,000 payment to Garcia and Kricko provided in each Settlement Agreement is non-exclusive; that is, a single payment of $20,000 is to be made to Garcia and Kricko for reasonable attorneys' fees and costs.) Wal-Mart will withhold taxes as appropriate

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[1] The civil rights count was dismissed with prejudice on October 7, 2005, and the RICO and RICO conspiracy counts were dismissed with prejudice on August 28, 2006. On June 25, 2010, the Court decertified the conditional collective action.

[2] Plaintiffs' counsel reported that they were unable to reach Hipolito Palacios. Mr. Denicia has not executed a settlement agreement, but counsel indicated on March 8, 2011 that he is continuing to try to reach Mr. Denicia. Wal-Mart intends to seek involuntary dismissal of the claims of Mr. Palacios (and Mr. Denicia, if he is not reached), due to counsel's inability to find them despite diligent efforts.

and will issue any paperwork to the IRS as required under federal law.

The Settlement Agreements were reached under the Court's supervision and represent a fair and reasonable resolution of the Settling Plaintiffs' respective claims in this proceeding. *See Lignore v. Hosp. of the Univ. of Pa.*, Civ. No. 04-5735, 2007 U.S. Dist. LEXIS 32169, at *13-14 (E.D. Pa. May 2, 2007) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)). With respect to the FLSA claims, there is a bona fide dispute as to the amount of compensation due to the Settling Plaintiffs and whether Wal-Mart was the Settling Plaintiffs' joint employer. *See id.* Accordingly, the release of the Settling Plaintiffs' claims under the FLSA is valid and enforceable.

For the reasons stated herein, the Parties respectfully request that the Court approve the Settlement Agreements and dismiss the claims of the Settling Plaintiffs with prejudice.

Respectfully submitted,

By:________________________

Gilberto Garcia
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68 Summit Avenue
Hackensack, NJ 07601

Attorneys for Plaintiffs

By: /s/ Thomas H. Golden
Thomas H. Golden

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Of Counsel:

David P. Murray (admitted *pro hac vice*)
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1875 K Street, N.W.
Washington, D.C. 20006-1238

Attorneys for Defendant

Dated: March 11, 2011

Respectfully submitted,

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James L. Linsey
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COHEN, WEISS AND SIMON LLP
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David P. Murray (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

Attorneys for Defendant

Dated: March __, 2011

EXHIBIT A
to Memorandum in Support of Motion to Approve Settlement and Dismiss Claims

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Felipe Condado ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

RECITALS

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **Recitals**: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. **Definitions**: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **Settlement Sum**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716 (**tax ID #**)) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Three thousand seven hundred DOLLARS ($3,700.00), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **Consideration**: Plaintiff understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for himself, and for each of his heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. **Tax Liability**: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is his sole responsibility, and that he will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to him of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. **Court Approval**: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. **No Assignment**: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. **Governing Law and Jurisdiction**: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

10. **No Admission of Liability**: The Parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by WAL-MART of any liability or unlawful conduct of any kind.

11. **Headings**: The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

12. **Modification of Agreement**: This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. Plaintiff agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The Parties acknowledge that only the General Counsel of WAL-MART has the authority to modify this AGREEMENT on behalf of WAL-MART.

13. **Interpretation**: The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

15. **Binding Nature of Agreement**: This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement**: This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of WAL-MART to Plaintiff. The SETTLEMENT SUM described in paragraph 3 Plaintiff acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in

connection with his decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

PLAINTIFF IS HEREBY ADVISED THAT HE HAS A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT.

PLAINTIFF AFFIRMS THAT HE IS AUTHORIZED TO SIGN THIS AGREEMENT AND HAS CONSULTED WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST WAL-MART.

ACCEPTED AND AGREED:

ia Graciela
ánches
LICO No. 9
UEBLA

By: Felipe Condado mata
FELIPE CONDADO

JAN. 12 - 2011
Date

STATE OF PUEBLA)
COUNTY OF México)

BEFORE ME, the undersigned authority on this 12 day of ENERO 2011, personally appeared FELIPE CONDADO, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 12 day of ENERO 2011, to certify which witness my hand and seal of office.

NOTARY PUBLIC – STATE OF PUEBLA

LIC. ALFONSO GONZÁLEZ CRUZ
(Printed Name of Notary)

My Commission Expires:

INDEFINIDA

Maria Elvia Graciela
Morales Sánches
NOTARIO PUBLICO No. 9
ATLIXCO, PUEBLA

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, EUNICE GOMEZ, ANTONIO FLORES, OCTAVIO DENISIO, HIPOLITO PALACIOS, CARLOS ALBERTO TELLO, MAXIMILIANO MENDEZ, ARTURO ZAVALA, FELIPE 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 (GEB) DOCUMENT ELECTRONICALLY FILED **MEMORANDUM IN SUPPORT OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF SETTLING PLAINTIFFS**

Plaintiffs Felipe Condado, Octavio Denisio, Eunice Gomez, Victor Zavala Torres, Jiri Pfauser, and Hana Pfauserova ("Settling Plaintiffs") and Defendant Wal-Mart Stores, Inc. (together, "the Parties"), through counsel of record, respectfully submit this Memorandum in Support of Joint Motion to Approve Settlement and Dismiss Claims of Settling Plaintiffs.

The Parties hereby jointly move for the Court to approve the settlement of any and all claims asserted by or on behalf of the Settling Plaintiffs at any time in this proceeding, as embodied in the Settlement Agreements attached as Exhibit A hereto. The Settlement Agreements were reached through several months of settlement discussions under the Court's supervision. Each of the Settlement Agreements is a fair, reasonable, and adequate resolution of a bona fide dispute of claims arising from Plaintiffs' alleged work on third-party floor maintenance crews in Wal-Mart stores.

Plaintiffs initially filed this case in November 2003 as a putative class action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO"), RICO conspiracy, civil rights,

Fair Labor Standards Act ("FLSA") and false imprisonment counts.[1] At all times Wal-Mart has denied that it has any liability as to any plaintiff or putative opt-in participant. The Court has supervised settlement discussions between the Parties at various times since this case was filed, including in settlement conferences on August 11, 2010 and October 1, 2010. Pursuant to the Court's instructions at the August 11, 2010 settlement conference, on August 27, 2010 Wal-Mart provided to plaintiffs' counsel settlement offer letters for each of the ten remaining plaintiffs. *See* Exhibit B (August 27, 2010 letter from Murray to Hon. Madeline Cox Arleo attaching settlement correspondence). On September 27, 2010 plaintiffs' counsel reported acceptances of the settlement offers by Felipe Condado, Octavio Denisio, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, and Victor Zavala Torres. *See* Exhibit C (September 27, 2010 Letter from Linsey to Hon. Madeline Cox Arleo).[2] Plaintiffs' counsel reported that named plaintiffs Petr Zednik and Teresa Jaros rejected the respective settlement offers addressed to them. *See id.*

The Settlement Agreements embody the same payment amounts and other material terms as the settlement offer letters accepted by the Settling Plaintiffs. Each Settlement Agreement provides for payment of a one-time Settlement Sum that includes (1) a payment of $20,000 as reasonable attorneys' fees and costs payable to plaintiffs' legal counsel, Garcia and Kricko, and (2) a payment to plaintiff in the amount of the respective plaintiff's alleged overtime damages, *see* Exhibit B (documenting calculation of alleged damages for each Settling Plaintiff). (The $20,000 payment to Garcia and Kricko provided in each Settlement Agreement is non-exclusive; that is, a single payment of $20,000 is to be made to Garcia and Kricko for reasonable attorneys' fees and costs.) Wal-Mart will withhold taxes as appropriate and will issue any paperwork to the IRS as required under federal law.

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1 The civil rights count was dismissed with prejudice on October 7, 2005, and the RICO and RICO conspiracy counts were dismissed with prejudice on August 28, 2006. On June 25, 2010, the Court decertified the conditional collective action.

2 Plaintiffs' counsel reported that they were unable to reach or locate Carlos Tello or Hipolito Palacios. *See id.*

The Settlement Agreements were reached under the Court's supervision and represent a fair and reasonable resolution of the Settling Plaintiffs' respective claims in this proceeding. *See Lignore v. Hosp. of the Univ. of Pa.*, Civ. No. 04-5735, 2007 U.S. Dist. LEXIS 32169, at *13-*14 (E.D. Pa. May 2, 2007) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)). With respect to the FLSA claims, there is a bona fide dispute as to the amount compensation due to the Settling Plaintiffs and whether Wal-Mart was the Settling Plaintiffs' joint employer. *See id.* Accordingly, the release of the Settling Plaintiffs' claims under the FLSA is valid and enforceable.

For the reasons stated herein, the Parties respectfully request that the Court approve the Settlement Agreements and dismiss the claims of the Settling Plaintiffs.

Respectfully submitted,

Attorneys for Plaintiffs

By:______________________________

James L. Linsey
Thomas N. Ciantra
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, New York 10036

By:______________________________

Gilberto Garcia, Esq.
GARCIA AND KRICKO
68 Summit Avenue
Hackensack, New Jersey 07601

WILLKIE FARR & GALLAGHER LLP
Attorneys for Defendant Wal-Mart Stores, Inc.

By:______________________________
Thomas H. Golden

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019

Of Counsel:

David P. Murray, Esq. (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

Dated: [MONTH/DAY], 2010

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Eunice Gomez ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

RECITALS

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **Recitals**: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. **Definitions**: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **Settlement Sum**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716 (**tax ID #**)) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Nineteen thousand seven hundred fourteen dollars and twenty eight cents ($19,714.28), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

da Graciela
ánchez
LICO No. 9
UEBLA

WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **Consideration**: Plaintiff understands and agrees that she would not receive the monies and/or benefits specified in paragraph 3, above, but for her execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for herself, and for each of her heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. <u>**Tax Liability**</u>: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is her sole responsibility, and that she will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to her of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. <u>**Court Approval**</u>: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. <u>**No Assignment**</u>: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. <u>**Governing Law and Jurisdiction**</u>: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

10. **No Admission of Liability**: The Parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by WAL-MART of any liability or unlawful conduct of any kind.

11. **Headings**: The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

12. **Modification of Agreement**: This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. Plaintiff agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The Parties acknowledge that only the General Counsel of WAL-MART has the authority to modify this AGREEMENT on behalf of WAL-MART.

13. **Interpretation**: The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

15. **Binding Nature of Agreement**: This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement**: This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of WAL-MART to Plaintiff. The SETTLEMENT SUM described in paragraph 3 Plaintiff acknowledges that she has not relied on any representations, promises, or agreements of any kind made to her in

connection with her decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

PLAINTIFF IS HEREBY ADVISED THAT SHE HAS A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT.

PLAINTIFF AFFIRMS THAT SHE IS AUTHORIZED TO SIGN THIS AGREEMENT AND HAS CONSULTED WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS SHE HAS OR MIGHT HAVE AGAINST WAL-MART.

ACCEPTED AND AGREED:

la Graciela
ánchez
LICO No. 9
UEBLA

By: ____________________ E JAN·12·2011·
EUNICE GOMEZ Date

STATE OF Puebla)
COUNTY OF Mexico)

BEFORE ME, the undersigned authority on this 12 day of Enero 2011, personally appeared Eunice Gómez, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 12 day of Enero 2011, to certify which witness my hand and seal of office.

NOTARY PUBLIC – STATE OF Puebla

Lic. Alfonso González Cruz. (Auxiliar)
(Printed Name of Notary)

My Commission Expires:

Indefinida

Lic. María Elvia Graciela
Morales Sánchez
NOTARIO PUBLICO No. 9
ATLIXCO, PUEBLA

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, EUNICE GOMEZ, ANTONIO FLORES, OCTAVIO DENISIO, HIPOLITO PALACIOS, CARLOS ALBERTO TELLO, MAXIMILIANO MENDEZ, ARTURO ZAVALA, FELIPE 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 (GEB) DOCUMENT ELECTRONICALLY FILED **MEMORANDUM IN SUPPORT OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF SETTLING PLAINTIFFS**

Plaintiffs Felipe Condado, Octavio Denisio, Eunice Gomez, Victor Zavala Torres, Jiri Pfauser, and Hana Pfauserova ("Settling Plaintiffs") and Defendant Wal-Mart Stores, Inc. (together, "the Parties"), through counsel of record, respectfully submit this Memorandum in Support of Joint Motion to Approve Settlement and Dismiss Claims of Settling Plaintiffs.

The Parties hereby jointly move for the Court to approve the settlement of any and all claims asserted by or on behalf of the Settling Plaintiffs at any time in this proceeding, as embodied in the Settlement Agreements attached as Exhibit A hereto. The Settlement Agreements were reached through several months of settlement discussions under the Court's supervision. Each of the Settlement Agreements is a fair, reasonable, and adequate resolution of a bona fide dispute of claims arising from Plaintiffs' alleged work on third-party floor maintenance crews in Wal-Mart stores.

Plaintiffs initially filed this case in November 2003 as a putative class action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO"), RICO conspiracy, civil rights,

Fair Labor Standards Act ("FLSA") and false imprisonment counts.[1] At all times Wal-Mart has denied that it has any liability as to any plaintiff or putative opt-in participant. The Court has supervised settlement discussions between the Parties at various times since this case was filed, including in settlement conferences on August 11, 2010 and October 1, 2010. Pursuant to the Court's instructions at the August 11, 2010 settlement conference, on August 27, 2010 Wal-Mart provided to plaintiffs' counsel settlement offer letters for each of the ten remaining plaintiffs. *See* Exhibit B (August 27, 2010 letter from Murray to Hon. Madeline Cox Arleo attaching settlement correspondence). On September 27, 2010 plaintiffs' counsel reported acceptances of the settlement offers by Felipe Condado, Octavio Denisio, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, and Victor Zavala Torres. *See* Exhibit C (September 27, 2010 Letter from Linsey to Hon. Madeline Cox Arleo).[2] Plaintiffs' counsel reported that named plaintiffs Petr Zednik and Teresa Jaros rejected the respective settlement offers addressed to them. *See id.*

The Settlement Agreements embody the same payment amounts and other material terms as the settlement offer letters accepted by the Settling Plaintiffs. Each Settlement Agreement provides for payment of a one-time Settlement Sum that includes (1) a payment of $20,000 as reasonable attorneys' fees and costs payable to plaintiffs' legal counsel, Garcia and Kricko, and (2) a payment to plaintiff in the amount of the respective plaintiff's alleged overtime damages, *see* Exhibit B (documenting calculation of alleged damages for each Settling Plaintiff). (The $20,000 payment to Garcia and Kricko provided in each Settlement Agreement is non-exclusive; that is, a single payment of $20,000 is to be made to Garcia and Kricko for reasonable attorneys' fees and costs.) Wal-Mart will withhold taxes as appropriate and will issue any paperwork to the IRS as required under federal law.

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1 The civil rights count was dismissed with prejudice on October 7, 2005, and the RICO and RICO conspiracy counts were dismissed with prejudice on August 28, 2006. On June 25, 2010, the Court decertified the conditional collective action.

2 Plaintiffs' counsel reported that they were unable to reach or locate Carlos Tello or Hipolito Palacios. *See id.*

The Settlement Agreements were reached under the Court's supervision and represent a fair and reasonable resolution of the Settling Plaintiffs' respective claims in this proceeding. *See Lignore v. Hosp. of the Univ. of Pa.*, Civ. No. 04-5735, 2007 U.S. Dist. LEXIS 32169, at *13-*14 (E.D. Pa. May 2, 2007) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)). With respect to the FLSA claims, there is a bona fide dispute as to the amount compensation due to the Settling Plaintiffs and whether Wal-Mart was the Settling Plaintiffs' joint employer. *See id.* Accordingly, the release of the Settling Plaintiffs' claims under the FLSA is valid and enforceable.

For the reasons stated herein, the Parties respectfully request that the Court approve the Settlement Agreements and dismiss the claims of the Settling Plaintiffs.

Respectfully submitted,

Attorneys for Plaintiffs

By:______________________________

James L. Linsey
Thomas N. Ciantra
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, New York 10036

By:______________________________

Gilberto Garcia, Esq.
GARCIA AND KRICKO
68 Summit Avenue
Hackensack, New Jersey 07601

WILLKIE FARR & GALLAGHER LLP
Attorneys for Defendant Wal-Mart Stores, Inc.

By:______________________________
Thomas H. Golden

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019

Of Counsel:

David P. Murray, Esq. (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

Dated: [MONTH/DAY], 2010

-1-

<u>CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE</u>

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Jiri Pfauser ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

<u>RECITALS</u>

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **<u>Recitals</u>**: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. **<u>Definitions</u>**: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **Settlement Sum**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Four thousand four hundred seventy five dollars and twenty four cents ($4,475.24), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **Consideration**: Plaintiff understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for himself, and for each of his heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. **Tax Liability**: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is his sole responsibility, and that he will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to him of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. **Court Approval**: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. **No Assignment**: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. **Governing Law and Jurisdiction**: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

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11. **Headings**: The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

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13. **Interpretation**: The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

15. **Binding Nature of Agreement**: This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement**: This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of WAL-MART to Plaintiff. The SETTLEMENT SUM described in paragraph 3 Plaintiff acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in

connection with his decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

PLAINTIFF IS HEREBY ADVISED THAT HE HAS A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT.

PLAINTIFF AFFIRMS THAT HE IS AUTHORIZED TO SIGN THIS AGREEMENT AND HAS CONSULTED WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST WAL-MART.

ACCEPTED AND AGREED:

By: ______________________________ 17.1.2011
JIRI PFAUSER Date

STATE OF ________________)
COUNTY OF ______________)

BEFORE ME, the undersigned authority on this _____ day of _________ 201_, personally appeared ________________, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of ________ 201_, to certify which witness my hand and seal of office.

____
NOTARY PUBLIC – STATE OF ____________

____
(Printed Name of Notary)

My Commission Expires:

____

Běžné číslo ověřovací knihy **OC/** – 67 – **/ 2011** --

Ověřuji, že pan --

Jiří Pfauser, nar. 23.02.1976, bytem Kamenný Újezd, Dělnická 435, PSČ 373 81, ----------------

jehož osobní totožnost byla prokázána platným občanským průkazem, uznal přede mnou podpis na této listině za vlastní. ---

V Českých Budějovicích 01.02.2011 --

Mgr. Robert Procházka
notář

MGR. ROBERT PROCHÁZKA -I- NOTÁŘ VE STRAKONICÍCH

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

DŮVĚRNÁ DOHODA O VYROVNÁNÍ A VŠEOBECNÉ VZDÁNÍ SE NÁROKU

Tato důvěrná dohoda o vyrovnání a všeobecné vzdání se nároku („DOHODA") je uzavřena mezi Jiřím Pfauserem („žalobce") a společností WAL-MART STORES, INC. („WAL-MART") (dohromady „strany").

PREAMBULE

DOHODA je uzavřena s odkazem na následující fakta:

A. **ZATÍMCO** žalobce podal soudní žalobu proti společnosti WAL-MART u Okresního soudu Spojených států pro federální okres New Jersey, která je označena jako *Zavala a kol versus společnost Wal-Mart Stores, Inc.*, číslo případu 03-5309 („soudní řízení"); a

B. **ZATÍMCO** společnost WAL-MART popírá platnost nároků žalobce, popírá, že byla zaměstnavatelem žalobce, popírá jakékoliv povinnosti zaplatit mzdy žalobci nebo jakéhokoliv jiné náhrady a popírá, že podléhá jakékoliv odpovědnosti; a

C. **ZATÍMCO** všechny mzdy údajně dlužné žalobci jsou sporné; a

D. **ZATÍMCO** si strany přejí vyřešit své rozpory bez vedení dalšího sporu; a

E. **ZATÍMCO** společnost WAL-MART je ochotna poskytnout žalobci určitou náhradu popsanou níže, což není běžně požadováno, za předpokladu, že žalobce zbaví společnost WAL-MART jakýchkoliv nároků, které byly vzneseny žalobcem nebo mohou vzniknout ze soudního řízení podle vyvázání uvedeného v odstavci 5, a souhlasí, že dodrží jiné sliby a podmínky uvedené v této DOHODĚ; a

F. **ZATÍMCO** DOHODA řeší spor bona fide při podpoře smyslu zákona o spravedlivých pracovních podmínkách, 29 U.S.C. §§ 201 et seq., a je čestná a přiměřená k žalobci,

NYNÍ TUDÍŽ při zvážení vzájemných úmluv a slibů zde obsažených a jiného dobrého a cenného zvážení, přijetí a dostatečnosti, které jsou zde potvrzené stranami, strany souhlasí, že jsou právně vázány následujícími podmínkami, které vytvářejí úplné vyrovnání jakýchkoliv sporů mezi nimi:

1. **Preambule**: Strany stvrzují, že věty „ZATÍMCO" předcházející odstavci 1 jsou pravdivé a správné a jsou začleněny do tohoto dokumentu jako závazné části této DOHODY.

2. **Definice**: V rámci této DOHODY termín „WAL-MART" je definován tak, aby zahrnul následující:

(A) Wal-Mart Stores, Inc., stejně jako dceřinou společnost, mateřskou společnost, přidruženou jednotku, afiliaci, provozní jednotku, franchisu nebo divizi společnosti Wal-Mart Stores, Inc.; a

(B) Jakéhokoliv představitele, ředitele, člena správní rady, zástupce, zaměstnance nebo pojistitele jednotky zahrnuté do pododstavce (a).

3. **Částka vyrovnání**: Při zvážení za účelem podpisu této DOHODY a dodržení slibů zde učiněných, společnost WAL-MART souhlasí, že zaplatí následující částku poníženou o odpočet požadovaný zákonem:

(A) Jednorázová platba ve výši dvacetitisíc dolarů (20 000,00 USD) musí být splatná jako přiměřené poplatky a náklady na právního zástupce, a to právnímu zástupci žalobce: Garcia a Kricko (22-3125716) (dále jen „právní zástupce žalobce"). Formulář 1099 má být vydán v příslušném rozsahu; a

(B) Souhrnná částka ve výši čtyř tisíc čtyř set sedmdesáti pěti dolarů a dvaceti čtyř centů (4 475,24 USD) má být splatná jako odškodnění založené na nárocích týkajících se mzdy za údajnou práci přesčas dlužnou žalobci a stanoveným odškodněním podle zákona o spravedlivých pracovních podmínkách. Tato částka podléhá *federálním a státním požadavkům na srážku daně ze mzdy, která bude od této částky odečtena a zaplacena vládě.* Formulář 1099 má být vydán v příslušném rozsahu.

Společnost WAL-MART má poskytnout úhradu stanovenou v tomto odstavci 3 po obdržení (1) originálu této DOHODY s příslušným podpisem a datem ze strany žalobce a (2) ustanovení o skončení řízení s újmou vyhotovené právním zástupcem žalobce.

Tato DOHODA tudíž nemá vstoupit v platnost a žádné výhody uvedené v tomto odstavci nejsou dlužné nebo splatné, až do doby po datu vstoupení v platnost této DOHODY („datum vstoupení v platnost" uvedené jako první den poté, co společnost WAL-MART obdrží od žalobce všechny věci popsané v tomto odstavci).

4. **Uvážení**: Žalobce chápe a souhlasí, že nezíská peníze a/nebo výhody uvedené v odstavci 3 výše, ale po vstoupení v platnost této DOHODY a vyplnění slibů zde obsažených.

5. **Všeobecné vzdání se nároků**: Výměnou za a při zvážení plateb, výhod a jiných závazků popsaných výše, které budou realizovány současně s touto DOHODOU, žalobce pro sebe a pro všechny své dědice, vykonavatele, správce a zmocněnce tímto neodvolatelně zprošťuje, odvolává a navždy vyvazuje společnost WAL-MART ze všech nároků, práv, pokut, požadavků, odškodnění, dluhů, odpovědností, povinností, nákladů a výdajů (jiných než těchto nákladů a výdajů, které jsou dlužné dle této DOHODY), zástavních práv, břemen, žalob, předmětů žaloby, povinností nebo závazků, které byly uplatňovány v rámci soudního řízení nebo které mohly být uplatňovány, ať jsou známé nebo neznámé, na základě, ve spojení s, vzešlé z nebo související v celku nebo části se všemi údajnými činy, zanedbáním, fakty, záležitostmi, transakcemi, okolnostmi a příhodami, které byly

buď přímo nebo nepřímo údajné, uplatňované, popsané, uvedené nebo označené v soudním řízení, ať byla nebo mohla být taková tvrzení založena na obecném právu nebo spravedlivém nároku nebo jakémkoliv nařízení, směrnici, zákonném předpisu, řádu nebo zákonu, ať už federálním, státním nebo místním. Anulované nároky zahrnují, ale nejsou omezeny na ty, které vznikají dle 42 U.S.C. § 1985(3) (občanská práva); (2) 18 U.S.C. § 1962(c) (občanské právo RICO) a 29 U.S.C. § 1962(d) (zločinné spolčení RICO); (3) neoprávněného uvěznění; a (4) 29 U.S.C. §§ 206-207 (zákon o spravedlivých pracovních podmínkách). Tato DOHODA také zahrnuje vzdání se všech pohledávek v souvislosti s poplatky a náklady na právního zástupce vzniklých žalobci nebo právnímu zástupci žalobce v souvislosti se soudním případem a vyrovnáním soudního případu.

6. **<u>Daňová odpovědnost</u>**: Žalobce chápe, že společnost WAL-MART vydá formulář IRS 1099 pro účely této platby uvedené v odstavci 3 této DOHODY, které nepodléhají daňové srážce. Při vyplácení částky uvedené v odstavci 3 společnost WAL-MART nevznáší námitky v souvislosti s daňovými důsledky nebo odpovědností vzešlou z řečené platby, včetně toho, zda společnost WAL-MART byla zaměstnavatelem žalobce během příslušné doby. Žalobce chápe a souhlasí, že jakákoliv daňová odpovědnost, která je povinná nebo se povinnou stane kvůli platbě uvedené výše, je jeho výhradní odpovědností a že zaplatí jakékoliv daně, které mohou být dlužné nebo se dlužnými stanou. Společnost WAL-MART nemá žádnou finanční odpovědnost nebo povinnost v souvislosti s platbou (jinou než dodání žalobci platného šeku na částku uvedenou v odstavci 3 této DOHODY). Žalobce souhlasí, že ponese všechny daňové následky, pokud se nějaké vyskytnou, doprovázející platbu výše uvedených částek. Žalobce dále souhlasí, že uchrání společnost WAL-MART od jakýchkoliv stížností souvisejících s daněmi nebo nároky na daňové srážky ze mzdy, částkami, úroky, penálemi, pokutami nebo poplatky vznesenými nebo žádanými ze strany daňového úřadu nebo vládní agentury s ohledem na výše uvedené částky. V případě, že společnost WAL-MART obdrží písemnou zprávu, že jakýkoliv nárok nebo výměra daní, závazky vůči srážkám daní ze mzdy, pokuty a/nebo úroky vzešlé z tohoto vyrovnání jsou nebo budou učiněny proti společnosti WAL-MART, společnost WAL-MART okamžitě po přijetí takové písemné zprávy oznámí toto žalobci prostřednictvím dopisu zaslaného právnímu zástupci žalobce.

7. **<u>Soudní schválení</u>**: Žalobce souhlasí a pověřuje svého právního zástupce, aby společně postoupili jménem žalobce stažení všech nároků učiněných jménem žalobce v rámci soudního řízení. Návrh má být učiněn v podstatě stejnou formou, jako je v Příloze A této DOHODY.

8. **<u>Nepřevoditelnost</u>**: Strany stvrzují a zaručují, že žádná osoba, jiná, než strany, které podepsaly tuto dohodu, neměly nebo nemají žádný zájem na záležitostech uvedených v této DOHODĚ, že strany mají výhradní právo a exkluzivní oprávnění uvést v platnost tuto DOHODU a že strany neprodaly, nepostoupily, nepřevedly, nepředaly nebo jinak nenaložily s nárokem, požadavkem nebo zákonným právem, které je předmětem této DOHODY.

9. **<u>Rozhodné právo a jurisdikce</u>**: Tato DOHODA má být řízena a být v souladu se zákony státu New Jersey bez ohledu na ustanovení kolize právních norem. V případě, že žalobce nebo společnost WAL-MART poruší jakékoliv ustanovení této DOHODY, žalobce a

společnost WAL-MART stvrzují, že buď mohou podat žalobu na zvláštní vynucení podmínky nebo podmínek této DOHODY.

10. **Nepřijetí odpovědnosti**: Strany souhlasí, že ani tato DOHODA, ani poskytnutí zřetele na tuto DOHODU nemá být považováno nebo vytvořeno kdykoliv pro jakýkoliv účel jako přijetí ze strany společnosti WAL-MART jakékoliv záruky nebo nezákonného vedení jakéhokoliv druhu.

11. **Názvy paragrafů**: Názvy paragrafů ustanovení uvedených v této dohodě jsou zamýšleny pouze jako vhodné odkazy a ty samé nemají být nebo nejsou určeny, aby byly interpretační v souvislosti s obsahem takového ustanovení.

12. **Změna dohody**: Tato DOHODA nemá být pozměňována, odvolána, měněna nebo upravována, a to jakýmkoliv způsobem, s výjimkou písemné změny stvrzené všemi stranami. Žalobce souhlasí, že nevznese žádnou stížnost, a to kdykoliv nebo kdekoliv, že tato DOHODA byla jakkoliv ústně upravena. Žádné zřeknutí se ustanovení této DOHODY nebude platné, pokud nebude v písemné formě a podepsáno stranou, proti které je takové zřeknutí namířeno. Strany stvrzují, že pouze hlavní právní zástupce společnosti WAL-MART má pověření pozměnit tuto DOHODU jménem společnosti WAL-MART.

13. **Výklad**: Jazyk všech částí této DOHODY má být ve všech případech vytvořen jako celek, podle svého čestného úmyslu, a ne vyloženě pro nebo proti jakékoliv ze stran. Tato DOHODA byla projednána s a mezi právními zástupci stran a nemá být vykládána proti „stylizátorovi návrhu" této DOHODY.

14. **Oddělitelnost**: Strany výslovně stvrzují a souhlasí, že ustanovení této DOHODY jsou přiměřená a vymahatelná. Přesto, pokud jakákoliv část nebo ustanovení této DOHODY (včetně, bez souvislosti na omezení, jakékoliv části nebo ustanovení jakékoliv části této DOHODY) je shledáno jako nezákonné, neplatné nebo nevymahatelné u soudu příslušné jurisdikce a nemůže být upraveno, aby bylo zákonné, platné nebo vymahatelné, zbytek této DOHODY nemá být ovlivněn takovým určením a má být platný a vymahatelný v plném rozsahu, který je povolen zákonem, a uvedená nezákonná nebo nevymahatelná část nebo ustanovení nemá být posuzována jako část této DOHODY. V rozsahu ustanovení uvedeného zde, které souvisí se skončením soudního řízení ze strany žalobce nebo všeobecným zřeknutím se nároků popsaných v odstavci 5 výše, je považováno za nezákonné, neplatné nebo nevymahatelné, společnost WAL-MART není povinná uznat jakékoliv podmínky uvedené v této dohodě a žalobce má vrátit částku zaplacenou společností WAL-MART.

15. **Závazná povaha dohody**: Tato DOHODA je závazná pro všechny strany a pro jejich příslušné dědice, správce, zástupce, vykonavatele, následovníky a poručníky a má nabýt platnosti ve prospěch všech stran a jejich příslušných dědiců, správců, zástupců, vykonavatelů, následovníků a poručníků.

16. **Celá dohoda**: Tato DOHODA ustanovuje celou DOHODU mezi stranami této dohody a plně nahrazuje jakýkoliv předcházející závazek ze strany společnosti WAL-MART vůči žalobci. ČÁSTKA VYROVNÁNÍ popsaná v odstavci 3 Žalobce stvrzuje, že nespoléhá na tvrzení, sliby nebo dohody jakéhokoliv druhu jemu učiněné v souvislosti s jeho rozhodnutím přijmout tuto DOHODU, kromě těch, které jsou uvedené v této DOHODĚ.

ŽALOBCI JE ZDE UDĚLENA RADA, ŽE MÁ PŘIMĚŘENOU DOBU PRO PŘEHODNOCENÍ A ZVÁŽENÍ TÉTO DOHODY.

ŽALOBCE STVRZUJE, ŽE JE POVĚŘEN PODEPSAT TUTO DOHODU A PROJEDNAL JI S PRÁVNÍM ZÁSTUPCEM PŘED UVEDENÍM TÉTO DOHODY V PLATNOST.

POTÉ, CO SE ROZHODNE UVÉST TUTO DOHODU V PLATNOST, ABY BYLO MOŽNO SPLNIT SLIBY A ZÍSKAT ČÁSTKY A VÝHODY UVEDENÉ VÝŠE V ODSTAVCI 3 ŽALOBCE SVOBODNĚ A PŘI ZNALOSTI A PO NÁLEŽITÉM ZVÁŽENÍ UZAVÍRÁ TUTO DOHODU SE ZÁMĚREM ZŘÍCI SE, UROVNAT A VZDÁT SE VŠECH NÁROKŮ, KTERÉ MÁ NEBO MŮŽE MÍT PROTI SPOLEČNOSTI WAL-MART.

PŘIJATO A SCHVÁLENO:

Podpis: ______________________________ 11.1.2010
JIŘÍ PFAUSER Datum

STÁT ____________________)
SPRÁVNÍ OBVOD ____________)

PŘEDE MNOU, níže podepsaná oprávněná osoba dne ________ 201_, se osobně dostavila ________________, mě známá jako osoba, jejíž jméno je uvedeno v předchozím dokumentu a podepsáno v mé přítomnosti a odpřísáhnuto, že tato DOHODA byla stvrzena pro účely a zvážení zde vyjádřeném.

PODEPSÁNO A ODPŘÍSÁHNUTO PŘEDE MNOU dne _______ 201__ stvrzení je ověřeno mou rukou a razítkem kanceláře.

____
VEŘEJNÝ NOTÁŘ – STÁT ____________

____
(Jméno notáře v tištěné podobě)

Mé oprávnění vyprší:

____

Běžné číslo ověřovací knihy **OC/** — 70 – **/ 2011** --

Ověřuji, že pan ---

Jiří Pfauser, nar. 23.02.1976, bytem Kamenný Újezd, Dělnická 435, PSČ 373 81, ----------------

jehož osobní totožnost byla prokázána platným občanským průkazem, uznal přede mnou podpis na této listině za vlastní. --

V Českých Budějovicích 01.02.2011 ---

Mgr. Robert Procházka
notář

MGR. ROBERT PROCHÁZKA -1- NOTÁŘ VE STRAKONICÍCH

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Hana Pfauserova ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

RECITALS

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **<u>Recitals</u>**: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. **<u>Definitions</u>**: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **Settlement Sum**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Four thousand one hundred seventy six dollars and ninety cents ($4,176.90), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **Consideration**: Plaintiff understands and agrees that she would not receive the monies and/or benefits specified in paragraph 3, above, but for her execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for herself, and for each of her heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. **Tax Liability**: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is her sole responsibility, and that she will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to her of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. **Court Approval**: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. **No Assignment**: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. **Governing Law and Jurisdiction**: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

10. **No Admission of Liability**: The Parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by WAL-MART of any liability or unlawful conduct of any kind.

11. **Headings**: The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

12. **Modification of Agreement**: This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. Plaintiff agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The Parties acknowledge that only the General Counsel of WAL-MART has the authority to modify this AGREEMENT on behalf of WAL-MART.

13. **Interpretation**: The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

15. **Binding Nature of Agreement**: This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement**: This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of WAL-MART to Plaintiff. The SETTLEMENT SUM described in paragraph 3 Plaintiff acknowledges that she has not relied on any representations, promises, or agreements of any kind made to her in

connection with her decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

PLAINTIFF IS HEREBY ADVISED THAT SHE HAS A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT.

PLAINTIFF AFFIRMS THAT SHE IS AUTHORIZED TO SIGN THIS AGREEMENT AND HAS CONSULTED WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS SHE HAS OR MIGHT HAVE AGAINST WAL-MART.

ACCEPTED AND AGREED:

By: Hana Pfauserova ______________________ 12-1-2009
HANA PFAUSEROVA Date

STATE OF ________________)
COUNTY OF ________________)

BEFORE ME, the undersigned authority on this _____ day of _________ 201_, personally appeared ________________, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of ________ 201_, to certify which witness my hand and seal of office.

____
NOTARY PUBLIC – STATE OF ____________

____
(Printed Name of Notary)

My Commission Expires:

____

Běžné číslo ověřovací knihy **OC/** — 66 - **/ 2011** ---

Ověřuji, že paní ---

Hana Pfauserová, nar. 29.11.1976, bytem Kamenný Újezd, Dělnická 435, PSČ 373 81, ---------

jejíž osobní totožnost byla prokázána platným občanským průkazem, uznala přede mnou podpis na této listině za vlastní. ---

V Českých Budějovicích 01.02.2011 --

Mgr. Robert Procházka
notář

MGR. ROBERT PROCHÁZKA -1- NOTÁŘ VE STRAKONICÍCH

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

-1-

ROBERT PROCHÁZKA NOTÁŘ STRAKONICE

DŮVĚRNÁ DOHODA O VYROVNÁNÍ A VŠEOBECNÉ VZDÁNÍ SE NÁROKU

Tato důvěrná dohoda o vyrovnání a všeobecné vzdání se nároku („DOHODA") je uzavřena mezi Hanou Pfauserovou („žalobkyně") a společností WAL-MART STORES, INC. („WAL-MART") (dohromady „strany").

PREAMBULE

DOHODA je uzavřena s odkazem na následující fakta:

A. **ZATÍMCO** žalobkyně podala soudní žalobu proti společnosti WAL-MART u Okresního soudu Spojených států pro federální okres New Jersey, která je označena jako *Zavala a kol versus společnost Wal-Mart Stores, Inc.*, číslo případu 03-5309 („soudní řízení"); a

B. **ZATÍMCO** společnost WAL-MART popírá platnost nároků žalobkyně, popírá, že byla zaměstnavatelem žalobkyně, popírá jakékoliv povinnosti zaplatit mzdy žalobkyni nebo jakéhokoliv jiné náhrady a popírá, že podléhá jakékoliv odpovědnosti; a

C. **ZATÍMCO** všechny mzdy údajně dlužné žalobkyni jsou sporné; a

D. **ZATÍMCO** si strany přejí vyřešit své rozpory bez vedení dalšího sporu; a

E. **ZATÍMCO** společnost WAL-MART je ochotna poskytnout žalobkyni určitou náhradu popsanou níže, což není běžně požadováno, za předpokladu, že žalobkyně zbaví společnost WAL-MART jakýchkoliv nároků, které byly vzneseny žalobkyní nebo mohou vzniknout ze soudního řízení podle vyvázání uvedeného v odstavci 5, a souhlasí, že dodrží jiné sliby a podmínky uvedené v této DOHODĚ; a

F. **ZATÍMCO** DOHODA řeší spor bona fide při podpoře smyslu zákona o spravedlivých pracovních podmínkách, 29 U.S.C. §§ 201 et seq., a je čestná a přiměřená k žalobkyni,

NYNÍ TUDÍŽ při zvážení vzájemných úmluv a slibů zde obsažených a jiného dobrého a cenného zvážení, přijetí a dostatečnosti, které jsou zde potvrzené stranami, strany souhlasí, že jsou právně vázány následujícími podmínkami, které vytvářejí úplné vyrovnání jakýchkoliv sporů mezi nimi:

1. **Preambule**: Strany stvrzují, že věty „ZATÍMCO" předcházející odstavci 1 jsou pravdivé a správné a jsou začleněny do tohoto dokumentu jako závazné části této DOHODY.

2. **Definice**: V rámci této DOHODY termín „WAL-MART" je definován tak, aby zahrnul následující:

(A) Wal-Mart Stores, Inc., stejně jako dceřinou společnost, mateřskou společnost, přidruženou jednotku, afiliaci, provozní jednotku, franchisu nebo divizi společnosti Wal-Mart Stores, Inc.; a

(B) Jakéhokoliv představitele, ředitele, člena správní rady, zástupce, zaměstnance nebo pojistitele jednotky zahrnuté do pododstavce (a).

3. **Částka vyrovnání**: Při zvážení za účelem podpisu této DOHODY a dodržení slibů zde učiněných, společnost WAL-MART souhlasí, že zaplatí následující částku poníženou o odpočet požadovaný zákonem:

(A) Jednorázová platba ve výši dvacetitisíc dolarů (20 000,00 USD) musí být splatná jako přiměřené poplatky a náklady na právního zástupce, a to právnímu zástupci žalobkyně: Garcia a Kricko (22-3125716) (dále jen „právní zástupce žalobkyně"). Formulář 1099 má být vydán v příslušném rozsahu; a

(B) Souhrnná částka ve výši čtyř tisíc sto sedmdesáti šesti dolarů a devadesáti centů (4 176,90 USD) má být splatná jako odškodnění založené na nárocích týkajících se mzdy za údajnou práci přesčas dlužnou žalobkyni a stanoveným odškodněním podle zákona o spravedlivých pracovních podmínkách. Tato částka podléhá *federálním a státním požadavkům na srážku daně ze mzdy, která bude od této částky odečtena a zaplacena vládě.* Formulář 1099 má být vydán v příslušném rozsahu.

Společnost WAL-MART má poskytnout úhradu stanovenou v tomto odstavci 3 po obdržení(1) originálu této DOHODY s příslušným podpisem a datem ze strany žalobkyně a (2) ustanovení o skončení řízení s újmou vyhotovené právním zástupcem žalobkyně.

Tato DOHODA tudíž nemá vstoupit v platnost a žádné výhody uvedené v tomto odstavci nejsou dlužné nebo splatné, až do doby po datu vstoupení v platnost této DOHODY („datum vstoupení v platnost" uvedené jako první den poté, co společnost WAL-MART obdrží od žalobkyně všechny věci popsané v tomto odstavci).

4. **Uvážení**: Žalobkyně chápe a souhlasí, že nezíská peníze a/nebo výhody uvedené v odstavci 3 výše, ale po vstoupení v platnost této DOHODY a vyplnění slibů zde obsažených.

5. **Všeobecné vzdání se nároků**: Výměnou za a při zvážení plateb, výhod a jiných závazků popsaných výše, které budou realizovány současně s touto DOHODOU, žalobkyně pro sebe a pro všechny své dědice, vykonavatele, správce a zmocněnce tímto neodvolatelně zprošťuje, odvolává a navždy vyvazuje společnost WAL-MART ze všech nároků, práv, pokut, požadavků, odškodnění, dluhů, odpovědností, povinností, nákladů a výdajů (jiných než těchto nákladů a výdajů, které jsou dlužné dle této DOHODY), zástavních práv, břemen, žalob, předmětů žaloby, povinností nebo závazků, které byly uplatňovány v rámci soudního řízení nebo které mohly být uplatňovány, ať jsou známé nebo neznámé, na základě, ve spojení s, vzešlé z nebo související v celku nebo části se všemi údajnými činy, zanedbáním, fakty, záležitostmi, transakcemi, okolnostmi a příhodami, které byly

buď přímo nebo nepřímo údajné, uplatňované, popsané, uvedené nebo označené v soudním řízení, ať byla nebo mohla být taková tvrzení založena na obecném právu nebo spravedlivém nároku nebo jakémkoliv nařízení, směrnici, zákonném předpisu, řádu nebo zákonu, ať už federálním, státním nebo místním. Anulované nároky zahrnují, ale nejsou omezeny na ty, které vznikají dle 42 U.S.C. § 1985(3) (občanská práva); (2) 18 U.S.C. § 1962(c) (občanské právo RICO) a 29 U.S.C. § 1962(d) (zločinné spolčení RICO); (3) neoprávněného uvěznění; a (4) 29 U.S.C. §§ 206-207 (zákon o spravedlivých pracovních podmínkách). Tato DOHODA také zahrnuje vzdání se všech pohledávek v souvislosti s poplatky a náklady na právního zástupce vzniklých žalobkyni nebo právnímu zástupci žalobkyně v souvislosti se soudním případem a vyrovnáním soudního případu.

6. **Daňová odpovědnost**: Žalobce chápe, že společnost WAL-MART vydá formulář IRS 1099 pro účely této platby uvedené v odstavci 3 této DOHODY, které nepodléhají daňové srážce. Při vyplácení částky uvedené v odstavci 3 společnost WAL-MART nevznáší námitky v souvislosti s daňovými důsledky nebo odpovědností vzešlou z řečené platby, včetně toho, zda společnost WAL-MART byla zaměstnavatelem žalobkyně během příslušné doby. Žalobce chápe a souhlasí, že jakákoliv daňová odpovědnost, která je povinná nebo se povinnou stane kvůli platbě uvedené výše, je její výhradní odpovědností a že zaplatí jakékoliv daně, které mohou být dlužné nebo se dlužnými stanou. Společnost WAL-MART nemá žádnou finanční odpovědnost nebo povinnost v souvislosti s platbou (jinou než dodání žalobkyni platného šeku na částku uvedenou v odstavci 3 této DOHODY). Žalobkyně souhlasí, že ponese všechny daňové následky, pokud se nějaké vyskytnou, doprovázející platbu výše uvedených částek. Žalobkyně dále souhlasí, že uchrání společnost WAL-MART od jakýchkoliv stížností souvisejících s daněmi nebo nároky na daňové srážky ze mzdy, částkami, úroky, penálemi, pokutami nebo poplatky vznesenými nebo žádanými ze strany daňového úřadu nebo vládní agentury s ohledem na výše uvedené částky. V případě, že společnost WAL-MART obdrží písemnou zprávu, že jakýkoliv nárok nebo výměra daní, závazky vůči srážkám daní ze mzdy, pokuty a/nebo úroky vzešlé z tohoto vyrovnání jsou nebo budou učiněny proti společnosti WAL-MART, společnost WAL-MART okamžitě po přijetí takové písemné zprávy oznámí toto žalobkyni prostřednictvím dopisu zaslaného právnímu zástupci žalobkyně.

7. **Soudní schválení**: Žalobkyně souhlasí a pověřuje svého právního zástupce, aby společně postoupili jménem žalobkyně stažení všech nároků učiněných jménem žalobkyně v rámci soudního řízení. Návrh má být učiněn v podstatě stejnou formou, jako je v Příloze A této DOHODY.

8. **Nepřevoditelnost**: Strany stvrzují a zaručují, že žádná osoba, jiná, než strany, které podepsaly tuto dohodu, neměly nebo nemají žádný zájem na záležitostech uvedených v této DOHODĚ, že strany mají výhradní právo a exkluzivní oprávnění uvést v platnost tuto DOHODU a že strany neprodaly, nepostoupily, nepřevedly, nepředaly nebo jinak nenaložily s nárokem, požadavkem nebo zákonným právem, které je předmětem této DOHODY.

9. **Rozhodné právo a jurisdikce**: Tato DOHODA má být řízena a být v souladu se zákony státu New Jersey bez ohledu na ustanovení kolize právních norem. V případě, že

žalobkyně nebo společnost WAL-MART poruší jakékoliv ustanovení této DOHODY, žalobkyně a společnost WAL-MART stvrzují, že buď mohou podat žalobu na zvláštní vynucení podmínky nebo podmínek této DOHODY.

10. **<u>Nepřijetí odpovědnosti</u>**: Strany souhlasí, že ani tato DOHODA, ani poskytnutí zřetele na tuto DOHODU nemá být považováno nebo vytvořeno kdykoliv pro jakýkoliv účel jako přijetí ze strany společnosti WAL-MART jakékoliv záruky nebo nezákonného vedení jakéhokoliv druhu.

11. **<u>Názvy paragrafů</u>**: Názvy paragrafů ustanovení uvedených v této dohodě jsou zamýšleny pouze jako vhodné odkazy a ty samé nemají být nebo nejsou určeny, aby byly interpretační v souvislosti s obsahem takového ustanovení.

12. **<u>Změna dohody</u>**: Tato DOHODA nemá být pozměňována, odvolána, měněna nebo upravována, a to jakýmkoliv způsobem, s výjimkou písemné změny stvrzené všemi stranami. Žalobkyně souhlasí, že nevznese žádnou stížnost, a to kdykoliv nebo kdekoliv, že tato DOHODA byla jakkoliv ústně upravena. Žádné zřeknutí se ustanovení této DOHODY nebude platné, pokud nebude v písemné formě a podepsáno stranou, proti které je takové zřeknutí namířeno. Strany stvrzují, že pouze hlavní právní zástupce společnosti WAL-MART má pověření pozměnit tuto DOHODU jménem společnosti WAL-MART.

13. **<u>Výklad</u>**: Jazyk všech částí této DOHODY má být ve všech případech vytvořen jako celek, podle svého čestného úmyslu, a ne vyloženě pro nebo proti jakékoliv ze stran. Tato DOHODA byla projednána s a mezi právními zástupci stran a nemá být vykládána proti „stylizátorovi návrhu“ této DOHODY.

14. **<u>Oddělitelnost</u>**: Strany výslovně stvrzují a souhlasí, že ustanovení této DOHODY jsou přiměřená a vymahatelná. Přesto, pokud jakákoliv část nebo ustanovení této DOHODY (včetně, bez souvislosti na omezení, jakékoliv části nebo ustanovení jakékoliv části této DOHODY) je shledáno jako nezákonné, neplatné nebo nevymahatelné u soudu příslušné jurisdikce a nemůže být upraveno, aby bylo zákonné, platné nebo vymahatelné, zbytek této DOHODY nemá být ovlivněn takovým určením a má být platný a vymahatelný v plném rozsahu, který je povolen zákonem, a uvedená nezákonná nebo nevymahatelná část nebo ustanovení nemá být posuzována jako část této DOHODY. V rozsahu ustanovení uvedeného zde, které souvisí se skončením soudního řízení ze strany žalobce nebo všeobecným zřeknutím se nároků popsaných v odstavci 5 výše, je považováno za nezákonné, neplatné nebo nevymahatelné, společnost WAL-MART není povinná uznat jakékoliv podmínky uvedené v této dohodě a žalobce má vrátit částku zaplacenou společností WAL-MART.

15. **<u>Závazná povaha dohody</u>**: Tato DOHODA je závazná pro všechny strany a pro jejich příslušné dědice, správce, zástupce, vykonavatele, následovníky a poručníky a má nabýt platnosti ve prospěch všech stran a jejich příslušných dědiců, správců, zástupců, vykonavatelů, následovníků a poručníků.

16. **Celá dohoda**: Tato DOHODA ustanovuje celou DOHODU mezi stranami této dohody a plně nahrazuje jakýkoliv předcházející závazek ze strany společnosti WAL-MART vůči žalobkyni. ČÁSTKA VYROVNÁNÍ popsaná v odstavci 3 Žalobkyně stvrzuje, že nespoléhá na tvrzení, sliby nebo dohody jakéhokoliv druhu jí učiněné v souvislosti s jejím rozhodnutím přijmout tuto DOHODU, kromě těch, které jsou uvedené v této DOHODĚ.

ŽALOBKYNĚ JE ZDE UDĚLENA RADA, ŽE MÁ PŘIMĚŘENOU DOBU PRO PŘEHODNOCENÍ A ZVÁŽENÍ TÉTO DOHODY.

ŽALOBKYNĚ STVRZUJE, ŽE JE POVĚŘENA PODEPSAT TUTO DOHODU A PROJEDNALA JI S PRÁVNÍM ZÁSTUPCEM PŘED UVEDENÍM TÉTO DOHODY V PLATNOST.

POTÉ, CO SE ROZHODNE UVÉST TUTO DOHODU V PLATNOST, ABY BYLO MOŽNO SPLNIT SLIBY A ZÍSKAT ČÁSTKY A VÝHODY UVEDENÉ VÝŠE V ODSTAVCI 3 ŽALOBKYNĚ SVOBODNĚ A PŘI ZNALOSTI A PO NÁLEŽITÉM ZVÁŽENÍ UZAVÍRÁ TUTO DOHODU SE ZÁMĚREM ZŘÍCI SE, UROVNAT A VZDÁT SE VŠECH NÁROKŮ, KTERÉ MÁ NEBO MŮŽE MÍT PROTI SPOLEČNOSTI WAL-MART.

PŘIJATO A SCHVÁLENO:

Podpis: Hana Pfauserová ______________________ 17. 1. 2011 ____________

HANA PFAUSEROVÁ Datum

STÁT ______________________)
SPRÁVNÍ OBVOD ______________________)

PŘEDE MNOU, níže podepsaná oprávněná osoba dne __________ 201_, se osobně dostavila __________________, mě známá jako osoba, jejíž jméno je uvedeno v předchozím dokumentu a podepsáno v mé přítomnosti a odpřísáhnuto, že tato DOHODA byla stvrzena pro účely a zvážení zde vyjádřeném.

PODEPSÁNO A ODPŘÍSÁHNUTO PŘEDE MNOU dne ________ 201__ stvrzení je ověřeno mou rukou a razítkem kanceláře.

____
VEŘEJNÝ NOTÁŘ – STÁT ______________

____
(Jméno notáře v tištěné podobě)

Mé pověření vyprší:

____

Běžné číslo ověřovací knihy **OC/** — 65 – **/ 2011** --

Ověřuji, že paní --

Hana Pfauserová, nar. 29.11.1976, bytem Kamenný Újezd, Dělnická 435, PSČ 373 81, ---------

jejíž osobní totožnost byla prokázána platným občanským průkazem, uznala přede mnou podpis na této listině za vlastní. --

V Českých Budějovicích 01.02.2011 ---

Mgr. Robert Procházka
notář

MGR. ROBERT PROCHÁZKA -1- NOTÁŘ VE STRAKONICÍCH

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Carlos Tello ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

RECITALS

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. <u>**Recitals**</u>: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. <u>**Definitions**</u>: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **<u>Settlement Sum</u>**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Six thousand eight hundred DOLLARS ($6,800.00), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **<u>Consideration</u>**: Plaintiff understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **<u>General Release of Claims</u>**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for himself, and for each of his heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. <u>**Tax Liability**</u>: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is his sole responsibility, and that he will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to him of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. <u>**Court Approval**</u>: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. <u>**No Assignment**</u>: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. <u>**Governing Law and Jurisdiction**</u>: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

10. **No Admission of Liability**: The Parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by WAL-MART of any liability or unlawful conduct of any kind.

11. **Headings**: The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

12. **Modification of Agreement**: This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. Plaintiff agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The Parties acknowledge that only the General Counsel of WAL-MART has the authority to modify this AGREEMENT on behalf of WAL-MART.

13. **Interpretation**: The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

15. **Binding Nature of Agreement**: This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.

16. **Entire Agreement**: This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of WAL-MART to Plaintiff. The SETTLEMENT SUM described in paragraph 3 Plaintiff acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in

connection with his decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

PLAINTIFF IS HEREBY ADVISED THAT HE HAS A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT.

PLAINTIFF AFFIRMS THAT HE IS AUTHORIZED TO SIGN THIS AGREEMENT AND HAS CONSULTED WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST WAL-MART.

ACCEPTED AND AGREED:

ia Graciela
ánchez
LICO No. 9
UEBLA

By: ______________________ JAN-12-2011
CARLOS TELLO Date

STATE OF Puebla)
COUNTY OF México)

BEFORE ME, the undersigned authority on this 12 day of Enero 2011, personally appeared Carlos Tello, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 12 day of Enero 2011, to certify which witness my hand and seal of office.

____
NOTARY PUBLIC – STATE OF Puebla
Lic. Alfonso González Cruz Cartín
(Printed Name of Notary)

My Commission Expires:

Indefinida

Lic. María Elvia Graciela
Morales Sánchez
NOTARIO PUBLICO No. 9
ATLIXCO, PUEBLA

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, EUNICE GOMEZ, ANTONIO FLORES, OCTAVIO DENISIO, HIPOLITO PALACIOS, CARLOS ALBERTO TELLO, MAXIMILIANO MENDEZ, ARTURO ZAVALA, FELIPE 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 (GEB) DOCUMENT ELECTRONICALLY FILED **MEMORANDUM IN SUPPORT OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF SETTLING PLAINTIFFS**

Plaintiffs Felipe Condado, Octavio Denisio, Eunice Gomez, Victor Zavala Torres, Jiri Pfauser, and Hana Pfauserova ("Settling Plaintiffs") and Defendant Wal-Mart Stores, Inc. (together, "the Parties"), through counsel of record, respectfully submit this Memorandum in Support of Joint Motion to Approve Settlement and Dismiss Claims of Settling Plaintiffs.

The Parties hereby jointly move for the Court to approve the settlement of any and all claims asserted by or on behalf of the Settling Plaintiffs at any time in this proceeding, as embodied in the Settlement Agreements attached as Exhibit A hereto. The Settlement Agreements were reached through several months of settlement discussions under the Court's supervision. Each of the Settlement Agreements is a fair, reasonable, and adequate resolution of a bona fide dispute of claims arising from Plaintiffs' alleged work on third-party floor maintenance crews in Wal-Mart stores.

Plaintiffs initially filed this case in November 2003 as a putative class action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO"), RICO conspiracy, civil rights,

Fair Labor Standards Act ("FLSA") and false imprisonment counts.[1] At all times Wal-Mart has denied that it has any liability as to any plaintiff or putative opt-in participant. The Court has supervised settlement discussions between the Parties at various times since this case was filed, including in settlement conferences on August 11, 2010 and October 1, 2010. Pursuant to the Court's instructions at the August 11, 2010 settlement conference, on August 27, 2010 Wal-Mart provided to plaintiffs' counsel settlement offer letters for each of the ten remaining plaintiffs. *See* Exhibit B (August 27, 2010 letter from Murray to Hon. Madeline Cox Arleo attaching settlement correspondence). On September 27, 2010 plaintiffs' counsel reported acceptances of the settlement offers by Felipe Condado, Octavio Denisio, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, and Victor Zavala Torres. *See* Exhibit C (September 27, 2010 Letter from Linsey to Hon. Madeline Cox Arleo).[2] Plaintiffs' counsel reported that named plaintiffs Petr Zednik and Teresa Jaros rejected the respective settlement offers addressed to them. *See id.*

The Settlement Agreements embody the same payment amounts and other material terms as the settlement offer letters accepted by the Settling Plaintiffs. Each Settlement Agreement provides for payment of a one-time Settlement Sum that includes (1) a payment of $20,000 as reasonable attorneys' fees and costs payable to plaintiffs' legal counsel, Garcia and Kricko, and (2) a payment to plaintiff in the amount of the respective plaintiff's alleged overtime damages, *see* Exhibit B (documenting calculation of alleged damages for each Settling Plaintiff). (The $20,000 payment to Garcia and Kricko provided in each Settlement Agreement is non-exclusive; that is, a single payment of $20,000 is to be made to Garcia and Kricko for reasonable attorneys' fees and costs.) Wal-Mart will withhold taxes as appropriate and will issue any paperwork to the IRS as required under federal law.

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1 The civil rights count was dismissed with prejudice on October 7, 2005, and the RICO and RICO conspiracy counts were dismissed with prejudice on August 28, 2006. On June 25, 2010, the Court decertified the conditional collective action.

2 Plaintiffs' counsel reported that they were unable to reach or locate Carlos Tello or Hipolito Palacios. *See id.*

The Settlement Agreements were reached under the Court's supervision and represent a fair and reasonable resolution of the Settling Plaintiffs' respective claims in this proceeding. *See Lignore v. Hosp. of the Univ. of Pa.*, Civ. No. 04-5735, 2007 U.S. Dist. LEXIS 32169, at *13-*14 (E.D. Pa. May 2, 2007) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)). With respect to the FLSA claims, there is a bona fide dispute as to the amount compensation due to the Settling Plaintiffs and whether Wal-Mart was the Settling Plaintiffs' joint employer. *See id.* Accordingly, the release of the Settling Plaintiffs' claims under the FLSA is valid and enforceable.

For the reasons stated herein, the Parties respectfully request that the Court approve the Settlement Agreements and dismiss the claims of the Settling Plaintiffs.

Respectfully submitted,

Attorneys for Plaintiffs

By:______________________________

James L. Linsey
Thomas N. Ciantra
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, New York 10036

By:______________________________

Gilberto Garcia, Esq.
GARCIA AND KRICKO
68 Summit Avenue
Hackensack, New Jersey 07601

WILLKIE FARR & GALLAGHER LLP
Attorneys for Defendant Wal-Mart Stores, Inc.

By:______________________________
Thomas H. Golden

WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019

Of Counsel:

David P. Murray, Esq. (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238

Dated: [MONTH/DAY], 2010

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between Victor Zavala Torres ("Plaintiff") and WAL-MART STORES, INC. ("WAL-MART") (collectively "Parties").

RECITALS

This AGREEMENT is made with reference to the following facts:

A. **WHEREAS,** Plaintiff brought a Lawsuit against WAL-MART in the United States District Court for the District of New Jersey, that is designated as *Zavala, et al. v. Wal-Mart Stores, Inc.*, Case No. 03-5309 (the "Lawsuit"); and

B. **WHEREAS,** WAL-MART denies the validity of Plaintiff's claims, denies that it was Plaintiff's employer, denies any obligation to pay Plaintiff wages or any other compensation, and denies that it is subject to any liability; and

C. **WHEREAS,** all wages allegedly due to Plaintiff are disputed; and

D. **WHEREAS,** the Parties wish to resolve their differences without resort to further litigation; and

E. **WHEREAS,** WAL-MART is willing to provide Plaintiff with certain considerations described below, which it is not ordinarily required to, provided that Plaintiff release WAL-MART from any claims Plaintiff have made or might make arising out of the Lawsuit in accordance with the Release set forth in Paragraph 5, and agrees to comply with the other promises and conditions set forth in this AGREEMENT; and

F. **WHEREAS,** the AGREEMENT resolves a bona fide dispute in furtherance of the purpose of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is fair and reasonable to Plaintiff,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **Recitals**: The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.

2. **Definitions**: Throughout this AGREEMENT, the term "WAL-MART" shall be defined to include the following:

(A) Wal-Mart Stores, Inc., as well as any subsidiary, parent company, affiliated entity, related entity, operating entity, franchise, or division of Wal-Mart Stores, Inc.; and

(B) Any officer, director, trustee, agent, employee, or insurer of an entity encompassed by subparagraph (a).

3. **Settlement Sum**: As consideration for signing this AGREEMENT and compliance with the promises made herein, WAL-MART agrees to pay the following sums, less deductions required by law:

(A) A single payment of twenty thousand dollars ($20,000.00) shall be made payable as reasonable attorney's fees and costs to Plaintiff's legal counsel: Garcia and Kricko (22-3125716 (**tax ID #**)) (hereinafter "Plaintiff's Counsel"). A 1099 shall be issued to the extent appropriate; and

(B) An aggregate amount of Twenty two thousand dollars ($22,000.00), shall be made payable as damages based on claims of overtime pay allegedly due to Plaintiff and liquidated damages pursuant to the Fair Labor Standards Act. This amount is subject to federal and state tax withholding requirements, which will be deducted from this amount and paid to the government. A 1099 shall be issued to the extent appropriate.

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WAL-MART shall provide the consideration identified in this paragraph 3 after receiving both (1) an original of this AGREEMENT appropriately signed and dated by Plaintiff, and (2) a Stipulation of Dismissal With Prejudice executed by Plaintiff's Counsel.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date" defined as the first day after WAL-MART has received from Plaintiff all of the items described in this paragraph).

4. **Consideration**: Plaintiff understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims**: In exchange for, and in consideration of, the payments, benefits, and other commitments described above, which is being executed contemporaneously with this AGREEMENT, Plaintiff, for himself, and for each of his heirs, executors, administrators and assigns, hereby irrevocably releases, acquits, and forever discharges WAL-MART of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this AGREEMENT), liens, charges, complaints, causes of action, obligations, or liability that were asserted in the Lawsuit or that could have been asserted but were not asserted in the Lawsuit, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and

occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Released Claims include, but are not limited to, those arising under 42 U.S.C. § 1985(3) (civil rights); (2) 18 U.S.C. § 1962(c) (civil RICO), and 29 U.S.C. § 1962(d) (RICO conspiracy); (3) false imprisonment; and (4) 29 U.S.C. §§ 206-207 (Fair Labor Standards Act). This AGREEMENT also includes a release of all claims for attorneys' fees and costs incurred by Plaintiff or by Plaintiff's Counsel in connection with the Lawsuit and the Settlement of the Lawsuit.

6. **Tax Liability**: Plaintiff understands that WAL-MART shall issue an IRS Form 1099 for those portions of the payment specified in paragraph 3 of this AGREEMENT that are not subject to withholding. In paying the amount specified in paragraph 3, WAL-MART makes no representation regarding the tax consequences or liability arising from said payment, including whether WAL-MART was Plaintiff's employer during the relevant time period. Plaintiff understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is his sole responsibility, and that he will pay any such taxes that may be due or become due. WAL-MART has no monetary liability or obligation regarding payment whatsoever (other than delivering a valid check in the sum referenced in paragraph 3 of this AGREEMENT to Plaintiff). Plaintiff agrees to bear all tax consequences, if any, attendant upon the payment to him of the above-recited sums. Plaintiff further agrees to hold WAL-MART harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited sums. In the event WAL-MART receives written notice that any claim or assessments for taxes, withholding obligations, penalties and/or interest arising out of this settlement are being or will be made against WAL-MART, WAL-MART shall promptly, after receipt of such written notice, notify Plaintiff by letter sent to Plaintiff's Counsel.

7. **Court Approval**: Plaintiff agrees and authorizes Plaintiff's Counsel to move jointly on Plaintiff's behalf for dismissal of any and all claims made by or on behalf of Plaintiff in the Lawsuit. The motion shall be made in substantially the same form as that in Exhibit A of this AGREEMENT.

8. **No Assignment**: The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

9. **Governing Law and Jurisdiction**: This AGREEMENT shall be governed and conformed in accordance with the laws of the state of New Jersey without regard to its conflict of laws provision. In the event Plaintiff or WAL-MART breaches any provision of this AGREEMENT, Plaintiff and WAL-MART affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.

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14. **Severability**: The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to the dismissal of Plaintiff's Lawsuit or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, WAL-MART is not obligated to honor any of the terms set forth herein and Plaintiff shall return any amounts paid by WAL-MART.

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ACCEPTED AND AGREED:

By: ______________________ JAN-02-2011
VICTOR ZAVALA TORRES Date

via Graciela Sánchez BLICO No. 9 PUEBLA

STATE OF Puebla)
COUNTY OF México)

BEFORE ME, the undersigned authority on this 12 day of Enero 2011, personally appeared Victor Zavala Torres, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 12 day of Enero 2011, to certify which witness my hand and seal of office.

NOTARY PUBLIC – STATE OF Puebla

Lic. Alfonso González Caso (Adrine)
(Printed Name of Notary)

My Commission Expires:

Indefinida

María Elvia Graciela Morales Sánchez NOTARIO PUBLICO No. 9 ATLIXCO, PUEBLA

ON BEHALF OF WAL-MART:

David P. Murray

David P. Murray
WILLKIE FARR & GALLAGHER LLP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, EUNICE GOMEZ, ANTONIO FLORES, OCTAVIO DENISIO, HIPOLITO PALACIOS, CARLOS ALBERTO TELLO, MAXIMILIANO MENDEZ, ARTURO ZAVALA, FELIPE 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 (GEB) DOCUMENT ELECTRONICALLY FILED **MEMORANDUM IN SUPPORT OF JOINT MOTION TO APPROVE SETTLEMENT AND DISMISS CLAIMS OF SETTLING PLAINTIFFS**

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1 The civil rights count was dismissed with prejudice on October 7, 2005, and the RICO and RICO conspiracy counts were dismissed with prejudice on August 28, 2006. On June 25, 2010, the Court decertified the conditional collective action.

2 Plaintiffs' counsel reported that they were unable to reach or locate Carlos Tello or Hipolito Palacios. *See id.*

The Settlement Agreements were reached under the Court's supervision and represent a fair and reasonable resolution of the Settling Plaintiffs' respective claims in this proceeding. *See Lignore v. Hosp. of the Univ. of Pa.*, Civ. No. 04-5735, 2007 U.S. Dist. LEXIS 32169, at *13-*14 (E.D. Pa. May 2, 2007) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)). With respect to the FLSA claims, there is a bona fide dispute as to the amount compensation due to the Settling Plaintiffs and whether Wal-Mart was the Settling Plaintiffs' joint employer. *See id.* Accordingly, the release of the Settling Plaintiffs' claims under the FLSA is valid and enforceable.

For the reasons stated herein, the Parties respectfully request that the Court approve the Settlement Agreements and dismiss the claims of the Settling Plaintiffs.

Respectfully submitted,

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Dated: [MONTH/DAY], 2010

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VICTOR ZAVALA, et al., Plaintiffs, v. WAL-MART STORES, INC., Defendant.	CIVIL ACTION NO. 03-CIV-05309 (GEB) DOCUMENT ELECTRONICALLY FILED **CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2011, I caused the foregoing Notice of Motion to Approve Settlement and Dismiss Claims of Felipe Condado, Eunice Gomez, Jiri Pfauser, Hana Pfauserova, Carlos Tello, and Victor Zavala Torres, accompanying memorandum, exhibit, and proposed order to be served on plaintiffs via electronic filing to their counsel of record, as follows:

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