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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JANE DOE I, JANE DOE II, JOHN DOE I, JOHN DOE II, individually and on behalf of Wal-Mart Worker in Shenzhen, China, et al.,

Plaintiffs,

vs.

WAL-MART STORES, INC.,

Defendant.

Case No. CV05-7307 AG (MANx)

Assigned to the Honorable Andrew J. Guilford

NOTICE OF MOTION AND MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES

[*AMICUS CURIAE* BRIEF FILED CONCURRENTLY]

Date: No Hearing Requested
Time:
Place:

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Points and Authorities, the Chamber of Commerce of the United States of America respectfully moves this Court for an order for leave to file the accompanying *amicus curiae* brief in support of Defendant Wal-Mart Stores, Inc.'s Motion to Dismiss First Amended Complaint.

This Motion is made following the conferences of counsel pursuant to Local Rule 7-3, which took place by telephone with Defendant's counsel on August 31, 2006, and with Plaintiffs' counsel on September 1 and 5, 2006. Counsel for Defendant consented to the filing of the *amicus* brief. Counsel for Plaintiffs declined to take a position on this Motion, while stating an intent to seek leave to respond to the *amicus* brief should the Court grant this Motion.

This Motion is based upon this Notice of Motion; the attached Memorandum of Points and Authorities; the concurrently filed *amicus curiae* brief; the pleadings, prior briefs, documents, records, and files in this action; such other matters of which this Court may or must take judicial notice; and such oral or documentary evidence or oral argument as may be presented at the hearing, if any.

Dated: September 6, 2006

SIDLEY AUSTIN LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

The Chamber of Commerce of the United States of America (the "Chamber") respectfully requests leave to file the accompanying *amicus curiae* brief in support of Defendant Wal-Mart Stores, Inc.'s motion to dismiss Plaintiffs' First Amended Complaint. The Chamber's *amicus curiae* brief would contribute to the Court's consideration of Defendant's motion to dismiss by providing an in-depth analysis of important foreign affairs issues involved the case. Furthermore, the Chamber seeks to highlight for the Court the potentially severe consequences that this case carries for international business interests generally.

The Chamber is the world's largest business federation, representing an underlying membership of more than three million U.S. businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to advocate its members' interests in matters of national concern before all branches and at all levels of government, including filing briefs as *amicus curiae* before federal and state courts. Indeed, the Chamber regularly files briefs as *amicus curiae* in cases such as this one that raise issues of vital concern to the business community.

The Chamber has a substantial interest in ensuring stable and predictable legal regimes affecting international trade and investment. Chamber members rely on a stable framework of international laws and agreements, made possible by carefully calibrated U.S. diplomatic efforts, that allow them to conduct business around the globe.

The current litigation puts that framework at risk. This case raises critical issues regarding the limits of state law to influence U.S. foreign policy and to place burdens on foreign commerce. If allowed to proceed, Plaintiffs' claims, which seek to impose liability on Defendant for the purported conduct of its foreign suppliers, threaten the ability of the United States to speak with one voice to other nations concerning how best to improve labor standards abroad. Plaintiffs' claims also tread

unconstitutionally on the federal government's power to regulate foreign commerce. Moreover, allowing Plaintiffs' lawsuit to proceed could ultimately have deleterious effects on international business and the global economy.

Given the importance of these issues, the Chamber submits that the Court would clearly benefit from the broader perspective of the U.S. business community on the potential negative consequences—diplomatic, constitutional, and economic—of allowing Plaintiffs' claims to proceed. The Chamber's *amicus* brief presents an important viewpoint on how the doctrines of foreign affairs preemption and the dormant Foreign Commerce Clause are implicated in this case, and why dismissing Plaintiffs' claims is necessary under these doctrines. Through its brief, the Chamber seeks to ensure that these issues are given full consideration by the Court.

For the foregoing reasons, the Chamber requests that the Court grant it leave to file the accompanying *amicus curiae* brief in support of Defendant's motion to dismiss.

Dated: September 6, 2006

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***AMICUS CURIAE* BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT**

[MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF FILED CONCURRENTLY]

Date: October 2, 2006
Time: 10:00 A.M.
Place: Ctrm of Hon. Andrew J. Guilford

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INTRODUCTION

The Chamber of Commerce of the United States of America respectfully submits this brief as *amicus curiae* in support of Defendant Wal-Mart Stores, Inc.'s motion to dismiss.

In bringing the current action, Plaintiffs seek to use this Court to implement their preferred U.S. foreign policy. Specifically, Plaintiffs bring a series of claims attempting to hold a U.S. company liable for violations of workers' rights alleged to have occurred in factories located outside the United States that are neither owned nor operated by the U.S. company. Plaintiffs include current and former employees in these factories in China, Bangladesh, Indonesia, Swaziland, and Nicaragua. First Am. Compl. ("FAC") ¶¶ 7-26. Plaintiffs' aim is to regulate labor standards overseas, using Defendant as a convenient vehicle. Dissatisfied with the efforts of the political branches of the federal government in this area, Plaintiffs attempt to use state law causes of action unilaterally to influence U.S. foreign relations.

Plaintiffs' complaint specifically alleges that the governments of each of the countries involved have policies that contribute to the abuse of workers' rights. *See* FAC ¶ 11 ("China has a unique place on the roster of countries that use violent reprisals, imprisonment, torture and execution to suppress assertions of rights by workers seeking to secure labor rights . . . ."); *id.* ¶ 14 (Bangladesh has a "well-known record of violent reprisal against workers who complain about labor rights conditions or who attempt to secure their labor rights" and the "Bangladeshi judiciary is notoriously corrupt"); *id.* ¶ 18 (Indonesia has a "noted history of violent reprisal against trade union leaders and those seeking to secure labor rights" and there is a "lack of independence by the Indonesian judiciary, along with notorious levels of corruption"); *id.* ¶ 21 (alleging the "certain retribution and punishment from interested parties and operatives of the Government of Swaziland" and that "the King has interfered to prevent enforcement of judicial orders by issuing contradictory decrees"); *id.* ¶ 26 ("Nicaragua does not have an independent judiciary and its administrative

labor judges and the labor ministers frequently accept bribes from employer factories."). Plaintiffs accordingly ask this Court to stand in judgment of the practices of these foreign governments. Furthermore, by attempting to impose liability on Defendant, one of the largest players in the global marketplace, for doing business through its suppliers with factories operating under these regimes, Plaintiffs plainly seek to exert pressure on foreign governments to change their policies.

But the conduct of foreign governments in enforcing their own laws is not an issue properly adjudicated in U.S. courts. And the United States has existing policies designed to improve foreign labor standards through diplomatic means. If allowed to proceed, Plaintiffs' efforts would impair the ability of the United States to speak coherently and forcefully with one voice to other nations concerning how best to improve labor standards abroad. Plaintiffs' claims are therefore preempted under established Supreme Court precedent. Plaintiffs' claims also tread unconstitutionally on the federal government's power to regulate foreign commerce. For these reasons, *amicus curiae* urges the Court to dismiss Plaintiffs' complaint.

INTERESTS OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing an underlying membership of more than three million U.S. businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to advocate its members' interests in matters of national concern before the courts, the United States Congress, the Executive Branch, and independent regulatory agencies of the federal government. The Chamber has a substantial interest in ensuring stable and predictable legal regimes affecting international trade and investment.

The Chamber regularly files briefs as *amicus curiae* in cases such as this one that raise issues of vital concern to the business community. The organization filed briefs as *amicus curiae* in *Crosby v. National Foreign Trade Council*, 530 U.S. 363

(2000) and *American Insurance Ass'n v. Garamendi*, 539 U.S. 396 (2003), important precursors to the present litigation. In this case, the Chamber again seeks to assist the Court in understanding the Constitution's limits on the ability of state law to influence foreign affairs and regulate foreign commerce.

Chamber members rely on a stable framework of international laws and agreements, made possible by carefully calibrated U.S. diplomatic efforts, that allow them to conduct business around the globe. Permitting the Plaintiffs' claims to proceed puts that framework at risk, by allowing states to regulate beyond their boundaries and influence delicate international relations. Plaintiffs' litigation thereby threatens diplomatic efforts supporting business and investment, and constitutes a significant hindrance to the international commerce on which *amicus*' members, and the U.S. economy, depend.

ARGUMENT

I. Because Judicial Action on Plaintiffs' Claims Would Interfere With the Federal Government's Conduct of Foreign Affairs, Plaintiffs' Claims Are Preempted.

This case presents the question of whether state law causes of action can be used by private parties to make, influence, and carry out U.S. foreign policy. Plaintiffs' complaint clearly expresses a preferred foreign policy agenda, and through the current litigation, Plaintiffs strive to implement that agenda, without regard to constitutional boundaries. The complaint includes familiar causes of action for, *inter alia*, breach of contract, negligence, and violation of a California's unfair competition law, but the content of these claims is anything but typical. In seeking a judgment against Defendant in a U.S. court, the Plaintiffs' actual goal is to exert pressure on foreign countries and foreign companies to change working conditions in factories outside of the United States. Regardless of the merits of such a goal, the method chosen to reach it improperly interferes with the federal government's conduct of foreign policy and is an end-run around the United States' established diplomatic processes designed to address these very issues. Plaintiffs' approach is

constitutionally infirm because the executive and legislative branches of the federal government have the exclusive responsibility for crafting U.S. foreign policy. By attempting to shape U.S. foreign policy and the conduct of foreign nations through the litigation of state law claims, Plaintiffs have entered a realm from which they are constitutionally excluded. These claims are accordingly preempted, and this action should be dismissed.

It is long established that foreign policy is the exclusive province of the federal government. Over a century ago, the Supreme Court declared that "[f]or local interests the several states of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power." *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889); *see also United States v. Belmont*, 301 U.S. 324, 330 (1937) ("Governmental power over internal affairs is distributed between the national government and the several states. Governmental power over external affairs is not distributed, but is vested exclusively in the national government."); *Deutsch v. Turner Corp.*, 324 F.3d 692, 709 (9th Cir. 2003) ("[T]he Supreme Court has long viewed the foreign affairs powers specified in the text of the Constitution as reflections of a generally applicable constitutional principle that power over foreign affairs is reserved to the federal government."). The foreign affairs power "is not and cannot be subject to any curtailment or interference on the part of the several states." *Belmont*, 301 U.S. at 331.

When a state law, including through judicial action, encroaches upon the federal government's "effective exercise of the Nation's foreign policy," the result is that the state law "must give way." *Zschernig v. Miller*, 389 U.S. 429, 440 (1968); *see also United States v. Pink*, 315 U.S. 203, 230-31(1942) ("[S]tate law must yield when it is inconsistent with or impairs . . . the superior Federal policy evidenced by a treaty or international compact or agreement."). The Supreme Court recently reaffirmed *Zschernig*'s core holding that state laws that interfere with federal foreign policy are preempted, in *American Insurance Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003). In

Garamendi, the Court held that California's Holocaust Victim Insurance Relief Act of 1999 (HVIRA) interfered with efforts taken by the federal government to resolve issues related to Nazi-era insurance claims of Holocaust victims. Because HVIRA was more heavy-handed than the federal government's approach and hindered the President's ability to pursue his chosen foreign policy agenda, the Court held that HVIRA was preempted. The Court noted that preemption of state law under the foreign affairs doctrine may involve field preemption, conflict preemption, or both. *Id.* at 419-20. Indeed, foreign affairs preemption does not require that the state law directly conflict with a treaty or federal statute, *Zschernig*, 389 U.S. at 441, nor does it require that federal law or policy include an express statement of preemption, *see Garamendi*, 539 U.S. at 417. Moreover, the preemptive effect of the foreign affairs doctrine extends not only to state statutes but also to applications of the state's common law that would interfere with federal foreign policy. *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164, 1188 (C.D. Cal. 2005) (dismissing plaintiffs' common law tort claim as preempted under the foreign affairs doctrine); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.*, 340 F. Supp. 2d 494, 501 (S.D.N.Y. 2004) (dismissing plaintiffs' common law claims as preempted under the foreign affairs doctrine because "[l]itigation of Holocaust-era insurance claims, *no matter the particular source of law* under which the claims arise, necessarily conflicts with the executive policy favoring voluntary resolution of such claims" (emphasis added)).[1]

Plaintiffs' attempt in this case to invoke state law to influence foreign affairs implicates the concepts of both conflict and field preemption. First, Plaintiffs' claims present a direct conflict with existing federal policy. In the foreign affairs context,

[1] Not all courts have followed this view regarding the scope of foreign affairs preemption. *See Schydlower v. Pan Am. Life Ins. Co.*, 231 F.R.D. 493, 498 (W.D. Tex. 2005); *Doe v. Exxon Mobil Corp.*, No. Civ.A. 01-1357, 2006 WL 516744, at *3 (D.D.C. March 2, 2006). Notably, however, these cases have presented no rationale for why the doctrine would not apply to preempt state common law claims.

preemption of state law is required whenever the application of state law would have "more than an incidental effect in conflict with express foreign policy of the National Government." *Garamendi*, 539 U.S. at 420. Moreover, when a state's interest in applying its law is weak or non-existent, the conflict with federal foreign policy need not be strong or direct. *See id.* at 425 (noting that even if the clarity of a conflict between the state and federal policy is in doubt, state law is properly preempted when the state's interest in enforcing the law is weak). In the present case, the state's interest is extremely weak because the predicate acts that spurred the litigation all took place outside of the state and were allegedly committed against foreign citizens in foreign factories owned by foreign nationals (and not by Defendant). Furthermore, Defendant is not a California corporation, and California residents have no greater interest in improving labor conditions abroad than the residents of any other state.

In contrast to the state's weak interest in Plaintiffs' claims, the United States has an express and well-developed foreign policy aimed at ameliorating labor abuses abroad. Plaintiffs' claims, which attempt to use state law to pursue an approach inconsistent with that policy, are thus preempted. *See Garamendi*, 539 U.S. at 425 ("The express federal policy and the clear conflict raised by the [state law] are alone enough to require state law to yield."). U.S. foreign policy regarding foreign labor practices is most clearly expressed in the international trade context. The federal government has implemented its policy through numerous pieces of trade legislation, trade agreements negotiated by the Executive, and other trade-related initiatives. Through these vehicles, among others, the U.S. government has sought to improve labor conditions around the world, but it has done so in a balanced manner.

The Trade Promotion Authority Act of 2002 (TPA) is a noteworthy example. Section 11 of the TPA specifically sets forth a variety of objectives relating to foreign labor standards. These objectives include (A) "ensur[ing] that a party to a trade agreement with the United States does not fail to effectively enforce its . . . labor laws," (B) "recogniz[ing] that parties to a trade agreement retain the right to exercise

discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor . . . matters determined to have higher priorities," and (C) "strengthen[ing] the capacity of United States trading partners to promote respect for core labor standards." 19 U.S.C. § 3802. Subsection B specifically provides, in relation to the discretion that U.S. trading partners have in enforcing their own labor laws, that "no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards." *Id.* These provisions were debated extensively in Congress, and the TPA represents a balanced and carefully tailored federal stance toward labor practices in other countries—one that should not be supplanted through *ad hoc* judicial proceedings.

Another relevant federal effort is the Trade Act of 1974. Section 301 of the statute authorizes the President to impose sanctions on countries that engage in "unreasonable" trade practices. 19 U.S.C. §2411. "Unreasonable" trade practices can include "an act, policy, or practice . . . which . . . constitutes a persistent pattern of conduct that – (1) denies workers the right of association, (2) denies workers the right to organize and bargain collectively, (3) permits any form of forced or compulsory labor, (4) fails to provide a minimum age for the employment of children, or (5) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers." *Id.* In 2004, the AFL-CIO filed a petition (with allegations similar to those raised by Plaintiffs in this litigation) alleging violations of Section 301 in China. In response to this petition, the U.S. Trade Representative decided to take no action, explaining that an investigation would run contrary to the "Administration's efforts to improve workers' rights in China." Petition under Section 302 on Workers' Rights in China; Decision Not to Initiate Investigation, 69 Fed. Reg. 26,204, 26,205 (May 11, 2004).[2] In responding in this manner, the Trade Representative not only

[2] A subsequent petition on similar matters received the same response. *See* http://www.workinglife.org/FOL/pdf/China--AFL%20301%20petition.pdf.

declared that the Executive had an existing policy regarding labor rights in China, but also expressly declined to pursue the policy urged by the AFL-CIO. The Executive weighed U.S. foreign policy objectives and the means best suited, in the judgment of the United States, to achieve them.

The United States' policy with respect to foreign labor practices can also be found in several recent trade agreements negotiated by the President under the TPA. Seven free trade agreements (FTAs) have been completed since the TPA was enacted.[3] These FTAs include provisions adopting the carefully calibrated approach to labor standards expressed in the TPA, which both encourages improved labor conditions and recognizes the sovereignty of foreign governments. And the executive branch has utilized other mechanisms to improve labor standards abroad. For example, existing anti-dumping laws have been used as leverage to pressure countries such as China to improve working conditions.[4] Similarly, the Generalized System of Preferences (GSP) confers on developing countries duty-free treatment so long as they have taken steps to "afford . . . internationally recognized worker rights" to workers in the country. 15 C.F.R. § 2007(b)(2)(x) (2005). Swaziland, a country implicated in this very case, has had its status as a GSP-eligible country challenged through this system. *See* 71 Fed. Reg. 25,614, 25,615 (May 1, 2006).

Federal policy in this area is not confined to matters involving trade. The State Department has worked to encourage countries such as China to implement broad labor reforms, including providing mechanisms for dispute resolution, mediation, arbitration and collective bargaining. The Office of International Labor Affairs, a division of the State Department,"[f]unds and assists in the development of programs to eliminate abusive sweatshop labor conditions in foreign factories that produce

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[3] Australia, Bahrain, Chile, Morocco, Peru, Singapore and CAFTA-DR (which includes Nicaragua, Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras).

[4] *See* http://www.ustr.gov/Document_Library/Press_Releases/2006/July/Statement_from_USTR_Spokesman_Regarding_China_Labor_Petition.html.

consumer goods for the American market,"[5] which is the putative goal of this litigation. The Department of Labor has also initiated programs to assist China in improving labor legislation, educating workers regarding labor standards, and improving occupational health and safety conditions.[6]

As this summary of only some of the highlights of U.S. policy reveals, the federal government's approach to these matters is multifaceted. Although improved foreign labor conditions are a central objective of the United States' foreign policy, it should be noted that sanctions are rarely used as a tactic in the federal government's arsenal. Yet Plaintiffs are trying to have this Court do just that—indirectly sanction various countries around the world for "sub par" labor practices by imposing liability on a company that conducts business with suppliers in those countries. Allowing Plaintiffs' claims, which advance a foreign policy inconsistent with the federal government's, to proceed could "compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments" to resolve labor issues abroad. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000). This in turn could "undercut[] the President's diplomatic discretion and the choice he has made exercising it." *Garamendi*, 539 U.S. at 423-24. Because Plaintiffs are asking this Court to speak in an area where the federal government has already spoken, and to speak in a way the federal government has chosen not to, Plaintiffs' attempted misuse of state law must yield to the express foreign policy of the federal government, particularly given the state's weak interest in this area.

Plaintiffs' claims also raise the spectre of field preemption because a failure to dismiss this action may require the Court to intrude into the domain of foreign affairs and pass judgment on the labor standards of other nations, despite the fact that such matters are for the political branches of the federal government and not for courts

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[5] *See* http://www.state.gov/g/drl/lbr/.

[6] *See* http://www.msha.gov/media/press/2002/nr021010.htm.

applying state law. *See Zschernig*, 389 U.S. at 437-38 (holding that the application of state probate law unconstitutionally interfered in the federal government's domain because the law required state courts to make foreign policy assessments). Without question, foreign labor practices are a U.S. foreign policy concern, and state law must yield to the federal government's dominant interest in this domain. Even if the application of the state law "is not as gross an intrusion in the federal domain as [it] might be," if it "may well adversely affect the power of the central government to deal with" the underlying concern through its foreign policy, then the application of the state law is preempted. *Id.* at 440-41. This is particularly true in a situation such as the present one, in which there is "no serious claim" that Plaintiffs' claims are "addressing a traditional state responsibility." *Garamendi*, 539 U.S. at 419 n.11. Indeed, even if California generally has an interest in providing state common law remedies, because the substance of Plaintiffs' claims—challenging foreign labor standards—is so completely removed from an area of traditional state competence and intrudes into a matter of foreign policy, the Plaintiffs' claims are properly preempted.

II. Allowing Plaintiffs' Claims To Proceed Would Impermissibly Project California Law Beyond the State's Own, and the Nation's, Borders in Violation of the Foreign Commerce Clause.

Plaintiffs' claims, if permitted to go forward, not only would intrude on the federal government's foreign affairs powers, but also would violate the dormant Foreign Commerce Clause. Article I, Section 8 of the Constitution grants Congress the power "to regulate Commerce with foreign nations, and among the several states." The dormant Commerce Clause precludes a state from regulating commerce that takes place outside its territory. *See Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336, 338 (1989); *Edgar v. MITE Corp.*, 457 U.S. 624, 642-43 (1982). That rule has all the more force when foreign, rather than merely interstate, commerce is impaired. *See South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984) ("[S]tate restrictions burdening foreign commerce are subjected to a more rigorous and searching scrutiny."). Plaintiffs seek to use California law to dictate to foreign

companies labor standards in foreign factories. If allowed to proceed, this invocation of state law would have a deleterious effect on foreign commerce, not to mention its effect on the Nation's ability to "speak with one voice." *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448-49 (1979).

Plaintiffs' use of state law is specifically targeted at influencing foreign streams of commerce, by altering the terms of the foreign manufacturers' and suppliers' relationships with Defendant. By seeking to impose state law liability on Defendant for the conduct of third-party foreign factories that took place exclusively on foreign soil, the Plaintiffs are attempting to exert pressure on foreign suppliers to change the allegedly "sub par" labor practices of the foreign factories or on Defendant to change its suppliers. In either case, the Plaintiffs' state law claims would effectively exact a sanction on foreign commerce. Such interference with the free flow of foreign commerce is exactly the type of burden that is constitutionally infirm under the dormant Foreign Commerce Clause, all the more so because it is contrary to existing federal trade policy. *See Japan Line, Ltd.*, 441 U.S. at 451 (holding that the application of state laws that "prevent the Federal Government from speaking with one voice when regulating commercial relations with foreign governments" violate the Foreign Commerce Clause (internal quotation and citation omitted)).

III. Allowing Plaintiffs' Claims To Proceed Would Result in Deleterious Effects on International Business.

In addition to its legal consequences, the interference in foreign affairs and foreign commerce resulting from Plaintiffs' claims also has important economic consequences, particularly in an international business environment that is characterized by complex business relationships that routinely cross national boundaries. The potential ramifications this case will have on the global marketplace merits serious consideration. Indeed, it is precisely these consequences that involve matters well beyond ordinary litigation that require dismissal of the complaint. The Court therefore performs an important gatekeeper role in preventing claims from going forward that impermissibly interfere with foreign commerce. *See In re S.*

African Apartheid Litig., 346 F. Supp. 2d 538, 554 (S.D.N.Y. 2004) ("In a world where many countries may fall considerably short of ideal economic, political, and social conditions, this Court must be extremely cautious in permitting suits here based upon a corporation's doing business in countries with less than stellar human rights records, *especially since the consequences of such an approach could have significant, if not disastrous, effects on international commerce.*" (Emphasis added)).

If claims such as Plaintiffs' were actionable, companies operating in the United States will face new burdens in doing business overseas. Every time they entered into a commercial arrangement with a foreign company or in a foreign locale, they might be exposing themselves to potential liability, even when their actions—like Defendant's in this case—are far removed from the alleged harm. A retailer like Defendant, which stocks myriad types of merchandise, has thousands of suppliers in countries all over the globe. Controlling the labor practices of all these companies is simply impossible. Furthermore, if state law liability is used to regulate corporate conduct abroad, there is also a very real danger that foreign countries will retaliate by imposing harsher regulations on U.S. companies generally. More broadly, Plaintiffs' claims threaten to destabilize international business relationships between companies and their suppliers, by forcing companies to abandon their existing suppliers or face increasing liability.

In addition to the immediate harms to global companies, secondary harms will likely fall on consumers in the form of higher prices, as companies attempt to pass on their extra costs. The negative consequences would likely fall disproportionately on the United States. As the world's largest market, largest importer/exporter, largest source of outbound investment, largest haven for foreign investment, and a country with companies irreversibly intertwined in global supply chains, the overall impact on the U.S. economy, and ultimately the global economy, could be severe.

Ironically, a possible consequence of Plaintiffs' claims could be slower improvement in labor conditions around the world. To the extent Plaintiffs' claims

succeed in imposing liability in this manner, they may make the countries implicated in this action less attractive places for U.S. trade and investment, to the possible detriment of Plaintiffs and their compatriots.

CONCLUSION

For the foregoing reasons as well as those advanced by Defendant, *amicus curiae* respectfully urges the Court to dismiss Plaintiffs' First Amended Complaint.

Respectfully submitted,

Dated: September 6, 2006

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Assigned to the Honorable Andrew J. Guilford

PROOF OF SERVICE

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013-1010.

On September 6, 2006, I served the foregoing document(s) described as **(1) NOTICE OF MOTION AND MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES; and (2) *AMICUS CURIAE* BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT** on all interested parties in this action as follows:

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(courtesy copy, via U.S. mail)

I served the foregoing document(s) by U.S. mail, as follows: I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. I am readily familiar with Sidley Austin LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 6, 2006, at Los Angeles, California.

S.J. Bissell