13-3873-CV

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MANI JACOB and LESLEENA MARS,
individually and on behalf of all others similarly situated,

Plaintiffs-Appellees

(caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICI CURIAE* IMPACT FUND, NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, LEGAL AID SOCIETY, AARP, ARISE CHICAGO, ASIAN AMERICANS ADVANCING JUSTICE - LOS ANGELES, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, CENTER FOR POPULAR DEMOCRACY, CENTRO DE TRABAJADORES UNIDOS, CHICAGO COMMUNITY AND WORKERS' RIGHTS, CHICAGO WORKERS' COLLABORATIVE, JUSTICE AT WORK, LATINO UNION OF CHICAGO, LATINOJUSTICE PRLDEF, LEGAL AID SOCIETY—EMPLOYMENT LAW CENTER, MFY LEGAL SERVICES, INC., NATIONAL EMPLOYMENT LAW PROJECT, PASO DEL NORTE CIVIL RIGHTS PROJECT, PUBLIC COUNSEL, PUBLIC JUSTICE, P.C., RESTAURANT OPPORTUNITIES CENTERS UNITED, SOUTH AUSTIN COALITION COMMUNITY COUNCIL, WAREHOUSE WORKERS JUSTICE CENTER, WAREHOUSE WORKERS RESOURCE CENTER, WORKERS DEFENSE PROJECT, WORKING HANDS LEGAL CLINIC IN SUPPORT OF APPELLEES AND AFFIRMANCE OF THE DISTRICT COURT'S ORDER GRANTING RULE 23 CLASS CERTIFICATION

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Plaintiffs,

v.

DUANE READE INC. and DUANE READE HOLDINGS, INC.,

Defendants-Appellants,

WALGREEN CO.,

Defendant.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Amici are public interest organizations with no parent corporations, and with no publicly held corporations owning more than 10% of their stock.

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INTEREST OF *AMICI CURIAE*

Amici curiae are public interest organizations dedicated to representing the interests of low-wage workers and securing enforcement of employees' rights to fair pay, among other goals. A statement of interest is attached as Exhibit 1. *Amici* respectfully submit this brief to highlight the importance of the class action mechanism to enforcing the rights of workers harmed by their employers' common policies and practices, and the propriety of issue class certification in such cases.[1] Fed. R. App. P. 29.

INTRODUCTION

Amici write to address the claims of Appellant Duane Reade and its *amicus* that the District Court lacked the authority under Rule 23(c)(4) of the Federal Rules of Civil Procedure to certify a class action for the limited purpose of resolving the issue of Duane Reade's liability for overtime pay. Appellant and its *amicus* misconstrue the plain meaning of Rule 23(c)(4) as set forth in its text and explained in the Advisory Committee notes. They also ignore the well-developed body of case law applying the rule. Since the adoption of Rule 23(c)(4) in 1966, courts have held that the rule gives district courts the authority to certify class

[1] *Amici* affirm that no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no other person except *amici curiae*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(c)(5); Local Rule 29.1(b). All Parties have consented to the filing of this brief.

actions as to particular issues when appropriate. Indeed, in *In re Nassau County Strip Search Cases*, 461 F.3d 219 (2d Cir. 2006), this Court explicitly authorized courts to certify a class as to liability only, regardless of whether the claim as a whole satisfies predominance.

Contrary to the argument of *amicus* Business Council of New York State, Inc. ("Business Council"), *In re Nassau County* remains good law. Nothing in either *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) or *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) explicitly or by implication undermines the use of issue certification in appropriate cases. No court has accepted this argument and this Court should not be the first.

ARGUMENT

I. RULE 23(c)(4) GIVES DISTRICT COURTS BROAD DISCRETION TO CERTIFY CLASSES LIMITED TO PARTICULAR ISSUES

A. The Text and History of Rule 23(c)(4) Support Certification of a Class for Purposes of Determining Liability

Rule 23(c)(4) was added as part of the 1966 amendments to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 23 advisory committee's note. As originally drafted, the rule addressed the district court's authority to certify a class action as to particular issues, as well as the ability to certify subclasses. *See* Fed.

R. Civ. P. 23(c)(4) (1966).[2] In 2007, Rule 23(c)(4) was split into two separate rules—23(c)(4) addressing issue certification, and 23(c)(5) addressing subclasses. *See* Fed. R. Civ. P. 23(c)(4)-(5) (2008). The current version of Rule 23(c)(4) reads simply: "When appropriate, an action may be brought or maintained as a class action with respect to particular issues." Fed. R. Civ. P. 23(c)(4).

The text of Rule 23(c)(4) could not be clearer: it gives the court authority to certify a class limited to particular issues that are common to the class, leaving other issues to be litigated in subsequent proceedings. This reading of the rule is explicitly confirmed by the 1966 Advisory Committee notes:

> This provision recognizes that an action may be maintained as a class action as to particular issues only. For example, in a fraud or similar case the action may retain its "class" character *only through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims*.

Fed. R. Civ. P. 23 advisory committee's note (emphasis added).

The Second Circuit adopted this straightforward interpretation of Rule

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[2] The original version of the rule provided:

> When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

Fed. R. Civ. P. 23(c)(4) (1966).

23(c)(4) in *In re Nassau County Strip Search Cases*, 461 F.3d 219 (2d Cir. 2006). That case involved statutory and constitutional challenges to a blanket strip search policy for newly admitted misdemeanor detainees. *Id.* at 221-22. The district court denied the motion for class certification because common issues did not predominate under Rule 23(b)(3). *Id.* at 222. Despite finding numerous common questions concerning the policy and defendants' liability, the court concluded that individualized questions involving proximate cause and damages would predominate. *Id.* at 222-23. Plaintiffs moved for reconsideration, requesting certification limited to the issue of liability under Rule 23(c)(4). *Id.* at 223. The district court denied the motion, noting "that partial certification might not be appropriate in the first instance where the cause of action, as a whole, does not satisfy the predominance requirement of Rule 23(b)(3)." *Id.*

This Court reversed, holding that a class may be certified as to liability regardless of whether the entire claim satisfies Rule 23(b)(3). *Id.* at 226-27. The Court identified three main reasons for its conclusion. First, the structure of Rule 23 and its plain language require a court to first identify the issues potentially appropriate for certification, "and then" apply the other provisions of the rule, such as the predominance requirement.[3] *Id.* at 226. Second, the Advisory Committee

[3] *Amicus* Business Council takes issue with this reasoning in light of the fact that Rule 23(c)(4) was split into two separate rules in 2007 and the "and then" language was removed. Its argument is unfounded. The 2007 changes to Rule 23

notes counsel against requiring case-wide predominance. *Id.* at 226-27. "As the notes point out, a court may employ Rule 23(c)(4) when it is the 'only' way that a litigation retains its class character, i.e., when common questions predominate only as to the 'particular issues' of which the provision speaks." *Id.* Third, the Court explicitly rejected the view that an entire cause of action must satisfy the predominance requirement, and that Rule 23(c)(4) is merely a "housekeeping" rule that allows courts to sever common issues for a class trial. *Id.* at 227. The Court reasoned that, if this were the case, "a court could only use subsection (c)(4) to manage cases that the court had already determined would be manageable *without* consideration of subsection (c)(4)." *Id.* (quoting *Gunnells v. Healthplan Servs. Inc.*, 348 F.3d 417, 439 (4th Cir. 2003)). Reading Rule 23(c)(4) in this way would render it meaningless and violate the principle "that courts should avoid statutory interpretations that render provisions superfluous." *Id.* (quoting *State St. Bank & Trust Co. v. Salovaara*, 326 F.3d 130, 139 (2d Cir. 2003)).

Amicus Business Council challenges this Court's reasoning in *In re Nassau* County. It suggests that a better interpretation of the rule would be one that confines Rule 23(c)(4) to situations where the court initially certifies the entire

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were explicitly "intended to be stylistic only" to improve readability of the rules. The change to subsection (c)(4) is not mentioned in the Advisory Committee notes and there is no evidence that it was intended to overrule *sub silentio* the well-understood interpretation of the provision. *See* Fed. R. Civ. P. 23 advisory committee's note.

action, only to discover "down the road" that some issues, such as damages, will need to be resolved individually. (*See* Br. of Business Council at 21-23.) This Court should not be persuaded. Restricting 23(c)(4) in this manner ignores the text of the rule, which expressly permits an action to be "brought" *or* "maintained" as a class action with respect to particular issues. *See* Fed. R. Civ. P. 23(c)(4). No court has interpreted the rule in the way Business Council suggests, and for good reason.[4] If Rule 23(c)(4) allows a court to certify an issue class "down the road," then why not in the first instance? There is simply no justification for such an arbitrary result.

Importantly, Rule 23(c)(4) states that district courts "may" certify issue classes "[w]hen appropriate[.]" While the rule grants courts broad authority to certify issue classes without applying Rule 23(b) to the case as a whole, it by no means creates an *automatic* entitlement to certification of *any* common issues plaintiffs may identify. The rule recognizes that, in some cases, certification of common issues will not be appropriate and should be denied.[5] Given these express limits on the court's discretion, a case-wide predominance requirement need not be

[4] Other than *Comcast Corp. v. Behrend* and *Wal-Mart Stores, Inc. v. Dukes* (addressed below), Business Council cites no case law in support of this illogical interpretation of Rule 23(c)(4). (*See* Br. of Business Council at 20-23.)

[5] Issue certification will generally be "appropriate . . . if it permits fair presentation of the claims and defenses and materially advances the disposition of the litigation as a whole." Manual for Complex Litigation (Fourth) § 21.24 (2013).

read into the rule to ensure reasonable limits on issue certification.

B. The Overwhelming Weight of Authority Supports the District Court's Use of Rule 23(c)(4)

This Court's endorsement of issue certification is consistent with the views of its sister circuits. The use of Rule 23(c)(4) to certify issue classes, or at minimum liability-only classes, has been approved by the overwhelming majority of appellate courts that have considered the issue. This includes the First, Third, Fourth, Sixth, Seventh, and Ninth Circuits.

Nearly two decades ago,[6] the Ninth Circuit addressed the interplay between predominance and Rule 23(c)(4) in *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996). The panel explained that the predominance requirement includes an implicit understanding that "the adjudication of common issues will help achieve judicial economy." *Id.* at 1234. Accordingly, "[e]ven if the common

[6] Although recent authority is addressed here, certification of issue classes is not a new concept. Since 1966, courts have consistently interpreted Rule 23 to allow certification of common issues, with individualized issues resolved in later proceedings. *See, e.g.*, *Green v. Wolf Corp.*, 406 F.2d 291, 301 (2d Cir. 1968) ("We see no sound reason why the trial court, if it determines individual reliance is an essential element of the proof, cannot order separate trials on that particular issue, as on the question of damages, if necessary."); *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 456 (3d Cir. 1977) ("If . . . the district court were to conclude that there would be problems involved in proving damages which would outweigh the advantages of class certification, it should give appropriate consideration to certification of a class limited to the determination of liability. *See* Rule 23(c)(4)(A)."), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988) ("No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with . . . liability tried as a class action.").

questions do not predominate over the individual questions so that class certification of the entire action is warranted, Rule 23 authorizes the district court in appropriate cases to isolate the common issues under Rule 23(c)(4)(A) and proceed with class treatment of these particular issues." *Id.*

Employing similar reasoning, the Seventh Circuit consistently applies Rule 23(c)(4) to certify issue classes when an entire cause of action would not otherwise satisfy predominance. *See, e.g.*, *Butler v. Sears, Roebuck and Co.*, 727 F.3d 796 (7th Cir. 2013); *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482 (7th Cir. 2012).[7] A perfect example is the court's recent decision in *Butler v. Sears*, which involved two class actions alleging defects in washing machines. 727 F.3d at 797-98. The district court certified the claim that the machines would suddenly stop running, but not the claim that they grew mold. *Id.* On an interlocutory appeal, the Seventh Circuit reversed the denial on the mold claim, and affirmed certification of the stoppage claim. *Id.* The Supreme Court vacated and remanded in light of its *Comcast Corp. v. Behrend* decision. *Sears,*

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[7] *See also In re Allstate Ins. Co.*, 400 F.3d 505, 508 (7th Cir. 2005) ("A single hearing may be all that's necessary to determine whether Allstate had a policy of forcing its employee agents to quit. This issue could be decided first and then individual hearings conducted to determine which of the members of the class were actually affected by the policy . . . ."); *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (citing Rule 23(c)(4) and noting that "it may be that if and when the defendants are determined to have violated the law separate proceedings of some character will be required to determine the entitlements of the individual class members to relief").

Roebuck and Co. v. Butler, 133 S. Ct. 2768 (2013).

On remand, the Seventh Circuit *again* affirmed. *Butler*, 727 F.3d at 802. The court found that the cases involved a single, common question on liability: whether Sears' washing machines were defective. *Id.* at 801-02. The court stressed the availability of issue certification under Rule 23(c)(4), explaining that determining class-wide liability with subsequent damages hearings "will often be the sensible way to proceed." *Id.* at 800. The court reasoned:

> It would drive a stake through the heart of the class action device, in cases in which damages were sought rather than an injunction or a declaratory judgment, to require that every member of the class have identical damages. If the issues of liability are genuinely common issues, and the damages of individual class members can be readily determined in individual hearings, in settlement negotiations, or by creation of subclasses, the fact that damages are not identical across all class members should not preclude class certification.

Id. at 801. The Supreme Court subsequently denied Sears' petition for review. *Sears, Roebuck and Co. v. Butler*, 134 S. Ct. 1277 (2014).

The First, Fourth, and Sixth Circuits have also held that Rule 23(c)(4) can be used, at minimum, to certify a liability-only class and leave determination of damages to litigation on an individual basis.[8] And although the Third Circuit has

[8] *See, e.g.*, *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32, 41 (1st Cir. 2003) ("Indeed, even if individualized determinations were necessary to calculate damages, Rule (23)(c)(4)(A) would still allow the court to maintain the class action with respect to other issues."); *Gunnells*, 348 F.3d at 428 (citing the Rule 23(c)(4) Advisory Committee notes and explaining that Rule 23 "explicitly" envisions class actions with individualized damages determinations); *Olden v. LaFarge Corp.*, 383

declined to address the precise interplay between predominance and Rule 23(c)(4), it has explicitly authorized district courts to certify issue classes. *Gates v. Rohm and Haas Co.*, 655 F.3d 255, 272-73 (3d Cir. 2011).[9]

Notably, the cramped view advocated by Duane Reade and its *amicus* is not even accepted in the Fifth Circuit, which has traditionally taken a more conservative approach on the use of Rule 23(c)(4). *See Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.21 (5th Cir. 1996) (referring to Rule 23(c)(4) as a "housekeeping rule" that allows courts to sever the common issues for a class trial after predominance is satisfied for the entire action). The Fifth Circuit recently acknowledged that the presence of individualized damages will not defeat class certification where liability issues are common and may be severed through Rule 23(c)(4). *In re Deepwater Horizon*, 739 F.3d 790, 817 (5th Cir. 2014). The court explained, "[a]s our three fellow circuits have already concluded, we agree that the rule of *Comcast* is largely irrelevant '[w]here determinations on liability and damages have been bifurcated' in accordance with Rule 23(c)(4)" and further that "the predominance inquiry can still be satisfied . . . if the proceedings are

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F.3d 495, 509 (6th Cir. 2004) (citing Rule 23(c)(4) and noting a district court "can bifurcate the issue of liability from the issue of damages, and if liability is found, the issue of damages can be decided by a special master or by another method").

[9] To guide courts in their consideration of whether to certify such classes, the Third Circuit has adopted a list of factors based largely on the American Law Institute's Principles of the Law of Aggregate Litigation. *Gates*, 655 F.3d at 273.

structured to establish 'liability on a class-wide basis, with separate hearings to determine—if liability is established—the damages of individual class members.'" *Id.* (internal citations and quotations omitted).[10]

The message of these cases is clear. Where there are common questions as to liability, but individualized damages questions not suitable to class treatment, district courts have the authority to certify a class limited to liability, reserving damages issues for later individual proceedings. The claim of Duane Reade and its *amicus* that the District Court lacked this authority does not withstand scrutiny.

II. NEITHER *COMCAST* NOR *WAL-MART* COUNSELS AGAINST THE CERTIFICATION OF ISSUE CLASSES

In the face of overwhelming authority supporting the District Court's use of Rule 23(c)(4), Duane Reade and its *amicus* argue that the Supreme Court's decisions in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013), and *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), have somehow changed the equation, prohibiting class certification unless an entire action, both liability and damages, satisfies Rule 23(b)(3)'s predominance requirement. This is simply not true. Neither of the majority opinions in *Comcast* or *Wal-Mart* even mentions Rule 23(c)(4). Moreover, their rationales do not call into question the case law

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[10] *See also* Patricia Bronte et. al., *"Carving at the Joint": The Precise Function of Rule 23(c)(4)*, 62 DePaul L. Rev. 745, 752 (2013) (analyzing recent Fifth Circuit decisions and concluding the court is aligning with the consensus approach of permitting Rule 23(c)(4) certification when the requirements of Rule 23 are satisfied with respect to the *issue* certified).

authorizing the use of Rule 23(c)(4) to certify a liability-only class.

A. ***Comcast* Does Not Require Class-wide Proof of Damages Nor Undermine the Use of Rule 23(c)(4)**

Duane Reade and its *amicus* posit that following *Comcast*, a class can only be certified under Rule 23(b)(3) if damages can be proven on a class-wide basis. *Every* circuit court that has addressed this argument has rejected it.

Comcast involved an antitrust class action on behalf of cable television subscribers. 133 S. Ct. at 1430. Plaintiffs proposed four theories of antitrust impact, but the district court accepted only one. *Id.* at 1430-31. The district court certified the entire action under Rule 23(b)(3), even though plaintiffs' damages model did not isolate the damages resulting from that one specific theory. *Id.* at 1431. The Third Circuit affirmed. *Id.*

The Supreme Court reversed. It concluded that, since the district court had accepted only one theory of antitrust liability, "a model purporting to serve as evidence of damages in this class action must measure only those damages attributable to that theory." *Id.* at 1433. "If the model does not even attempt to do that, it cannot possibly establish that damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3)." *Id.* In other words, plaintiffs' damages model must match their liability case.

Even giving *Comcast* its broadest possible reading, it stands only for the unremarkable proposition that if plaintiffs attempt to certify damages under Rule

23(b)(3), the class-wide damages must be attributable to their theory of liability.[11] This understanding has been confirmed, and Duane Reade's interpretation rejected, in decisions from the Fifth, Sixth, Seventh, and Ninth Circuits. *See In re Deepwater Horizon*, 739 F.3d at 815-17 (noting that "nothing in *Comcast* mandates a formula for classwide measurement of damages in all cases" and that predominance can be satisfied if the proceedings are structured to establish class-wide liability, followed by individual damages hearings); *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 860 (6th Cir. 2013) ("Where determinations on liability and damages have been bifurcated, *see* Fed. R. Civ. P. 23(c)(4), the decision in *Comcast*—to reject certification of a liability and damages class because plaintiffs failed to establish that damages could be measured on a classwide basis—has limited application."); *Butler*, 727 F.3d at 800 ("[T]he district court in our case, unlike *Comcast*, neither was asked to decide nor did decide whether to determine damages on a class-wide basis."); *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013) (confirming that after

[11] Although the *Comcast* majority referenced plaintiffs' concession that "damages" had to be "capable of measurement on a class-wide basis," this discussion of "damages" can only be properly understood in the context of antitrust actions. In antitrust, the "fact of damages" or "antitrust impact" is an element of the plaintiffs' liability case. *See, e.g.*, Ellen Meriwether, *Comcast Corp. v. Behrend: Game Changing or Business as Usual?*, Antitrust (Summer 2013), at 57. Thus, plaintiffs' "concession" simply echoed the long-settled principle of antitrust law that the liability element of "antitrust injury" or "fact of damage" be susceptible to common proof. *E.g.*, *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 311-12 (3d Cir. 2008).

Comcast, the presence of individualized damages will not, by itself, defeat certification under Rule 23(b)(3)); *see also Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, 725 F.3d 1213, 1220 (10th Cir. 2013) (recognizing, post-*Comcast*, that "there are ways to preserve the class action model in the face of individualized damages[,]" including certification for liability purposes only, leaving damages for subsequent proceedings).

Finally, although Duane Reade makes much of the Supreme Court's grant, vacate, and remand orders in *In re Whirlpool* and *Butler* (Br. of Appellants at 35-36), both the Sixth and Seventh Circuits subsequently reaffirmed their class certification decisions, concluding that the decisions are not affected by *Comcast*. *In re Whirlpool*, 722 F.3d at 845; *Butler*, 727 F.3d at 802. The Supreme Court recently declined further review in both cases. *Whirlpool Corp. v. Glazer*, 134 S. Ct. 1277 (2014); *Sears, Roebuck and Co. v. Butler*, 134 S. Ct. 1277 (2014).

B. ***Wal-Mart* is Irrelevant to the Role of Rule 23(c)(4)**

The District Court's certification of a liability-only class is similarly unaffected by *Wal-Mart Stores, Inc. v. Dukes*. In *Wal-Mart*, the Supreme Court held that to meet the commonality requirement of Rule 23(a)(2), a plaintiff must do more than show common violations of the same law. 131 S. Ct. at 2551. Instead, plaintiffs must show that the claims of the class depend on a common contention "of such a nature that it is capable of classwide resolution—which means that

determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

Wal-Mart did not address the standards for predominance under Rule 23(b)(3). Indeed, the majority specifically *disclaimed* any implication that its holding affected the standards for determining whether common questions predominate under Rule 23(b)(3). *See* 131 S. Ct. at 2556-57 ("We consider dissimilarities not in order to determine (as Rule 23(b)(3) requires) whether common questions *predominate*, but in order to determine (as Rule 23(a)(2) requires) whether there *is* '[e]ven a single [common] question.'"). And although *Wal-Mart* clarified that claims involving individualized damages belong under Rule 23(b)(3) instead of 23(b)(2), it did not comment on when cases seeking individualized damages may be certified, beyond recognizing that they in fact may be certified under (b)(3). *See* 131 S. Ct. at 2557-61.

Wal-Mart certainly did not hold that a plaintiff must show an across-the-board method for determining both liability and damages before a class action can be certified. *Id.*[12] Indeed, just two years after *Wal-Mart*, in *Amgen Inc. v. Conn. Ret. Plans and Trust Funds*, the high court confirmed that Rule 23(b)(3) "does *not* require" a plaintiff seeking class certification to prove that each and every element of her claim is susceptible to classwide proof. 133 S. Ct. 1184, 1196 (2013). This

[12] *Wal-Mart* held that, under Title VII's specific statutory language, back pay must be established through individualized hearings. 131 S. Ct. at 2557-561.

Court should reject any suggestion to the contrary.

III. CERTIFICATION OF ISSUE CLASSES PROMOTES JUDICIAL ECONOMY AND ALLOWS THE ADVANCEMENT OF CLAIMS THAT MIGHT OTHERWISE NOT BE PURSUED

The use of issue classes is not only authorized by the Rules of Civil Procedure, it is also sound policy. Giving courts the tools they need to effectively manage complex litigation promotes efficiency and encourages enforcement of important rights that individuals—especially low-wage workers—might not otherwise be able to effectively vindicate.

A. Class Actions, Including Issue Classes, are Critical to Enforcing Low-Wage Workers' Rights

Violations of wage and hour laws are a significant problem, both in New York and across the country. Common violations include failure to pay overtime and minimum wages, willful or negligent employee misclassification, failure to allow meal and rest breaks, requiring unpaid "off-the-clock" work, illegal deductions, and tipped-worker violations.[13] Low-wage workers are particularly at risk for these types of illegal conduct. For example, a 2008 survey of over 4,000 low-wage workers in the three largest cities in America—Chicago, Los Angeles, and New York City—revealed that 25.9% of workers were paid less than minimum

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[13] *See, e.g*, *Flores v. Anjost Corp.*, 284 F.R.D. 112, 117-20 (S.D.N.Y. 2012) (alleging violations relating to overtime, minimum wage, tips, and wage statements); *Espinoza v. 953 Assocs. LLC*, 280 F.R.D. 113, 117-21 (S.D.N.Y. 2011) (alleging violations relating to off-the-clock work, overtime pay, minimum wage, and improper retention of gratuities).

wage; 76.3% of workers who worked overtime were not properly paid for it; 70.1% of workers required to come in early or stay late received no pay for the extra work; and 58.3% of workers were subject to meal break violations.[14] In 2013 alone, New York's Joint Employment Task Force on Employee Misclassification identified nearly 24,000 instances of employees being misclassified as "independent contractors," leading to well over $300 million in unreported wages and over $12 million in missed unemployment insurance contributions.[15]

A number of factors contribute to the vulnerability of low-wage workers. They are less likely to know their rights, and are more likely to be at risk of being fired, harassed, or reported to immigration authorities (or threatened with such reporting) in retaliation for speaking up about wage violations.[16] Low-wage workers' economic insecurity makes them especially vulnerable to intimidation on the job, as well as susceptible to health and housing problems and other hardships that make it difficult to actively pursue litigation.[17] Low-wage workers who want

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[14] *See* Annette Bernhardt, et al., *Broken Laws, Unprotected Workers, Violations of Employment and Labor Laws in America's Cities*, 20 (2009), ("Broken Laws"), *available at* http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1.

[15] NYS Department of Labor, *Annual Report of the Joint Enforcement Task Force on Employee Misclassification*, 1 (2014), *available at* https://labor.ny.gov/agencyinfo/PDFs/Misclassification-Task-Force-Report-2-1-2014.pdf.

[16] *See* Broken Laws at 3, 20, 24-25.

[17] *Id.*

to take legal action also face difficulties securing counsel due to the relatively low value of their claims and their limited financial resources. Further, recordkeeping violations by unscrupulous employers can make violations difficult to detect and prove. Employers may keep no records at all or may deliberately falsify them.[18]

Class litigation is a crucial tool for the enforcement of workplace rights. It enables workers to achieve remedies in common proceedings, share the financial burden of the litigation, and reduce the likelihood of retaliation through safety in numbers. *See Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.N.Y. 2007) ("The proposed class members are almost exclusively low-wage workers with limited resources and virtually no command of the English language or familiarity with the legal system. It is extremely unlikely that they would pursue separate actions.").[19]

The availability of Rule 23(c)(4) is particularly important. By their very

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[18] *See, e.g., Urtubia v. B.A. Victory Corp.*, 857 F. Supp. 2d 476, 481 (S.D.N.Y. 2012) (alleging that employees were forced to sign blank time sheets, which were subsequently completed by the employer to deliberately understate the number of hours worked); *Lanzetta v. Florio's Enters., Inc.*, 763 F. Supp. 2d 615, 619 (S.D.N.Y. 2011) ("No one at Florio's was required to clock in or out, and there was no formal timekeeping system."); *see also* Broken Laws at 32 ("Without the transparency afforded by pay statements, workers often are unable to determine whether they have received the wages they are due.").

[19] *See also Leyva*, 716 F.3d at 515 (observing in wage and hour case brought by warehouse workers, "[i]In light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only feasible means for them to adjudicate their claims").

nature, many employment class actions involve common legal claims, but individualized damages. *See, e.g.*, *Leyva*, 716 F.3d at 513 ("[D]amages determinations are individual in nearly all wage-and-hour class actions"); *Shabazz v. Morgan Funding Corp.*, 269 F.R.D. 245, 250-51 (S.D.N.Y. 2010) ("Any class action based on unpaid wages will necessarily involve calculations for determining individual class member damages . . . ."). If certification in every instance required both liability and damages to be capable of across-the-board determination, then many employment class actions could not be certified. This would result in many violations against low-wage workers going unchecked. Allowing low-wage workers to take full advantage of the Rule 23 class action mechanism—including issue classes under Rule 23(c)(4)—is critical to effective enforcement of our nation's wage and hour laws.[20]

B. Issue Certification Promotes Judicial Economy

Issue certification also furthers the policies behind Rule 23 by giving district courts discretion to efficiently manage complex cases. The driving purpose behind Rule 23(c)(4) is to ensure that "the advantages and economies of adjudicating issues that are common to the entire class on a representative basis may be secured

[20] For example, in a case involving incomplete or falsified records, issue certification would allow workers to prove an illegal policy through cumulative testimony and other systemic evidence—evidence that may be unavailable to an individual plaintiff. Once liability is established and made public, workers who might otherwise be hesitant would be encouraged to step forward and pursue their damages claims.

even though other issues in the case may need to be litigated separately by each class member." 7AA Charles Alan Wright et al., Federal Practice and Procedure § 1790 (3d ed. 2013).[21]

Despite this well-accepted purpose, *amicus* Business Council argues that issue certification actually promotes *inefficiency* because it exposes defendants first to class action litigation on the question of liability, and then to individual actions for damages down the road. (Br. of Business Council at 7-9.) But its conclusion does not follow from its premises. Determining liability just once is unquestionably more efficient than doing it fifty or a hundred times: time is saved for corporate executives who are only required to testify once about the company's policies and practices; costs and attorneys' fees are reduced as discovery and adjudication of liability is streamlined through a single proceeding; and the court and jury pool are spared the task of resolving the same legal and factual dispute multiple times, potentially with inconsistent results. If the defendant wins, the preclusive effect will save it from litigating the same issue in multiple forums. If

[21] *Accord* 2 William B. Rubenstein & Alba Conte, Newberg on Class Actions § 4:90 (5th ed. 2013) ("The more specific advantages of issue certification include conserving institutional resources by avoiding duplicative litigation, ensuring that similarly situated plaintiffs are treated similarly, and allowing for the advancement of claims that individual plaintiffs would lack the incentive or ability to bring."); Manual for Complex Litigation (4th) § 21.24 (2013) (explaining that Rule 23(c)(4) allows courts "to achieve the economies of class action treatment for a portion of a case, the rest of which may either not qualify under Rule 23(a) or may be unmanageable as a class action.").

the plaintiffs win, this may, as a practical matter, encourage the parties to settle. *See Carnegie v. Household Int'l., Inc.*, 376 F.3d 656, 661 (7th Cir. 2004).

Of course, individualized damages hearings will sometimes be necessary. Rule 23 authorizes "district courts to devise imaginative solutions to problems created by the presence in a class action litigation of individual damages issues," including "appointing a magistrate judge or special master to preside over individual damages proceedings." *Id.* Indeed, in many cases, it will make the most sense for these proceedings to take place in front of the same court that oversaw liability—everyone will be familiar with the issues. But even where the damages hearings take place in different courts, the proceedings will be streamlined, saving time and resources. In small dollar-value cases, class members will still be encouraged to pursue their claims, and competent counsel will be encouraged to take them, because the cost of litigating liability will be zero and the risk of a total loss will be minimal. In cases where individual claims have a higher value, the lawsuits will be streamlined by efficient common resolution of the liability question. *See, e.g.*, *McReynolds*, 672 F.3d at 492 (finding that Rule 23(c)(4) certification of a liability class of stock brokers' employment discrimination claims promoted efficiency, as even if the next stage was hundreds of individual suits for backpay, judicial economy would be served as liability would not have to be determined anew in each case).

Plainly, issue certification will not be appropriate for every case. If individual issues are highly intertwined with any common issues and cannot be effectively severed, or when the only common issues presented are marginal and their common adjudication will not meaningfully advance resolution of plaintiffs' claims, district courts may decline issue certification because it will not create the intended efficiencies. But it would make no sense (and be contrary to law) to take the tool of Rule 23(c)(4) away from the district courts whenever the case *as a whole* cannot be certified, thereby eliminating one of the most important mechanisms for effectuating the benefits of Rule 23.

CONCLUSION

The District Court acted well within its discretion in certifying this case for liability purposes under Rule 23(c)(4). This Court should affirm the order of the District Court.

DATED: April 22, 2014

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,679 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

DATED: April 22, 2014

/s/ Robert L. Schug
Robert L. Schug

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system, which will send notification of such filing to parties' counsel.

DATED: April 22, 2014

/s/ Abigail E. Shafroth
Abigail E. Shafroth

EXHIBIT 1

STATEMENT OF *AMICI CURIAE*

The **Impact Fund** is a nonprofit foundation that provides funding, training, and co-counsel to public interest litigators across the country. The Impact Fund is a California State Bar Legal Services Trust Fund Support Center, providing assistance to legal services projects throughout the State of California. The Impact Fund has served as counsel in a number of major civil rights class actions, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of fair housing laws.

The **National Employment Lawyers Association ("NELA")** is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. One of the issues about which NELA is particularly

concerned currently is class action preservation and minimizing the impact of recent adverse court decisions limiting the use of class and collective action mechanisms to vindicate workplace rights, especially in wage and hour cases.

The **Legal Aid Society** is the oldest and largest provider of legal assistance to low-income families and individuals in the United States. The Society's Civil Practice operates trial offices in all five boroughs of New York City providing comprehensive legal assistance to low-income clients. The Society's Employment Law Unit represents low-wage workers in employment-related matters including claims for unpaid wages. The Unit conducts litigation, outreach, and advocacy efforts on behalf of clients to assist the most vulnerable workers in New York City, among them, workers who are too vulnerable to retaliation or whose lives are too economically unstable to allow them to serve as named plaintiffs. The Unit relies on the ability to seek class certification for employees of the most abusive employers, despite variations in damages within the class, in order to protect the rights of these workers and ensure compliance with the New York Labor Law.

AARP is a nonpartisan, nonprofit organization with a membership that helps people turn their dreams into real possibilities, strengthens communities and fights for issues that matter most to families, such as employment, healthcare, income security, retirement planning, affordable utilities and protection from financial abuse. AARP is dedicated to addressing the needs and interests of older workers,

including low-wage older workers, as well as older consumers, including low-income older consumers, through legal and legislative advocacy. Preservation of access to the class action device, including its use to address key issues other than individual damages, is critical to the ability of older persons to preserve their rights under many federal and state employment and consumer protection laws. These protections often may only be secured in a class action in which individuals, unable to afford litigation on their own, band together to seek relief. Hence, this case is vital to the interests of older Americans on whose behalf AARP regularly speaks as an *amicus curiae*.

ARISE Chicago ("ARISE") is a non-profit membership-based community resource for workers, both immigrant and native-born, to learn about their rights and organize fellow workers to improve workplace conditions. ARISE has published a comprehensive workers' rights publication in Spanish, English, and Polish and conducts signature popular education-style workshops where workers hear from other workers and learn their issues are not isolated. Worker-members are primarily Latino and Polish immigrants, and almost half are women; all worker-members have made a commitment to educate, organize, and advocate for better working conditions.

Asian Americans Advancing Justice - Los Angeles ("Advancing Justice - LA"), formerly the Asian Pacific American Legal Center, is the nation's largest

legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI). Advancing Justice - LA serves more than 15,000 individuals every year, including Asian Americans and NHPIs who lack effective access to the courts. Through direct services, impact litigation, policy advocacy and capacity building, Advancing Justice - LA focuses on vulnerable members of Asian American and NHPI communities, while also building a strong voice for civil rights and social justice. Advancing Justice - LA has a long history of working to ensure that members of our communities have effective access to courts. We have represented vulnerable members of our communities in federal courts on a broad range of issues, including language rights and language access, workers' rights, consumer protection, education rights, housing rights, voting rights, health care, and public benefits, among others.

The **Asian American Legal Defense and Education Fund ("AALDEF")**, founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF throughout its 40 years of providing legal assistance has represented Asian immigrant workers in labor law claims for underpayment of wages. Class actions are critical to providing redress for low wage workers for violations of the labor laws.

The **Center for Popular Democracy ("CPD")** promotes equity, opportunity, and dynamic democracy in partnership with innovative base-building organizations, organizing networks and alliances, and progressive unions across the country. CPD builds the strength and capacity of democratic organizations to envision and advance a pro-worker, pro-immigrant, racial and economic justice agenda. CPD works to strengthen federal, state, and local labor laws so they empower workers on the job, combat wage theft, raise standards, and permit working families to achieve a dignified life. Ensuring that workers are actually able to vindicate their rights through efficient, reasonable, and meaningful enforcement mechanisms is central to this effort.

Centro de Trabajadores Unidos ("CTU") is a non-profit worker rights organization based on Chicago's southeast side. CTU's mission is to create a powerful immigrant-run organization that will educate workers on their rights, develop leadership within the immigrant community, support all workers as they fight for their rights in the workplace, and fight for changing policies that raise workplace standards for immigrant workers. The ability to achieve this goal on a systemic basis through class actions is critical to effective enforcement of employment laws.

Chicago Community and Workers' Rights ("CCWR") is a non-profit organization founded in 2009 by a group of Latino immigrant workers to empower

laborers to defend their rights. CCWR is an organization led by workers for workers, regardless of immigration status, and is dedicated to educating, building leadership, and gathering resources to resist labor abuses in the workplace and create just living conditions for workers and their families. CCWR believes that all people should have access to dignified living wage work that meets the minimum legal standards, regardless of their identity, immigration status, abilities, age or origin. The class action procedure is often the most effective means of accomplishing this, particularly for vulnerable, low-income workers.

Chicago Workers' Collaborative ("CWC") is an Illinois non-profit organization founded in 2000 that promotes full employment and equality for the lowest wage-earners—primarily temporary staffing workers—in the Chicago region through leadership and skills training, critical assistance and services, advocacy, and collaborative action. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. CWC assists members in seeking appropriate legal services to address illegal employment practices and has found that while the amounts recovered by each temporary laborer are individually small due to low wage rates, the recoveries are significant to these workers and can amount to millions in stolen wages in the aggregate. CWC members rely on the class action process to recover those stolen wages and stop those practices.

Justice At Work ("J@W") is a non-profit legal clinic in Massachusetts that provides strategic workplace-related legal services to community based labor organizations to support and encourage low-wage immigrant worker organizing. J@W provides legal resources to a network of worker centers and trains workers and organizers on workplace rights and the mechanisms needed to realize them. Many low-wage workers are unaware of their rights, or they worry that they lack the necessary documentation, English skills, education, or money to vindicate their rights. Faced with this reality, low-wage workers feel ill-equipped to enforce their rights alone against large, well-financed employers. The class action mechanism and other types of collective legal action are therefore critical to the effective enforcement of workplace rights, especially for low-wage workers. J@W is currently involved in class actions involving non-payment of overtime violations of the WARN Act. In both cases, few class members would have come forward on their own to file claims.

Latino Union of Chicago ("LU") is an Illinois-based non-profit organization that collaborates with low-income immigrant workers to develop the tools to collectively improve social and economic conditions. LU's mission is accomplished by developing leadership from within the immigrant worker community, developing feasible alternatives to the injustices immigrant workers face, and building the larger movement for immigrant worker rights. The Union

works with a wide range of workers, including thousands of day laborers and domestic workers who are extremely vulnerable to wage theft and other systemic workplace violations. The class action mechanism is important to protect the rights of these vulnerable classes of workers.

LatinoJustice PRLDEF, founded in 1972 as the Puerto Rican Legal Defense and Education Fund, champions an equitable society. Using the power of the law together with advocacy and education, LatinoJustice seeks to protect opportunities for all Latinos to succeed in school and work, fulfill their dreams, and sustain their families and communities. LatinoJustice has litigated numerous landmark cases addressing issues impacting Latinos, and has successfully challenged wage theft, discriminatory practices and unfair workplace conditions, and English-only language policies that limit the right of Latino immigrants to secure equal employment opportunities in their communities.

The **Legal Aid Society—Employment Law Center ("LAS-ELC")** is a non-profit public interest law firm in San Francisco that works nationally to protect, preserve, and advance the workplace rights of individuals from traditionally under-represented communities. Since 1970, LAS-ELC has represented plaintiffs in cases involving the rights of employees in the workplace, particularly those cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBT community, and the working

poor. LAS-ELC represents low-wage workers individually and in class actions in wage and hour matters before state and federal courts.

MFY Legal Services, Inc. ("MFY") envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. Through its Workplace Justice Project, MFY helps hundreds of low-income workers most vulnerable to exploitation at work. On their behalf, MFY regularly litigates class action claims for unlawful failure to pay wages.

The **National Employment Law Project ("NELP")** is a non-profit with over 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP's areas of expertise include the workplace rights of low-wage workers under employment and labor laws, with a special emphasis on wage and hour rights. NELP has litigated and participated as *amicus* in numerous cases addressing the rights of workers under the Fair Labor Standards Act and related state fair pay laws. NELP also provides legal assistance to labor unions and community worker organizations regarding the workplace

rights of immigrant and low-wage workers, including many membership-based groups in the Second Circuit. NELP works to ensure that all workers receive the basic workplace protections guaranteed in our nation's labor and employment laws; this work has given us the opportunity to learn up close about job conditions around the country and the wage theft that accompanies too many lower-wage jobs. These non-payments create terrible hardships for workers and their families. These same workers face severe barriers to enforcing their rights to fair pay, making collective and class action mechanisms vital to upholding the wage floor. A decision of this Court in favor of Duane Reade will directly undermine NELP's and our constituents' goals of securing fair-paying jobs for all workers.

Paso del Norte Civil Rights Project ("PCRP") is the El Paso office of the non-profit, Texas Civil Rights Project. Opening in 2006, PCRP promote social, racial, and economic justice along the west Texas border through litigation, education and social services. Its economic justice program represents and advocates for low wage workers in combating wage theft and other labor violations. Through legal cases, community presentations and workshops, and legislative advocacy, PCRP strives to make structural improvements for low wage workers in one of the nation's poorest areas. PCRP is deeply concerned about the erosion of basic worker protections, further employer impunity and low-wage

workers' loss of faith in our judicial system if individualized damages are found to preclude class certification in wage and hour cases.

Public Counsel is the largest not-for-profit law firm of its kind in the nation. It is the public interest arm of the Los Angeles County and Beverly Hills Bar Associations and is also the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults and families throughout Los Angeles County. In 2013, Public Counsel assisted more than 30,000 people with direct legal services and assisted hundreds of thousands more through filing impact lawsuits, influencing policy and sponsoring legislation. Because of the class action work it does in its Impact Litigation Project, Community Development Project and Consumer Law Project, among others, Public Counsel Public Counsel is especially concerned with ensuring that the rules governing class actions are not interpreted to block this important avenue for seeking relief.

Public Justice, P.C. is a national public interest law firm dedicated to pursuing justice for the victims of corporate and governmental abuses. Public Justice specializes in precedent-setting and socially significant cases designed to advance consumers' and victims' rights, civil rights and civil liberties, occupational health and workers' rights, the preservation and improvement of the

civil justice system, and the protection of the poor and the powerless. Public Justice regularly represents workers and consumers in class actions, and its experience is that the class action device is often the only way to redress corporate wrongdoing where individuals by themselves lack the knowledge, incentive, or effective means to pursue their claims.

Restaurant Opportunities Centers United ("ROC") is a non-profit national organization founded in 2008 that has helped initiate a network of Restaurant Opportunities Centers. These Centers are modeled on ROC-NY, a self-help worker center created after 9/11 to provide support to restaurant workers displaced as a result of the World Trade Center tragedy which has grown to support and advocate for improved working conditions for restaurant workers all over New York City. There are currently Restaurant Opportunity Centers in New Orleans, Miami, Michigan, Chicago, Philadelphia, Los Angeles, the Bay area, Houston, and Washington, DC. In each region, ROC works with local groups to conduct a comprehensive study of restaurant workers' needs, and create an advanced restaurant worker training and placement program that seeks to place workers in high-end restaurant jobs. Nationally, ROC has led and won 13 major campaigns against exploitation in high-profile restaurant companies, organizing more than 400 workers. Our members have won more than $7 million in financial

settlements. In appropriate cases, the class action mechanism is a critical tool for low-wage restaurant workers to defend their rights.

South Austin Coalition Community Council ("SACCC") is a thirty-five year old non-profit organization serving the largely low-income, African American community on Chicago's west side on issues relating to housing, health care and job placement. SACCC has seen its mission frustrated by the discriminatory practices of excluding African Americans from entry level jobs in the temporary staffing industry, much of which is also located on Chicago's west side. Members of the community served by SACCC rely on the class action mechanism to make systemic change in the discriminatory practices that result in exclusion of African American's from employment.

Warehouse Workers Justice Center ("WWJC") is a non-profit legal clinic founded to secure justice for warehouse and logistics workers in Illinois. WWJC provides workshops so warehouse workers can educate themselves about workplace rights and fight for policy changes to improve their opportunities. Tens of thousands of workers work in the warehousing industry located in the "inland port" of Elwood, Illinois, where rails from the East and West Coasts intersect to bring goods throughout the Midwest. The pressure on subcontracting warehouse labor suppliers to lower labor costs is immense and too often results in shorting workers of their earned wages. Warehouse workers face real concerns that

speaking out against these unlawful practices will result in their being blacklisted from employment in the primary industry in this community. The class action process has allowed warehouse workers to challenge unlawful practices collectively and has largely eliminated the most egregious practices of minimum wage and overtime violations that used to be rampant.

Warehouse Workers Resource Center ("WWRC") is a non-profit organization committed to improving the quality of life and jobs for warehouse workers in Southern California's Inland Empire. Hundreds of millions of tons of goods enter the United States every year through our nation's busiest ports in Long Beach and Los Angeles. Containers are then trucked through the Los Angeles basin to the Inland Empire, a region encompassing San Bernardino and Riverside counties, where roughly 85,000 warehouse workers, mostly Latino, unpack and reload items onto trucks destined for major retailers like Walmart. The majority of workers are hired through temporary agencies, paid low wages, receive no benefits, and have no job security. Courageous members of WWRC are lead plaintiffs in class action litigation against multiple Walmart contractors and subcontractors, alleging millions of dollars in stolen wages over the past 10 years. A federal court has issued several orders and injunctions in favor of the workers, including a temporary restraining order against a mass retaliatory firing of the

workers who filed the lawsuit. WWRC has found the class action mechanism critical to stopping systemic wage theft in the warehousing industry.

Workers Defense Project ("WDP") is a non-profit membership-based organization in Texas that empowers low-income workers to achieve fair employment through education, direct services, organizing, and strategic partnerships. WDP was founded in 2002 to address the widespread problem of unpaid wages among Austin's low-wage workers, and is one of the most established worker centers in the South. WDP is a leader in fighting for fair working conditions and is part of a national movement of organizations seeking to provide low-wage workers with the resources they need to improve their working and living conditions. The project provides a source of power and hope for low-wage workers who have little access to these important resources, and its members depend on the class action mechanism to recover millions in stolen wages.

Working Hands Legal Clinic ("WHLC") is a non-profit legal clinic in Illinois founded in 2007 in response to a dire need for legal assistance demonstrated at community-based worker centers. Over the last seven years, WHLC has provided legal assistance to tens of thousands of low wage workers throughout Illinois and has helped to recover millions of dollars in stolen wages for low-wage workers through litigation and mediation. For low wage workers, many of whom are especially vulnerable to retaliatory threats, the ability to join together

and bring class action claims on behalf of current employees is critical to overcoming employers' intimidation of workers who seek their stolen wages.