

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

John Roe I, <i>et al.</i>)	
)	
Plaintiffs,)	Case No.: 1:06-cv-00627-DFH-JMS
)	
v.)	
)	
Bridgestone Corporation, <i>et al.</i>)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MOTION AND MEMORANDUM OF POINTS AND
AUTHORITIES FOR CLASS CERTIFICATION**

Pursuant to Fed. R. Civ. P. 23 and Local Rule 23.1, Plaintiffs hereby move this Court for an order allowing this case to proceed as a class action with Plaintiffs as representatives for the class of current and former child laborers. As explained below, Plaintiffs seek certification under subsection 23(b)(2), or alternatively under subsection 23(b)(3) of a class for declaratory and injunctive relief, as well as compensatory and punitive damages.

Class certification is proper because Plaintiffs meet the four core requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy of representation), and demonstrate that the case is “maintainable” under subsection 23(b)(2) or 23(b)(3). Specifically, certification under 23(b)(2) is appropriate because Defendants^{1/} have acted in a way generally applicable to the class by promoting and/or allowing the pervasive and consistent use of child labor at its Firestone Plantation, and thereby making injunctive or declaratory relief appropriate. Certification would also be proper under subsection 23(b)(3) because common questions of law and fact predominate

1. The current Defendants are Bridgestone Americas Holding Inc., Bridgestone Firestone North American Tire, LLC, BFS Diversified Products, LLC, and Firestone Natural Rubber Company. They are referred to herein as Defendants or collectively referred as Firestone.

making a class action the superior method for fairly and efficiently resolving this case. As demonstrated by Plaintiffs' Declarations, submitted in support of this Motion, these common facts continue to include young children carrying extremely heavy loads, working with dangerous tools, and/or applying toxic chemicals, which constitute the worst forms of child labor and renders injunctive and monetary relief appropriate to the class as a whole.

I. STATEMENT OF FACTS

Plaintiffs James Roes I - XV and Jane Roes I - VIII are all current or former child laborers on Defendants' Firestone Plantations Company ("Firestone Plantation") in Harbel, Liberia within the hazardous sector of latex rubber production. Complaint at ¶ 4. Together, they total 23 laborers who have filed suit using pseudonyms for fear of retaliation against themselves or their parents by Defendants. *Id.* ¶ 8. They bring suit against Defendants under the Alien Tort Statute (ATS), 28 U.S.C. § 1350, for violations of international law norms prohibiting the use of child labor. *Id.* ¶ 5. These Plaintiffs currently range in ages from 7 to 19 years old, but all worked on the Firestone Plantation generally between the ages of 6 and 14. They seek to represent a class of Plaintiffs who similarly worked on the Firestone Plantation as children. *Id.* ¶ 80.

Plaintiffs allege that Firestone supervisors on the plantation encourage their parents to put them to work as the only means of meeting the extremely high daily production quota of tapping 1,125 rubber trees per day. *Id.* ¶¶ 4, 48. Based on Defendants' admission, the daily quota would require laboring for 21 hours a day in order for a single worker to meet the quota. *Id.* ¶ 48. While that is itself unimaginable, Plaintiffs assert that the true daily quota would require a single worker to toil for 37.5 hours per day. *Id.* If the quota is not met, the worker's pay is cut in half. *Id.* Accordingly, the only feasible way for workers to make this quota is to have their children also

work on the Plantation, which has been a recognized and consistent pattern and practice on the Firestone Plantation. *Id.* ¶¶ 4, 48, 55.

Plaintiffs supplement their Complaint by providing sworn Declarations further detailing the precise work they had to perform on the Firestone Plantation in order for their parent to meet their daily quota.^{2/} In their Declarations, briefly summarized below, Plaintiffs specify that these tasks continue to include carrying extremely heavy loads, working with dangerous tools, and/or applying toxic chemicals over continuous hours. They also confirm that Firestone supervisors saw them working on the plantation on numerous occasions, and often times actually encouraged them to work.

Plaintiff James Roe I is currently 15 years old. He has worked on the Firestone Plantation since he was 6 years old. *See* Declaration of James Roe I (“James I Decl.”), Exhibit A-1 to Plaintiffs’ Motion to File Their Declarations Under Seal at ¶¶ 3. On a typical day he worked from 5 a.m. to 12 p.m. *Id.* ¶ 3. His first tasks were cleaning and stripping tapper cups, and at 11 years old, he started collecting the latex and applying chemicals to the rubber trees. *Id.* He was not provided with any protective equipment, and indicates that he has been cut with a glass bottle while working. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work with his father on the plantation, and indicates that Firestone supervisors knew he worked with his father and recalls even hearing these supervisors instructing his father to bring him to work. *Id.* ¶ 6. Neither he nor his father were ever paid for his work on the plantation. *Id.* ¶ 7.

Plaintiff James Roe II is currently 10 years old. He began working on the Firestone

2. Plaintiffs’ Declarations are filed separately with their Motion to Seal Plaintiffs’ Declarations In Support of Plaintiffs’ Motion for Class Certification. They are filed as Exhibits A (1-15), the James Roe Declarations, and Exhibits B (1-8), the Jane Roe Declarations.

Plantation at age 9. *See* Declaration of James Roe II (“James II Decl.”), Exhibit A-2 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶¶ 3. His first tasks were cleaning cups and collecting latex in a small bucket. *Id.* He also carried latex in buckets to the factory. *Id.* On a typical day, he worked from 5 a.m. to 12 p.m. *see id.* ¶ 3, and indicates that Firestone Supervisors saw him working on the plantation. *Id.* ¶ 7. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. Neither he nor his father were ever paid for his work on the plantation. *Id.* ¶ 7.

Plaintiff James Roe III is currently 19 years old. He began working on the Firestone Plantation at age 10. *See* Declaration of James Roe III (“James III Decl.”), Exhibit A-3 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. His first tasks included cleaning cups, collecting latex, applying chemicals to the rubber tress, and laying panels (which is the technical job of marking the rubber tree with a sharp tool to show the extent of tapping over a given period). *Id.* ¶ 3. When he was eleven, he also started carrying latex to the tank after it had been collected. *Id.* He also weeded around the rubber trees with a machete. *Id.* He was not provided with any protective equipment, and indicates that he has a scar on his face from carrying the latex bucket on his head. *Id.* ¶¶ 3, 4. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe IV is currently 16 years old. He began working on the Firestone Plantation at age 9. *See* Declaration of James Roe IV (“James IV Decl.”), Exhibit A-4 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. His first tasks were cleaning

cups, cutting grass with a machete, and laying panels. *Id.* At age 11, he also began collecting latex and applying chemicals to the rubber trees. *Id.* He was not provided with any protective equipment, and indicates that he cut his foot with the machete at age 9 while cutting grass. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as this was the only way to help his father meet his daily quota so they would not starve. *Id.* ¶ 6. He indicates that Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, and that neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe V is currently 18 years old. He began working on the Firestone Plantation at age 10. *See* Declaration of James Roe V (“James V Decl.”), Exhibit A-5 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. From the age of 10 to 14, his tasks included cleaning cups, collecting latex, and applying chemicals to the rubber trees. *Id.* He was not provided with any protective equipment, and indicates that he has sustained numerous injuries while working, including: a scar on his left fingers from the tapping knife; being wounded by the slashing iron a few times; and sustaining an injury while cutting cuprons into pieces (cuprons are the hardened latex left in the cup after the liquid latex has been dumped into the collection buckets). *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as this was the only way to help his father meet his daily quota so his family would not starve. *Id.* ¶ 6. He indicates that Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, and even commented to his father that he “did a good job and worked hard”. *Id.* ¶ 6. Neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe VI is currently 16 years old. He began working on the Firestone Plantation at age 7. *See* Declaration of James Roe VI (“James VI Decl.”), Exhibit A-6 to

Plaintiffs' Motion to File Their Declarations Under Seal, at ¶ 3. His first tasks included cleaning latex cups, slashing grass with a machete, laying panel, and collecting latex. *Id.* When he was 10 years old, he began applying chemicals to the trees and taking cuprons and latex to the tank. *Id.* On a typical day, he worked from 4 a.m. to 4 p.m. *Id.* He was not provided with any protective equipment, and indicates that he was injured twice while working including a scar on his left foot from slashing grass with a machete, and a protruding knot on his head when he fell with a bucket full of cuprons. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, and even regularly thanked him for helping his father. *Id.* ¶ 6. He states that after Firestone passed a "No Child Labor" policy, they still encouraged him to work secretly because of the drop in the latex collection. *Id.* ¶ 6. He states that neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe VII is currently 12 years old. He began working on the Firestone Plantation at age 6. *See Declaration of James Roe VII ("James VII Decl."), Exhibit A-7 to Plaintiffs' Motion to File Their Declarations Under Seal, at ¶ 3.* His first tasks included taking down latex cups with a long stick, cleaning latex cups, collecting latex, and toting cuprons. *Id.* When he was 8, he also began tapping and transporting the latex, applying chemicals to the rubber trees, and slashing grass with a machete. *Id.* He was not provided with any protective equipment, and indicates that he has a deep cut on the bottoms of his feet from stepping on broken bottles while working. *Id.* ¶¶ 3, 5. He also indicates that he suffered bruises from falling down a hill with a bucket of latex. *Id.* ¶ 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota, and that often times he had to

be literally dragged there. *Id.* ¶ 6. Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe VIII is currently 19 years old. He began working on the Firestone Plantation at age 10. *See* Declaration of James Roe VIII (“James VIII Decl.”), Exhibit A-8 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. His first tasks included cleaning latex cups, toting empty tapping buckets to town, slashing grass, and applying chemicals. *Id.* On a typical day, he worked from 5 a.m. to 4 p.m. *Id.* He was not provided with any protective equipment, and indicates that he sustained injuries on multiple occasions with scars on several fingers and severe insect bites. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe IX is currently 18 years old. He began working on the Firestone Plantation at age 7. *See* Declaration of James Roe IX (“James IX Decl.”), Exhibit A-9 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. From age 7 to 14, his tasks included cleaning latex cups, weeding around rubber trees, applying chemicals to trees, collecting and transporting latex, and washing buckets. *Id.* On a typical day, he worked from 5 a.m. to 4 p.m. *Id.* He was not provided with any protective equipment, and indicates that he sustained injuries on multiple occasions which scarred his body. *Id.* ¶¶ 3, 4. He did not believe he had a choice but to work on the plantation, and recalls that Firestone Supervisors would instruct his father to deny him food if he did not help him complete his quota. *Id.* ¶ 6. He continued to work

even after Firestone passed its “No Child Labor” policy, and the Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶¶ 6, 7. Neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe X is currently 7 years old. He began working on the Firestone Plantation at age 4. *See* Declaration of James Roe X (“James X Decl.”), Exhibit A-10 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶¶ 3. His task was to clean latex cups. *Id.* Firestone Supervisors saw him working on the plantation on numerous occasions. *Id.* ¶ 6. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 5. Neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe XI is currently 18 years old. He began working on the Firestone Plantation at age 10. *See* Declaration of James Roe XI (“James XI Decl.”), Exhibit A-11 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. From age 10-14, his tasks included cleaning latex cups, slashing grass, collecting latex, and applying chemicals to trees. *Id.* On a typical day, he worked from 4 a.m. to 3 p.m. *Id.* He was not provided with any protective equipment, and indicates that he has a scar on his left foot from the sharp edge of a latex bucket that fell on his foot. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation, in order to help his father meet his quota. *Id.* ¶ 6. Firestone Supervisors saw him working on the plantation on numerous occasions, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.* ¶ 6.

Plaintiff James Roe XII is currently 18 years old. He began working on the Firestone Plantation at age 10. *See* Declaration of James Roe XII (“James XII Decl.”), Exhibit A-12 to

Plaintiffs' Motion to File Their Declarations Under Seal, at ¶ 3. His first tasks included cleaning latex cups, applying chemicals to rubber trees, and slashing grass with a machete. *Id.* When he was 10, he also began tapping and transporting the latex when his father was sick or could not work. *Id.* He was not provided with any protective equipment, and indicates that he suffered a serious injury when a large rubber tree branch stuck his side. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. He states that Firestone Supervisors saw him working daily, and that when he did not complete washing the latex cups, the supervisors would mark his father's pay for half the day. *Id.* Neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff James Roe XIII is currently 19 years old. He began working on the Firestone Plantation at age 8. *See* Declaration of James Roe XIII ("James XIII Decl."), Exhibit A-13 to Plaintiffs' Motion to File Their Declarations Under Seal, at ¶ 3. At age 12, he began cleaning latex cups and laying panels. *Id.* He was not provided with any protective equipment, and indicates that he cut his finger with a knife while cutting rubber. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota. *Id.* ¶ 6. He states that Firestone Supervisors saw him working daily, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.* ¶ 6.

Plaintiff James Roe XIV is currently 17 years old. He began working on the Firestone Plantation at age 7. *See* Declaration of James Roe XIV ("James XIV Decl."), Exhibit A-14 to Plaintiffs' Motion to File Their Declarations Under Seal, at ¶ 3. At age 10, he began cleaning latex cups, slashing grass, collecting latex, and applying chemicals to the rubber trees. *Id.* He was not provided with any protective equipment, and indicates that he cut his finger with a knife

while cutting rubber on several occasions. *Id.* ¶¶ 3, 5. He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota *Id.* ¶ 6. He states that Firestone Supervisors saw him working on numerous occasions, *see id.* ¶ 7, but neither he nor his father were ever paid for his work on the plantation. *Id.* ¶ 6.

Plaintiff James Roe XV is currently 17 years old. He began working on the Firestone Plantation at age 13. *See* Declaration of James Roe XV (“James XV Decl.”), Exhibit A-15 to Plaintiffs’ Motion to File Their Declarations Under Seal, at ¶ 3. His first task was applying chemicals to the rubber trees. *Id.* He was not provided with any protective equipment to apply these chemicals. *Id.* At age 14, he began the task of transporting the latex buckets to the tank. On a typical day, he worked from 5:30 a.m. to 7:30 p.m. *Id.* He did not believe he had a choice but to work on the plantation as the only way to help his father meet his daily quota *Id.* ¶ 5. He states that Firestone Supervisors saw him working on numerous occasions, and that he would give the clean latex cups directly to a Firestone headman. *Id.* This headman even asked him directly to spray the cuprons. *Id.* He continued to work even after Firestone passed the “No Child Labor” policy, but neither he nor his father were ever paid for his work on the plantation. *Id.*

Plaintiff Jane Roe I is currently 9 years old. She began working on the Firestone Plantation at age 7. *See* Declaration of Jane Roe I (Jane Roe I Decl.), Exhibit B-1 to Plaintiffs’ Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks were cleaning cups and collecting latex. She also slashed grass at the plantation using a machete, collected and carried coagulated rubber in latex cups and then applied chemicals that reddened them. This chemical was applied to distinguish coagulated rubber collected at the Firestone plantation from others around the country. *Id.* She never received any pay for working on the plantation and her father

did not receive any extra money for the work she did. *Id.* ¶ 6. On a typical day, she worked from 4 a.m. to 3 p.m. *see id.* ¶ 4, and indicates that Firestone supervisors saw her working on the plantation. *Id.* ¶ 7. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 6.

Plaintiff Jane Roe II is currently 17 years old. She began working on the Firestone Plantation at age 15. *See* Declaration of Jane Roe II (Jane Roe II Decl.), Exhibit B-2 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks were scraping and washing latex cups. She also applied chemicals to trees, hoed around rubber trees, slashed grass and collected latex. At the time she was applying chemicals, Firestone did not provide her with any protective equipment. She continues to work on the plantation to this day. *Id.* She never received any pay for working on the plantation and her father did not receive any extra money for the work she did. *Id.* ¶ 6. On a typical day, she worked from 4 a.m. to 12 p.m. *see id.* ¶ 3, and indicates that Firestone supervisors saw her working on the plantation. *Id.* ¶ 7. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 6.

Plaintiff Jane Roe III is currently 19 years old. She began working on the Firestone Plantation at age 10. *See* Declaration of Jane Roe III (Jane Roe III Decl.), Exhibit B-3 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her tasks included scraping the latex cups, collecting and carrying the latex, and applying the chemicals to the trees. At the time she was applying chemicals, Firestone did not provide her with any protective equipment. She continues to work and help her father on the Firestone Plantation. *Id.* She never received any pay for working on the plantation and her father did not receive any extra money for

the work she did. *Id.* ¶ 6. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.*

Plaintiff Jane Roe IV is currently 17 years old. She began working on the Firestone Plantation at age 13. *See* Declaration of Jane Roe IV (Jane Roe IV Decl.), Exhibit B-4 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks were collecting latex and cleaning the cups in which the latex was collected. The Firestone Supervisors encouraged her to really clean the cups well and to work up her strength so she could help tote the coagulated rubber in the cups to the tanks. She also slashed grass with a machete to weed around the rubber trees. When she turned 15, she began applying chemicals to the rubber trees. At the time she was applying chemicals, Firestone did not provide her with any protective equipment. *Id.* She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 6.

Plaintiff Jane Roe V is currently 19 years old. She began working on the Firestone Plantation at age 10. *See* Declaration of Jane Roe V (Jane Roe V Decl.), Exhibit B-5 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks included cleaning latex cups, applying chemicals to rubber trees, laying panel, and collecting latex. At the time she was applying chemicals, Firestone did not provide her with any protective equipment. Later, at age 13, she began slashing grass with a machete and carrying latex to the tank. *Id.* She never received any pay for working on the plantation and her father did not receive any extra money for the work she did. *Id.* ¶ 6. On a typical day, she worked from 7 a.m. to 1 p.m. *see id.* ¶ 3, and indicates that Firestone supervisors saw her working on the plantation. *Id.* ¶ 7. She did not

believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 6.

Plaintiff Jane Roe VI is currently 12 years old. She began working on the Firestone Plantation at age 8. *See* Declaration of Jane Roe VI (Jane Roe VI Decl.), Exhibit B-6 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks included cleaning latex cups and collecting latex. When she turned 9, she began to slash grass at the plantation using a machete in addition to her other tasks. *Id.* She never received any pay for working on the plantation and her father did not receive any extra money for the work she did. *Id.* ¶ 5. On a typical day, she worked from 7 a.m. to 1 p.m. *see id.* ¶ 3, and indicates that Firestone supervisors saw her working on the plantation. *Id.* ¶ 6. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 5.

Plaintiff Jane Roe VII is currently 18 years old. She began working on the Firestone Plantation at age 13. *See* Declaration of Jane Roe VII (Jane Roe VII Decl.), Exhibit B-7 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks included cleaning latex cups and hoeing around the rubber trees. She also collected latex and applied chemicals to the trees. At the time she was applying chemicals, Firestone did not provide her with any protective equipment. She still works on the Firestone plantation today. *Id.* She never received any pay for working on the plantation. *Id.* ¶ 6. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.*

Plaintiff Jane Roe VIII is currently 18 years old. She began working on the Firestone Plantation at age 8. *See* Declaration of Jane Roe VIII (Jane Roe VIII Decl.), Exhibit B-8 to Plaintiffs' Motion to File Their Declarations Under Seal at ¶ 3. Her first tasks were cleaning

latex cups and collecting latex. At age 10, she began slashing grass with a machete and carrying latex to the tank. *Id.* She never received any pay for working on the plantation and her father did not receive any extra money for the work she did. *Id.* ¶ 6. On a typical day, she worked from 4 a.m. to 3 p.m. *see id.* ¶ 3, and indicates that Firestone supervisors saw her working on the plantation. *Id.* ¶ 7. She did not believe she had a choice but to work on the plantation as the only way to help her father meet his daily quota. *Id.* ¶ 6.

II. ARGUMENT

A. **Standard of Review Governing Class Certification Motions**

Plaintiffs' Motion for Class Certification should be liberally construed, and Plaintiffs need only make a *prima facie* showing that class certification is appropriate. *King v. Kansas City Southern Industries, Inc.*, 519 F.2d 20, 26 (7th Cir. 1975). This is because class actions serve an important function in our system of civil justice. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). As explained just prior to the passage of the modern Rule 23, “[i]n our complex modern economic system where a single harmful act may result in damages to a great many people there is a particular need for the representative action as a device for vindicating claims.” *Escott v. Barchris Construction Corp.*, 340 F.2d 731, 733 (2d Cir. 1965) (citation omitted). Accordingly, it is the policy of this Circuit to favor the maintenance of class actions. *King*, 519 F.2d at 26.

Consistent with this principle, a court should not be concerned with the merits of the action or whether the class will prevail when it makes a class determination under Rule 23. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178 (1974). *See also Loeb Industries, Inc. v. Sumitomo Corp.*, 306 F.3d 469, 480 (7th Cir. 2002). Rather, the allegations of the complaint must be taken as true, *see id.*, and an extensive evidentiary showing is not required. *Eggleston v.*

Chicago Journeymen Plumbers' Local Union No. 130, U.A., 657 F.2d 890, 895 (7th Cir. 1981).

In short, when there is any question as to whether certification is appropriate, the court should err on the side of approving the class.

B. The Parameters of Plaintiffs' Proposed Class

Plaintiffs propose that the following class be certified under subsection 23(b)(2), or alternatively under subsection 23(b)(3):

All current and former persons who worked on Defendants' Firestone Plantations Company in Harbel, Liberia under the age of fourteen (14) years old between November 17, 1995 through November 17, 2005.^{3/}

First, Plaintiffs have conservatively set the minimum working age at 14 and below in accordance with international law, and Liberia's domestic law. *See generally*, Declaration of Lee Swepston in Support of Plaintiffs' Motion for Class Certification ("Swepston Decl."), filed herewith, at ¶¶ 6, 7, 37-39 (explaining based on a review of the International Labor Organization's Conventions 138 (Minimum Age Convention) and 182 (Worst Forms of Child Labor), the United Nations Convention on the Rights of the Child, as well as a review of domestic legislation in over 20 countries that the minimum working age is generally understood to be between 14 and 16 years of age).^{4/} This level of international consensus prohibiting specifically the worst forms of child labor constitutes a specific, universal, and obligatory norm

3. Plaintiffs are prepared to file an amended complaint should the Court find it necessary to conform the current pleading to Plaintiffs' existing Complaint.

4. Lee Swepston is one of the foremost authorities on child labor having worked at the International Labor Organization (ILO) for over twenty years, and serving as the former Director of the ILO's Fundamental Principles and Rights at Work Department. He is the drafter of the ILO's General Survey on Minimum Age for Employment or Work, and also responsible for preparing the ILO's Global Report on Child Labor in 2006. *See Swepston Decl.* at ¶¶ 1-5.

of international law. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004). Mr. Swepston also confirms that any exclusion which would permit work below the age of 14 (even under Liberian law) is inapplicable to the facts of case, as detailed in Plaintiffs' Complaint and Plaintiffs' Declarations, because the work performed was hazardous in nature and performed for continuous periods of time. *Id.* at ¶¶ 17-25; 28-31.

Second, the definition of the proposed class does not incorporate elements of the merits of Plaintiffs' claim, defining the class objectively as any person who worked on the Firestone Plantation under the age of 14 for a period of time within the applicable ten year statute of limitations (between 1995-2005). *See, e.g., Jean v. Dorelien*, 431 F.3d 776, 778-79 (noting that claims under the ATS are subject to a ten years statute of limitations). *See also Kenro, Inc. v. Fax Daily, Inc.*, 962 F. Supp. 1162, 1169 (S.D. Ind. 1997)(cautioning that the proposed class should not require individualized determinations on the merits of the class to determine whether inclusion in the class is appropriate).

C. The Proposed Class Meets the Requirements for Class Certification

To maintain the foregoing proposed class, Plaintiffs must satisfy the four core requirements of Fed. R. Civ. P. 23(a): numerosity, commonality, typicality and adequacy of representation, and demonstrate that the case is "maintainable" under any one of the three subsections of Fed. R. Civ. P. 23(b).^{5/} Here, as detailed below, all the requirements of Rule

5. Rule 23(b) allows a class to be certified under any one or a combination of its three subsections. Subsection 23(b)(1) is appropriate when "individual actions risk inconsistent adjudications establishing incompatible standards of conduct for the defendants and/or because individual adjudications would as a practical matter be dispositive of, or threaten, absent Class members' interests". Subsection 23(b)(2) is appropriate when Defendants have "acted or refused to act on grounds that apply generally to the class, so final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole". Subsection 23(b)(3) is

23(a) are easily met, and while the case may be maintained under any of the three subsections of Rule 23(b) or combination thereof, Plaintiffs move to certify under 23(b)(2), which is appropriate when Defendants have acted in a way generally applicable to the class, making primarily injunctive or declaratory relief appropriate, or alternatively under 23(b)(3) because common questions of law and fact predominate making a class action a superior method for fairly and efficiently adjudicating this case.

1. All the Requirements of Rule 23(a) are Satisfied.

a. The proposed class is sufficiently numerous.

The numerosity requirement is easily met as the proposed class is estimated to be between 8,000 and 10,000 members. *Complaint*, ¶ 81. Accordingly, joinder of all class members would be “impractical.” *Federal Rules of Procedure 23(a)(1)*. “Impracticability” does not mean “impossibility”, see *Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-914 (9th Cir. 1964), and the Supreme Court has held that numerosity requires examination of specific facts of each case and imposes no absolute numerical limitations. *General Tel. Co. of the Northwest v. EEOC*, 446 U.S. 318, 329 (1980). Indeed, the Seventh Circuit has specifically held that the numerosity requirement is satisfied for classes consisting of as little as 40 persons. See *Swanson v. American Consumer Indus., Inc.*, 415 F.2d 1326, 1333 (7th Cir. 1969)(holding that a class of 151 was sufficient to meet the numerosity requirement but that 40 would have been acceptable). See also *Evans v. Evans*, 818 F. Supp. 1215, 1219 (N.D. Ind. 1993)(stating that there is no fixed rule, but

appropriate when “questions of law or fact common to class members predominate. . . and that a class action is superior to other available methods for fairly and efficiently resolving the controversy”.

generally fewer than 21 is inadequate, more than 40 is adequate, and numbers in between are given varying treatment).

b. The commonality requirement is satisfied.

Commonality is also easily satisfied as there are numerous common issues of law and fact applicable to the class as a whole. The commonality requirement is not a difficult requirement to meet and has been characterized as “a ‘low hurdle’ easily surmounted.” *Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 181, 185 (N.D.Ill.1992). All questions of law and fact need not be in common to satisfy the rule. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.1992). Rather, it is well- recognized that if at least one question of law or fact is common to the class, then commonality is satisfied. 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, §1763, at 198 (1986).

Here, the common legal and factual questions include, but are not limited to:

- (1) Whether the Plantation Child Laborers were subjected to child labor in violation of the Alien Tort Statute (28 U.S.C. § 1350);
- (2) Whether Defendants knowingly caused and/or aided and abetted the use of child labor imposed on Plaintiffs by either setting policies to cause the use of child labor, sanctioning the pattern and practice of using child labor; and/or failing to take adequate action to prevent and stop such child labor. Complaint ¶ 82.

As explained in Plaintiffs’ Complaint, Defendants’ policies and practices were applicable to all rubber tappers at the Firestone Plantation. *See, e.g.*, Complaint ¶¶ 4, 48. Case law holds that there is sufficient commonality where “defendants have engaged in standardized conduct towards members of the proposed class.” *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998).

Here, Plaintiffs have alleged that Defendants' uniform practices at the Firestone Plantation affected each of the class members in a similar manner. These practices include, but are not limited to:

- (1) setting high daily quotas for tappers which require the Plantation Workers to use family members, including specifically their children, to meet the quotas;
- (2) docking workers a half day of pay for failing to meet the extremely high quotas;
- (3) instructing and encouraging tappers who are having difficulty meeting quotas to have their children help them.

Ultimately, this is a case where each of the proposed class members worked and lived in the same plantation, and as children were subjected to the same working conditions and inhumane treatment with little or no variation. *See, e.g.*, Complaint ¶ 4; Statement of Facts, Section I, *supra*. At younger ages, the representative Plaintiffs indicate they were generally responsible for collecting and cleaning latex cups, and at later ages (9 or 10 years old) they would advance to the even more dangerous tasks of applying chemicals to the rubber trees without protective clothing, slashing grass with a machete, laying panels with a sharp tool, and ultimately actually tapping the rubber trees and transporting them to the tank. *See* Statement of Facts, Section I, *supra*. They all report that Firestone Supervisors regularly saw them working on the Plantation, and at times even encouraged them to work. *Id.* They all believed that they had no choice but to work. *Id.* The above evidence thus establishes that there is a common core of salient facts which is more than sufficient to meet the commonality requirement.

c. Plaintiffs have satisfied the requirements for typicality.

Where commonality is satisfied, typicality is almost certainly satisfied as well. *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982). A “plaintiff’s claim is ‘typical’ if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir.1983) (citations and internal quotation omitted). “[T]ypical does not mean identical, and the typicality requirement is liberally construed.” *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D.Ill.1996). The typicality requirement may be met “even if there are factual distinctions between the claims of the named plaintiffs and those of other class members.” *De La Fuente*, 713 F.2d at 232. It is not necessary that all class members suffer the same injuries as the class representative. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). Thus, a plaintiff’s claims may be typical even if other members of the class suffered less or more injury, *id.*, or the injuries were suffered at different times.

Here, as previously discussed, each of the named plaintiffs were subjected to the same unlawful practices and suffered similar injuries as the class they seek to represent. There are also no “unique” defenses which would apply to some class members and not others given the uniformity of defendants’ practices and that class members worked or currently work under the same conditions.

Another ATS case, *Hilao v. Estate of Ferdinand Marcos*, 103 F.3d 767 (9th Cir. 1996), is particularly instructive here with respect to the typicality of Plaintiffs claims. There, the Court found the typicality requirement to be satisfied for a class with far less homogeneity than the

proposed classes in this case, approving certification of a class consisting of “[a]ll current civilian citizens of the Republic of the Philippines, their heirs and beneficiaries, who between 1972 and 1986 were tortured, summarily executed or disappeared while in the custody of military or paramilitary groups.” *Id.* at 774. In response to defendants’ contention that typicality was lacking because there were significant individual questions relating to injuries, the court stated:

As to whether any compensable injury exists for a particular class member, that question is virtually identical in each case. Did the victim experience pain and suffering from the torture, summary execution, or “disappearance”? In this case of those who were executed or “disappeared”, did their survivors suffer from the loss of the victim’s earnings?

Id.

The *Marcos* court concluded that typicality was present. In this case, as in *Marcos*, the question as to whether any class member suffered compensable injury is the same – did the class member suffer injury as a result of defendants’ unlawful practices with respect to the use of child labor? Thus, typicality is present.

d. The representative parties will fairly and adequately protect the interests of the class.

The adequacy requirement is satisfied if: (1) the named plaintiffs do not have any conflicts of interest with the other class members; and (2) the named plaintiffs and their counsel will prosecute this action vigorously on behalf of their client. *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir.1993).

Here, the interests of the class and the interests of the named plaintiffs are the same. Both seek to prove that Defendants violated the law by using child labor. The named Plaintiffs are also seeking the same injunctive relief and same type of damages as the other class members. In

addition, the named Plaintiffs are highly motivated to prosecute this case and see it through to the end.^{6/} Therefore, there are no conflicts of interest.

Plaintiffs' counsel are also adequate class counsel. Plaintiffs' counsel have prosecuted numerous cases involving similar claims and are highly experienced in class litigation. *See, e.g.*, Declaration of Terry Collingsworth ("Collingsworth Decl.") at ¶¶ 4, 5, 6; Declaration of Paul Hoffman ("Hoffman Decl.") at ¶¶ 4,5; and Declaration of Kimberly Jeselskis. at ¶ 4. Indeed, plaintiffs' counsel are currently prosecuting over twenty ATS / TVPA cases and are among the most experienced in the world in prosecuting these type of cases. Collingsworth Decl. at ¶¶ 5, 8; Hoffman Decl. at ¶ 6.

D. Having Satisfied The Basic Requirements of Rule 23(a), This Court Can Certify the Proposed Class Under Section 23(b)(2).

1. Plaintiffs seek to vindicate human rights on behalf of a class.

Certification under Rule 23(b)(2) is most appropriate when the defendant "has acted or refused to act on grounds generally applicable to the class," thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. *Fed. R. Civ. P. 23(b)(2)*. "Civil rights cases ... are prime examples" of Rule 23(b)(2) classes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 2245 (1997). Indeed, it is widely recognized that "Rule 23(b)(2) class actions were designed specifically for civil rights cases seeking broad declaratory or injunctive relief..." Newburg & Conte, *Newberg On Class Actions*, § 4:11 (4th ed. 2002).

6. *See* James I-XV Decls. and Jane I-VIII Decls., attached as Exhibits A1-A15 and B1-B8 respectively, to Plaintiffs' Motion to File Declarations Under Seal, filed herewith.

Here, as in traditional civil rights actions, Plaintiffs have alleged and submitted evidence that Defendants have acted in a manner generally applicable to the class by promoting and/or allowing the pervasive and consistent use of child labor at its Firestone Plantation. Plaintiffs are also attempting to vindicate fundamental human rights of the class by obtaining injunctive relief to halt Defendants' use of child labor in a particularly hazardous sector. Accordingly, the homogeneity of the proposed classes, as well as the relief being sought makes this a prototypical class for certification pursuant to Rule 23(b)(2).

2. Compensatory and punitive damages do not defeat class certification under Rule 23(b)(2).

The Seventh Circuit has made clear that this Court can certify a class for damages, both punitive and compensatory, pursuant to Rule 23(b)(2) provided that class members are given notice and an opportunity to opt out. *See, e.g., Lemon v. Int'l Union of Operating Engineers, Local No. 139, AFL-CIO*, 216 F.3d 577, 579 (7th Cir. 2000); *Jefferson v. Ingersoll International, Inc., et al.*, 195 F.3d 894, 898 (7th Cir. 1999).

In *Jefferson*, the plaintiff class sought punitive damages and defendant contended that class certification should exist pursuant to 23(b)(3) rather than 23(b)(2). The Seventh Circuit held that 23(b)(2) class certification is proper where money damages are not the exclusive nor predominant final relief sought. 195 F.3d at 898. If equitable remedies are not the predominant relief sought, “then the district court should either certify the class under Rule 23(b)(3) for all purposes or bifurcate the proceedings--certifying a Rule 23(b)(2) class for equitable relief and a Rule 23(b)(3) class for damages (assuming that certification under Rule 23(b)(3) otherwise is sound).” *Id.* at 899 (citing *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 412 (5th Cir. 1998)).

“Monetary relief ‘predominates’ under Rule 23(b)(2) . . . when the monetary relief being sought is less of a group remedy and instead depends more on the varying circumstances and merits of each potential class member's case.” *Allison*, 151 F.3d at 413 (holding “the drafters of Rule 23 believed that at least some form or amount of monetary relief would be permissible in a (b)(2) class action.”) *See also Palmer v. Combined Ins. Co. of Am.*, 217 F.R.D. 430, 439 (N.D. Ill. 2003)(“For monetary damages to be incidental to the injunctive or declaratory relief, the monetary damages must flow directly from liability to the class as a whole on the claims forming the basis of the injunctive or declaratory relief [and] cannot depend in any significant way on the intangible, subjective differences of each class member's circumstances. . .”)(citations omitted).

Accordingly, courts around the country, including courts in the Seventh Circuit, have routinely certified classes under Rule 23(b)(2) where, as here, substantial punitive damages and/or compensatory damages were being sought. *See, e.g., Williams v. Burlington Northern, Inc.*, 832 F.2d 100, 103 (7th Cir. 1987); *Thomas v. Albright*, 139 F.3d 227, 234 (D.C. Cir. 1998); *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 450, 461 (N.D. Cal. 1994); *Williams v. Lane*, 129 F.R.D. 636, 639 (N.D. Ill. 1990). *See also Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 166-167 (2d Cir. 2001)(“any due process risk posed by (b)(2) class certification of a claim for non-incidental damages can be eliminated by the district court simply affording notice and opt out rights to absent class members for those portions of the proceedings where the presumption of class cohesion falters - i.e., the damages phase of the proceedings.”); *Eubanks v. Billington*, 110 F.3d 87 (D.C. Cir. 1997) (finding Rule 23(d)(5) “broad enough to permit the court to allow individual class members to opt out of a (b)(1) or

(b)(2) class when necessary to facilitate the fair and efficient conduct of the litigation.”)(Citation omitted).

Given the homogeneity of the proposed class, both in terms of facts and damages, and the importance of the injunctive relief being sought, this Court should exercise its discretion and certify the proposed class for injunctive relief and damages pursuant to 23(b)(2).

E. Alternatively, This Court Can Certify the Proposed Class Under Rule 23(b)(3).

Rule 23(b)(3) allows a court to certify a class for damages where the questions of law and fact common to the class “predominate” over questions affecting the individual members and, on the balance, a class action is “superior” to other methods available for adjudicating the controversy. The determination of whether common questions predominate does not consist of a mechanical counting of the issues to see whether common or individual questions are more numerous. Rather, “the proper standard under Rule 23(b)(3) is a pragmatic one.” 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure*, § 1778, at 528 (2d ed.1986). Common issues need not be dispositive of the entire suit. “A single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.” Newburg & Conte, *Newburg on Class Actions* § 4.25, at 4-84 (3d ed.1992). The basic question is “whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623.

1. The “predominance” requirement of common questions of law and fact is easily satisfied in this case.

As detailed in Section C (1)(b), *supra*, there are numerous common legal and factual questions. Indeed, each member of the proposed class performed similar work, labored at the

same plantation under the same working conditions, and have suffered similar types of injuries. This alone is sufficient to meet the predominance requirement.

The fact that there may be some variation in the degree of pain and suffering and physical injuries experienced by class members does not mean that the predominance requirement has not been met. 1 Newberg & Conte, *Newberg on Class Actions* § 4.26 (3d ed.1992). Specifically, this Court has stated that “the mere fact that questions peculiar to each individual member of the class remain after the common questions of the defendant’s liability have been resolved does not dictate the conclusion that the class action is impermissible.” *Simpson v. Flagstar Bank*, 2003 Westlaw 22244789 (S.D. Ind, 2003)(quoting *Sterling v. Velsicol Chemical Co.*, 855 F.2d 1188, 1197 (6th Cir. 1988)). This is particularly true “where the defendant’s liability can be determined on a class-wide basis because the cause of the disaster is a single course of conduct which is identical for each of the plaintiffs.” *Sterling*, 855 F.2d at 1197. *See also Young v. County of Cook, et al.*, 2007 Westlaw 1238920 (N.D. Ill 2007)(certifying class of detainees subjected to same strip search policy at county jail); *Tyson v. Grant County Sheriff*, 2007 Westlaw 1395563 (N.D. Ind. 2007) (certifying class of all persons confined at Grant County Jail in suit challenging the conditions of the jail, including overcrowding, applicable to all prisoners).

The same conclusion should be reached here given that the representative Plaintiffs were all subject to Defendants’ same practice or policy here of promoting and/or allowing child labor. Accordingly, determining the liability of Defendants to the class will not require the Court to delve into individualized issues, and Plaintiffs plan to rely primarily on evidence which is common to all members of the class to prove liability and damages.

Other courts in this circuit have similarly concluded that differences in damages due to varying injuries amongst class members is not a valid reason to deny class certification where numerous common issues of fact and law otherwise exist. *See, e.g., Johns v. DeLeonardis*, 145 F.R.D. at 485(citing *Grossman v. Waste Management, Inc.*, 100 F.R.D. 781, 784 (N.D. Ill 1984)(holding the degree to which plaintiffs have suffered damages is not an issue at the class certification stage but rather an issue on the merits)); *Bullock v. Sheahan*, 225 F.R.D. 227, 230 (N.D. Ill 2004)(holding the fact that damages may vary among class members was an insufficient reason to deny certification and certified a class where emotional distress damages were sought).^{7/}

The *Hilao* case is also again instructive on the issue of class damages. There, the court certified an ATS class action and relied upon statistical sampling from a class of 9,541 persons to determine the compensatory damages owed to class members who experienced mental abuse, and torture. *Hilao*, 103 F.3d at 774. The court randomly selected 137 claims and then appointed a special master to supervise the taking of these class members' depositions. The special master then reviewed the class members depositions and claim forms and thereafter recommended damages figures which were used by the court. *Id.*

In short, *Hilao* and the foregoing cases make clear that individualized issues that may arise with respect to the damages of the class members do not defeat the predominance of common questions of fact.

7. *See also Gunnells v. Healthplan Services, Inc.*, 348 F.3d 417 (4th Cir. 2003)(holding the mere fact that class members would have to submit individualized proof of damages was not a sufficient reason to defeat class certification); *Mayer v. Mylod*, 988 F.2d 635, 640 (6th Cir.1993); *In re Asbestos School Litigation*, 104 F.R.D. 422, 432 (E.D.Pa.1984).

2. The class action procedure is superior to all other methods of adjudicating this case.

There is no question that a class action is a superior method of proceeding with this lawsuit. Having each current or former child laborer at the Firestone plantation bring his or her own separate lawsuit regarding defendants' practices, which would result in thousands of trials on the same issue, would be both unwieldy and impractical and certainly would not promote the interests of judicial economy. *See In re "Agent Orange" Product Liability Litigation*, 100 F.R.D. 718, 724 (E.D.N.Y. 1983)(enormous potential size of plaintiffs' case and judicial economies that would flow from a class trial makes class action superior to all other methods for "fair and efficient adjudication of the controversy.")

F. Defendants Should Be Required to Provide and Bear the Cost of Notice to Class Members.

This court has great discretion when determining what kind of notice program is required under the circumstances, whether respect to a 23(b)(2) or 23(b)(3) class. *Hickerson v. Velsicol Chemical Corp.*, 121 F.R.D. 67, 69 (N.D. Ill. 1988), citing F.R. Civ. P. 23(e). In fact, Rules 23(d)(2) and 23(d)(5) grant the court plenary authority to fashion a notice program particular to the certified class. *Palmer v. Combined Ins. Co. of Am.*, 217 F.R.D 430, 439 (N.D. Ill 2003). Accordingly, "[a] district court may enlist the aid of a defendant in identifying class members to whom notice must be sent." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 348 (1978). It is also "appropriate to order a defendant, rather than a representative plaintiff, to perform tasks other than identification that are necessary to the sending of notice... where the defendant may be able to perform a necessary task with less difficulty or expense than could the representative plaintiff... ie., the task could be performed more efficiently by the defendants." *Oppenheimer*, at

355-57. “In such cases... the district court properly may exercise its discretion under Rule 23(d) to order the defendant to perform the task in question.” *Id.*

Indeed, the Supreme Court has noted that “a number of district courts have required defendants in Rule 23 (b)(3) class actions to enclose class notices in their own periodic mailings to class members in order to reduce the expense of sending the notice, as respondents asked the District Court in this case to do.” *Id.* at 355 (citing *Ste. Marie v. Eastern R. Assn.*, 72 F.R.D. 443, 450 n. 2 (SDNY 1976)). This form of notice is particularly used when “[f]rom a practical point of view . . . only the defendants can bear the expense of providing notice.” *Doglow v. Anderson*, 43 F.R.D. 472, 499-500 (E.D.N.Y. 1968). *See also Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)(ordering defendant to provide notice of the pending 23(b)2 action and finding “no real burden to the [defendant] in providing notice” where defendant could easily provide such notice in its regular course of business); *Southern Ute Indian Tribe v. Amoco Prod. Co.*, 2 F.3d 1023, 1030 (10th Cir. 1993)(same); *Abrams v. Interco, Inc.*, 719 F.2d 23, 30 (2nd Cir. 1983)(same); *In re Nasdaq Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515 n.19 (S.D.N.Y. 1996) (requiring notice sent to subclass be inserted in defendants' mailings); *Kan. Hosp. Ass'n v. Whiteman*, 167 F.R.D. 144, 145-46 (D. Kan. 1996) (requiring defendants to insert notice of the "proposed disposition" of case into monthly mailings); *Sollenbarger v. Mountain States Tel. & Tel. Co.*, 121 F.R.D. 417, 437 (D.N.M. 1988) (allowing plaintiffs to provide individual notice to class members by enclosing an insert in defendant's monthly billing statements to current customers); *Jacobs v. Sea Land Service Inc.*, 1980 U.S. Dist. LEXIS 11707 (N.D. Cal. 1980) (current employees would receive notice form attached to paycheck).

Here, Defendants would incur very little burden or cost in providing notice to the class with whom they routinely communicate in the ordinary course of business. Moreover, any burden imposed would be far less than what the representative Plaintiffs would bear, given their indigent status, or that Plaintiffs' counsel would have to bear if forced to travel abroad to Defendants' place of business, search Defendants' business records, and contact Defendants' employees.

IV. CONCLUSION

For all the foregoing reasons, this Court should grant Plaintiffs' motion for class certification and certify the class pursuant to Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3). This court should also certify the individual Plaintiffs as representatives of the class, and their counsel of record as counsel for the Plaintiff class, and further require that Defendants provide notice to the class.

Respectfully submitted on this 19th day of December, 2007 by:

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this **19th day of December, 2007**. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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