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5 **IN THE UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF FLORIDA**

7 SINALTRAINAL; THE ESTATE OF)
8 ISIDRO SEGUNDO GIL; LUIS)
9 EDUARDO GARCIA; ALVARO)
10 GONZALEZ LOPEZ; JOSÉ DOMINGO)
11 FLORES; JORGE HUMBERTO LEAL;)
12 JUAN CARLOS GALVIS)

13 all c/o SINALTRAINAL)
14 Carrera 15 No. 35-18)
15 Santafé de Bogotá)
16 Colombia, S.A.)

17 Plaintiffs,)

18 v.)

19 THE COCA-COLA COMPANY,)
20 One Coca-Cola Plaza, Atlanta GA, 30313;)
21 COCA-COLA DE COLOMBIA, S.A, c/o)
22 One Coca-Cola Plaza, Atlanta GA 30313;)
23 PANAMERICAN BEVERAGES, INC.,)
24 701 Waterford Way, Miami, FL 33126;)
25 PANAMCO, LLC, 701 Waterford Way,)
26 Miami, FL 33126; PANAMCO)
27 INDUSTRIAL de GASEOSAS, S.A. a/k/a)
28 PANAMCO COLOMBIA, S.A.)
c/o 701 Waterford Way, Miami, FL 33126;)
RICHARD I. KIRBY,)
881 Ocean Drive, Key Biscayne, FL 33149;)
RICHARD KIRBY KIELLAND, 881 Ocean)
Drive, Key Biscayne, FL 33149; and)
BEBIDAS y ALIMENTOS de URABA,)
S.A., c/o 881 Ocean Drive, Key Biscayne,)
FL 33149,)

Defendants.)

CIVIL ACTION NO.

COMPLAINT FOR EQUITABLE
RELIEF AND DAMAGES

JURY TRIAL DEMANDED

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1 **COMPLAINT**

2 **I. INTRODUCTION**

3 _____ 1. This case involves the systematic intimidation, kidnapping, detention and
4 murder of trade unionists in Colombia, South America at the hands of paramilitaries
5 working as agents of corporations doing business in that country. The violent persecution
6 of trade unionists in Colombia has been at epidemic proportions for many years. Since
7 1986 when the Central Unitaria de Trabajadores de Colombia ("CUT"), the largest trade
8 union confederation in Colombia, was formed, over 3,800 trade unionists have been
9 murdered. Presently, of every five (5) trade unionists murdered in the world, over 3 are
10 Colombian. This case, brought under the Alien Tort Claims Act, RICO and state tort law,
11 is brought to remedy and prevent the violent persecution of trade unionists at various
12 locations of one particular company doing business in Colombia -- Coca Cola. This
13 campaign of terror against trade unionists in Colombia and at Coca Cola in particular is
14 ongoing. For example, on June 21, 2001, at a Coca-Cola bottling plant in Monertia, in
15 the Cordoba Province of Colombia, Oscar Dario Soto Polo an employee at this operation,
16 and a member of the Executive Committee of the CUT, was gunned down in the street as
17 he was accompanying his youngest daughter to her house. Sen. Oscar Soto was engaged
18 in negotiations with Coca Cola at the time over union proposals to provide security to
19 trade unionists under threat.

20
21 **II. NATURE OF THE ACTION**

22 2. Plaintiff SINALTRAINAL is a Colombian trade union and a member of
23 the CUT. SINALTRAINAL represents workers at a number of beverage and food
24 companies in Colombia, including several Coca-Cola bottling plants throughout
25 Colombia. SINALTRAINAL (hereinafter referred to as the "Union") has been decimated
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1 by the intimidation, kidnap, detention, torture and assassination of numerous of its leaders
2 by paramilitary forces working as agents of corporate concerns, including Defendants, in
3 Colombia. Plaintiff Union brings this Complaint for equitable relief and damages to
4 remedy the injury to itself caused by the wrongful conduct of the Defendants Coca-Cola
5 Company (hereinafter referred to as “Coke”); Coca-Cola de Colombia, S.A. (hereinafter
6 referred to as “Coke Colombia”); Panamerican Beverages, Inc., Panamco, LLC
7 (collectively referred to herein as "Panamco"); Panamco Industrial de Gaseosas, S.A.
8 a/k/a Panamco Colombia, S.A. (hereinafter referred to as “Panamco Colombia”); Richard
9 I. Kirby, Richard Kirby Keilland and Bebidas y Alimentos de Uraba, S.A. (hereinafter
10 referred to as “Bebidas y Alimentos”).
11

12 3. Plaintiff Estate of Isidro Segundo Gil ("Plaintiff Estate") represents the
13 estate of Isidro Segundo Gil who was murdered by paramilitary forces inside the Carepa
14 plant of Defendant Bebidas y Alimentos. Plaintiff Estate brings this Complaint against
15 Defendants Coke, Coke Colombia, Bebidas y Alimentos, Richard I. Kirby and Richard
16 Kirby Keilland for damages to remedy the wrongful death of Isidro Segundo Gil which
17 was proximately caused by the wrongful conduct of these Defendants.
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19 4. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez, José Domingo Flores,
20 Jorge Humberto Leal and Juan Carlos Galvis bring this Complaint against Defendants
21 Coke, Coke Colombia, Panamco and Panamco Colombia for equitable relief and for
22 damages to remedy the injury to their persons caused by the wrongful conduct of these
23 Defendants.
24

25 5. The claims in this case arise from Defendants’ wrongful actions in
26 connection with their production, bottling and distribution of Coke products in Colombia.
27 With respect to their business operations in Colombia, the Defendants hired, contracted
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1 with or otherwise directed paramilitary security forces that utilized extreme violence and
2 murdered, tortured, unlawfully detained or otherwise silenced trade union leaders of the
3 Union representing workers at Defendants' facilities. The individual Plaintiffs have been
4 subjected to serious human rights abuses, including murder, extrajudicial killing,
5 kidnapping, unlawful detention, and torture in violation of the Alien Tort Claims Act
6 (ATCA), 28 U.S.C. §1350, the Torture Victims Protection Act (TVPA), international
7 human rights law, and the common tort law of the state of Florida. Further, Defendants,
8 their alter egos and/or their agents engaged in a conspiracy to cause physical and mental
9 harm to Plaintiffs in violation of the Racketeer Influenced and Corrupt Organizations Act
10 (RICO), 18 U.S.C. § 1961 *et seq.*

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12 6. Plaintiffs do not have access to an independent or functioning legal system
13 within Colombia, a country which is not governed by a rule of law. Further, as has been
14 well-documented in credible human rights reports by the U.S. Department of State,
15 Human Rights Watch and Amnesty International, Plaintiffs would certainly face violent
16 retaliation if they were to try to bring these claims in Colombia. Finally, the justice
17 system in Colombia has utterly failed to bring the perpetrators of anti-union violence to
18 justice under the laws of Colombia. Indeed, not one perpetrator has been successfully
19 prosecuted for any of the thousands of cases of trade union assassination which have
20 taken place since 1986.

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22 **III. JURISDICTION AND VENUE**

23 7. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331,
24 the ATCA and the TVPA, 28 U.S.C. §1350, for the alleged violations of international
25 human rights law. Federal question jurisdiction is further based on violations of RICO,
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1 18 U.S.C. § 1961 *et seq.* Supplemental jurisdiction exists over the state law causes of
2 action pursuant to 28 U.S.C. § 1367.

3
4 8. Venue properly lies in this Judicial District pursuant to 28 U.S.C.
5 §1391(b) and (c).

6 **IV. PARTIES**

7 **Plaintiffs**

8 9. Plaintiff SINALTRAINAL is a Colombian trade union that represents
9 workers in the food and beverage industry in various locations in Colombia, including
10 several Coke bottling plants operated by Defendants Panamco Colombia and Bebidas y
11 Alimentos. SINALTRAINAL has had numerous members and leaders assassinated and
12 tortured by paramilitary forces. Based on the allegations herein, this murder and torture
13 has been perpetrated by paramilitary units that were acting as agents for one or more of
14 the Defendants. SINALTRAINAL brings this action for injunctive relief to stop any
15 further murder or torture of its leaders by the agents of Defendants. In addition,
16 SINALTRAINAL seeks money damages to recover funds spent to protect its members
17 and leaders who have received threats of death from the agents of Defendants, and funds
18 provided for medical care, safe houses, and living expenses for members and leaders who
19 have received threats of death from the agents of Defendants.

20
21 10. Plaintiff Estate of Isidro Gil seeks damages on behalf of the estate of Isidro
22 Gil, a citizen and resident of Colombia and local Union officer at Bebidas y Alimentos,
23 who was murdered by agents for Defendants Richard I. Kirby and Richard Kirby
24 Keilland, acting through their alter ego and/or agent Defendant Bebidas y Alimentos.

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26 11. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez and José Domingo Flores
27 are citizens of Colombia and residents of Bucaramanga, Colombia. They bring this
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1 action for equitable relief and for damages to remedy the injuries to their persons caused
2 by the wrongful conduct of Defendants Panamco and Panamco Colombia in having them
3 arbitrarily and wrongfully detained in prison for a prolonged period.

4
5 12. Plaintiff Jorge Humberto Leal is a citizen of Colombia and a resident of
6 Cúcata, Colombia. He brings this action for equitable relief and for damages to remedy
7 the injuries to his person caused by the wrongful conduct of Defendants Panamco and
8 Panamco Colombia who had him kidnapped, tortured, and threatened with death by
9 paramilitaries.

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11 13. Plaintiff Juan Carlos Galvis is a citizen of Colombia and resident of
12 Barrancabermeja, Colombia. He brings this action for equitable relief and for damages
13 to remedy the injuries to his person caused by the wrongful conduct of Defendants
14 Panamco and Panamco Colombia who have placed him at risk of imminent harm,
15 including loss of life, and caused him to be subjected to torture.

16
17 **Defendants**

18 14. Defendant Coke, a for-profit corporation incorporated in Delaware, is the
19 world's largest manufacturer, distributor, and marketer of soft drinks in the world. Its
20 principal place of business is located at One Coca-Cola Plaza, Atlanta, Georgia 30313.
21 Coke has offices, production and marketing facilities, and bottling plants throughout the
22 United States and the world, including the Southern District of Florida.

23
24 15. Defendant Coke Colombia is a wholly-owned subsidiary of Defendant
25 Coke and it manufactures soft drink bases, concentrates, syrups, powders and mixes for
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1 sale and distribution within Colombia. Coke Colombia also markets the Coke brand
2 name, manages quality control, and coordinates relations between Coke and the bottlers
3 and distributors of Coke within Colombia. Coke Colombia's principal place of business
4 within Colombia is Calle 71 A #5-30, Piso 7 al 11, Bogota D.C., Colombia. Defendant
5 Coke Colombia is under the management, control and direction of Defendant Coke to the
6 extent that its separateness is illusory. Coke Colombia was created by Defendant Coke
7 and exists for the sole purpose of selling, marketing and distributing Coke products
8 throughout Colombia for the benefit of Defendant Coke. In essence, Coke Colombia is
9 merely the sales and marketing office for Defendant Coke in Colombia.

10
11 16. Defendant Panamerican Beverages, Inc. is a Delaware Corporation. Its
12 stock is publicly traded on the New York stock exchange. Panamerican Beverages, Inc
13 has its headquarters and its principle place of business at 701 Waterford Way, Miami,
14 Florida 33126. It operates its bottling plants and other activities on behalf of and for the
15 benefit of its parent, Defendant Coke, through its own wholly-owned subsidiary,
16 Panamco, L.L.C., which also has its headquarters and principle place of business at 701
17 Waterford Way, Miami, Florida 33126. Defendants Panamerican Beverages, Inc and
18 Panamco L.L.C. will be collectively referred to herein as "Panamco." Panamco is the
19 largest bottler in Latin America, operating in Brazil, Colombia, Costa Rica, Guatemala,
20 Mexico, Nicaragua, and Venezuela. Panamco maintains offices and bottling facilities in
21 all of the countries where it has operations. Panamco exists solely and exclusively to
22 serve as a bottler and distributor for Defendant Coke in Latin America and possesses the
23 exclusive right to produce and distribute Coke soft drink products in Colombia.

24 According to Defendant Coke, it designated Panamco as an "anchor bottler" in 1995,
25 making Panamco one of Coca-Cola's strategic partners in the Coca-Cola bottling system.
26 In the words of Defendant Coke in its Annual Report, an "anchor bottler" such as

1 Panamco is "strongly committed to the strategic goals of the Company and to furthering
2 the interests of our worldwide production, distribution and marketing systems."
3

4 17. Defendant Panamco Colombia is a wholly-owned subsidiary of Defendant
5 Panamco. In turn, Panamco Colombia wholly owns and controls 17 bottling plants in
6 Colombia in which it bottles Coke products and from which it then distributes these
7 products within Colombia. Defendant Panamco Colombia exists solely and exclusively
8 to bottle and distribute products for Defendant Coke and Defendants Panamco within
9 Colombia through its 17 bottling plants, including plants in Barrancabermeja,
10 Bucaramanga and Cúcata (collectively known as "Embotelladora de Santander, S.A.")
11 and a plant in Monertia (known as "Embotelladora Roman, S.A."). Panamco Colombia
12 and its 17 bottling plants are under the management control and direction of Defendant
13 Panamco to such an extent that their separateness is illusory.
14

15 18. Defendant Richard I. Kirby resides at 881 Ocean Drive, Unit 27-B, Key
16 Biscayne, Florida, 33149. From this location he manages and directs the operations of
17 numerous businesses, including Defendant Bebidas y Alimentos. Defendant Kirby is the
18 principal owner of Defendant Bebidas y Alimentos, and he personally manages, controls
19 and directs its operations in Colombia from his residence at 881 Ocean Drive, Key
20 Biscayne, Florida, 33149. Defendant Kirby also manages, controls and directs these
21 operations through his family, including his son, Defendant Richard Kirby Keilland, and
22 Peggy Ann Keilland. Defendant Richard Kirby Keilland resides both at 881 Ocean Drive,
23 Unit 27-B, Key Biscayne, Florida 33149 and in Colombia. Richard Kirby Keilland
24 operates as the on-site director of Defendant Bebidas y Alimentos in Colombia.
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1 19. Defendant Bebidas y Alimentos is a Coke bottling plant in Carepa,
2 Colombia in the department of Uraba where some of the events alleged herein occurred.
3 As demonstrated by the letterhead of Bebidas y Alimentos, a copy of which is attached
4 hereto as Exhibit A, Bebidas y Alimentos holds itself out as a Coca Cola company and
5 places the "Coca Cola" trademark above its own name on its letterhead with the express
6 permission of Defendant Coke. Defendant Bebidas y Alimentos is a closely held
7 company owned by Defendant Richard I. Kirby. Defendant Kirby personally manages,
8 controls and directs the operations of Defendant Bebidas y Alimentos from his residence
9 at 881 Ocean Drive, Key Biscayne, Florida, 33149. Defendant Kirby also manages,
10 controls and directs these operations through his family, including his son, Defendant
11 Richard Kirby Keilland, and Peggy Ann Keilland.

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13 **IV. THE INTERRELATIONSHIPS BETWEEN THE DEFENDANT**
14 **COMPANIES AND COKE'S ULTIMATE CONTROL OVER AND LIABILITY**
15 **FOR THE ACTS OF ITS CO-DEFENDANTS**

16 20. Defendant Coke, which generates the vast majority of its operating income
17 outside the United States, controls a highly organized network of bottling facilities
18 throughout the world in order to ensure uniform quality and efficient distribution of Coke
19 products. Any bottler that is awarded a contract to bottle and distribute Coke is required
20 to conform absolutely to Coke's requirements as to product quality, presentation, and
21 production. According to the 10-K Report filed by Defendant Coke on December 31,
22 2000, and other public sources, the specific details of Coke's control over any particular
23 bottler are governed by a "Bottler's Agreement." These Bottler's Agreements provide
24 Defendant Coke with the flexibility to assert the necessary degree of control and
25 supervision over a particular bottler, depending upon the circumstances. As is indicated in
26 the paragraphs below, Defendant Coke, through its specific Bottler's Agreements,
27 exercises a particularly high level of control and supervision over Defendants Panamco
28 and Bebidas y Alimentos. Further, as illustrated by a similar situation in Guatemala in the

1 early 1980's, Defendant Coke specifically has control over whether a bottler can continue
2 to do business in Coke's name if the bottler engages in violence against trade union
3 leaders. Based on its Bottler Agreement, Coke forced an independently owned franchisee
4 in Guatemala to sell its bottling business to a third party following the murder of three
5 trade union leaders and an attempted murder of a fourth at the bottling plant. Coke's
6 action was the result of a massive public campaign against the company, but its action,
7 however motivated, shows specifically that Coke has the control to prevent and/or
8 remedy violence against workers and trade union leaders in its foreign bottling plants,
9 including the plants at issue in this case.

10
11 21. Defendant Coke Colombia is a wholly-owned subsidiary of Defendant
12 Coke and is under the complete management control of Defendant Coke. All major
13 decisions concerning the production, distribution, marketing and presentation of Coke
14 products are made by Defendant Coke and are communicated as directives to wholly-
15 owned subsidiaries such as Coke Colombia. These wholly-owned subsidiaries are
16 responsible for implementing and enforcing Defendant Coke's policies and practices
17 within the specific countries in which they operate, and Defendant Coke Colombia
18 performs this function within Colombia. Defendant Coke Colombia is an alter ego of
19 Defendant Coke. Alternatively, Defendant Coke Colombia was acting as the agent of
20 Defendant Coke, and was acting within the scope of its agency relationship with respect
21 to its participation in the wrongful acts alleged herein.

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23 22. Defendant Panamco Colombia is a wholly-owned subsidiary of Defendant
24 Panamco and is under the complete management control of Defendant Panamco.
25 According to its Year 2000 Report, Panamco "conducts its operations through
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1 subsidiaries which are controlled, but in some cases not wholly owned, by Panamco.” All
2 major decisions concerning the production, distribution, marketing and presentation of
3 Coke products by Panamco Colombia are made by Defendant Panamco. Defendant
4 Panamco Colombia does not have any independent authority to make or implement
5 decisions regarding its business practices or direction. Defendant Panamco Colombia
6 operates in Colombia through its 17 bottling plants, including plants in Barrancabermeja,
7 Bucaramanga and Cúcata (collectively known as "Embotelladora de Santander, S.A.")
8 and a plant in Monertia (known as "Embotelladora Roman, S.A."). Defendant Panamco
9 Colombia, including its wholly-owned and controlled bottling plants at the aforesaid
10 locations, is an alter ego of Defendant Panamco because it is under the complete control
11 of Defendant Panamco. Alternatively, Defendant Panamco Colombia was acting as the
12 agent of Defendant Panamco, and was acting within the scope of its agency relationship
13 with respect to its participation in the wrongful acts alleged herein.

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15 23. Defendant Bebidas y Alimentos is a closely held company owned by
16 Defendant Richard I. Kirby and other members of his family. Defendant Kirby, along
17 with his son Defendant Richard Kirby Keilland, make all of the day-to-day decisions
18 regarding the operation of Defendant Bebidas y Alimentos, and profits from the company
19 are transferred to one or more bank accounts held by Defendant Kirby in Miami and other
20 locations outside of Colombia. Management decisions made by Defendants Richard I.
21 Kirby and Richard Kirby Keilland are implemented by members of Defendant Kirby’s
22 family who work for Bebidas y Alimentos. The complete control over and ownership of
23 Bebidas y Alimentos by Defendants Richard I. Kirby and Defendant Richard Kirby
24 Keilland makes Bebidas y Alimentos their alter ego. Alternatively, Defendant Bebidas y
25 Alimentos was acting as the agent of Defendants Richard I. Kirby and Richard Kirby
26 Keilland, and was acting within the scope of its agency relationship with respect to its
27 participation in the wrongful acts alleged herein.

1 24. Defendant Coke, acting through its alter ego and/or agent Coke Colombia,
2 supplies Defendant Panamco (acting through its alter ego and/or agent, Panamco
3 Colombia) and Defendants Richard I. Kirby and Richard Kirby Keilland (acting through
4 their alter ego and/or agent Defendant Bebidas y Alimentos) with the Coke products to be
5 bottled and distributed in Colombia. In addition, Defendant Coke, acting through its alter
6 ego and/or agent Coke Colombia, monitors and controls all aspects of the compliance of
7 Defendant Panamco (acting through its alter ego and/or agent, Panamco Colombia) and
8 Defendants Richard I. Kirby and Richard Kirby Keilland (acting through their alter ego
9 and/or agent Defendant Bebidas y Alimentos) with their Bottler's Agreements with Coke,
10 including Defendant Coke's requirements for product quality, presentation, marketing,
11 and bottling. Defendant Coke's control through the specific Bottler's Agreements
12 extends to the smallest details of production. For example, according to the 10-K Report
13 filed with the Securities and Exchange Commission on December 31, 2000 by Defendant
14 Panamco, "[Coke] must also approve the types of container used in bottling and controls
15 the design and decoration of the bottles, boxes cartons, stamps, and other materials used
16 in production. The [Bottler's] agreements grant [Coke] the right to inspect the products."
17 In addition, Coke, through the Bottler's Agreements, imposes standards concerning
18 employee qualifications and appearance and standards for the appearance and condition
19 of transport trucks. Further, Defendant Coke also provides direction on issues of
20 environmental preservation and compliance with a code of conduct governing the
21 treatment of employees. Coke also monitors the labor relations practices of its
22 subsidiaries and bottlers, and requires that subsidiaries and bottlers refrain from activities
23 that will damage Coke's brand-name in the market place. In addition, executives from
24 Defendant Coke recently met in Colombia with executives of Defendant Panamco
25 Colombia and told the latter that they must downsize in order to cut costs.

1 25. Among other methods of control over Defendant Panamco (acting through
2 its alter ego and/or agent, Panamco Colombia) and Defendants Richard I. Kirby and
3 Richard Kirby Keilland (acting through their alter ego and/or agent Defendant Bebidas y
4 Alimentos), Defendant Coke, acting through its alter ego and/or agent Coke Colombia,
5 maintains the right to terminate or suspend the Bottler's Agreements for noncompliance
6 with their terms and conditions. The Bottler's Agreements also provide Coke with the
7 right to require that Defendant Panamco (acting through its alter ego and/or agent,
8 Panamco Colombia) and Defendants Richard I. Kirby and Richard Kirby Keilland (acting
9 through their alter ego and/or agent Defendant Bebidas y Alimentos) withdraw any
10 products from the market that do not conform to Coke's specific requirements in the
11 Bottler's Agreements. Further, Defendant Coke maintains and exercises the right to
12 conduct frequent inspections of compliance with the specific terms of the Bottler's
13 Agreements with Defendant Panamco (acting through its alter ego and/or agent, Panamco
14 Colombia) and Defendants Richard I. Kirby and Richard Kirby Keilland (acting through
15 their alter ego and/or agent Defendant Bebidas y Alimentos). Defendant Coke also
16 monitors the day-to-day compliance of Defendant Panamco (acting through its alter ego
17 and/or agent, Panamco Colombia) and Defendants Richard I. Kirby and Richard Kirby
18 Keilland (acting through their alter ego and/or agent Defendant Bebidas y Alimentos)
19 with their Bottler's Agreements by requiring frequent and comprehensive reports to be
20 prepared and submitted to Defendant Coke that cover all aspects of the requirements of
21 the specific Bottler's Agreements.

22
23 26. In addition to the overall control of its system of bottling and distribution
24 that Coke maintains, it has direct ownership in 75% of its bottlers, including Defendant
25 Panamco, of which Defendant Coke possesses a controlling, 24% interest. This additional
26 leverage ensures Defendant Coke of both control over its bottlers and efficient
27 compliance with its standards and requirements. Coke holds two seats on the Board of
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1 Directors of Panamco and exercises management control through its presence on the
2 Board. According to a joint Coke and Panamco press release issued on November 2,
3 1995, Coke elevated Panamco to the status of “Anchor Bottler.” This designation was
4 accompanied by Coke’s increased participation in and ownership of Panamco. In
5 addition to holding two seats on the Board, Coke’s increased acquisition gives it “certain
6 corporate governance rights.” In addition, Coke acquired new “Series C preferred stock
7 which carries rights to approve certain major corporate actions.” This ownership and
8 governance, coupled with the level of control provided by the specific Bottler’s
9 Agreement between Coke and Panamco, makes Panamco the alter ego of Coke, with its
10 regular operations and business decisions subject to the direction and approval of Coke.
11 Alternatively, Defendant Panamco was acting as the agent of Defendant Coke and was
12 acting within the scope of its agency relationship with respect to its participation in the
13 wrongful acts alleged herein

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15 27. Defendants Richard I. Kirby and Richard Kirby Keilland, acting through
16 their alter ego and/or agent Defendant Bebidas y Alimentos, in addition to being subject
17 to the specific and comprehensive requirements of their Bottler’s Agreement with Coke,
18 are subject to the ultimate control of Coke because the business exists solely at the
19 pleasure of Coke. As an example of the level of control that Defendant Coke exercises,
20 Defendants Richard I. Kirby and Richard Kirby Keilland wanted to sell Bebidas y
21 Alimentos. Defendants Richard I. Kirby and Richard Kirby Keilland requested
22 permission of Defendant Coke to sell the business and its assets. The permission was
23 denied by Defendant Coke. This ultimate ownership control, coupled with the level of
24 control provided by the specific Bottler’s Agreement between Coke and Defendants
25 Richard I. Kirby and Richard Kirby Keilland, acting through their alter ego and/or agent

1 Defendant Bebidas y Alimentos, makes Defendants Richard I. Kirby, Richard Kirby
2 Keilland and Bebidas y Alimentos the alter egos of Coke, with the regular operations and
3 business decisions subject to the direction and approval of Coke. Alternatively,
4 Defendants Richard I. Kirby and Richard Kirby Keilland, acting through their alter ego
5 and/or agent Defendant Bebidas y Alimentos, were acting as the agent of Defendant Coke
6 and were acting within the scope of their agency relationship with respect to their
7 participation in the wrongful acts alleged herein.

8
9 28. Defendant Coke ultimately has complete control over Defendants
10 Panamco and Bebidas y Alimentos because these companies exist solely to bottle and
11 distribute Coke products. If there was ever any failure to follow the directives and
12 submit to the control of defendant Coke, Defendants Panamco and Bebidas y Alimentos
13 would lose their bottling concession and be out of business.

14
15 29. Defendant Coke is jointly and severally liable for all of the tortious actions
16 committed when its alter ego and/or agent, Coke Colombia, acts in concert with any other
17 person or entity in furtherance of Coke's business interests and activities. All of the
18 wrongful acts alleged herein were committed by individuals who were acting within the
19 course and scope of a business relationship with Coke Colombia with the advance
20 knowledge, acquiescence or subsequent ratification of Coke Colombia.

21
22 30. Defendant Coke, acting by and through its alter ego and/or agents, Coke
23 Colombia, Panamco, Richard I. Kirby and Richard Kirby Keilland, hired, contracted with,
24 or otherwise retained as agents the individuals who committed the violent acts against
25 Plaintiffs, as described herein. The individuals who committed the violent acts against
26 Plaintiffs were acting as agents of Coke Colombia, Panamco, Richard I. Kirby and/or
27 Richard Kirby Keilland, and committed the tortious actions described in this Complaint

1 in connection with and in furtherance of Coke's business interests and activities. In
2 committing these tortious actions, the individual agents were acting within the course and
3 scope of the agency relationship, with the advance knowledge, acquiescence or
4 subsequent ratification of Defendants Coke Colombia, Panamco, Richard I. Kirby and/or
5 Richard Kirby Keilland. Defendant Coke is therefore vicariously liable for all of the
6 tortious actions committed by its agents done in connection with and in furtherance of its
7 business interests and activities in Colombia as described herein.

8
9 31. With respect to all of the causes of action described below, the harm to
10 Plaintiffs was either caused directly by the acts or omissions of Defendant Coke or was
11 caused by the acts or omissions of Defendant Coke's alter egos and/or agents -- Coke
12 Colombia, Panamco or Richard I. Kirby or Richard Kirby Keilland, making Defendant
13 Coke jointly and severally liable, or making Defendant Coke vicariously liable.

14
15 32. Regardless of whether Defendant Panamco is found to be an alter ego or
16 agent of Defendant Coke, Defendant Panamco is liable for any and all wrongful acts done
17 by or on behalf of its alter ego and/or agent Panamco Colombia that resulted in harm to
18 any of the Plaintiffs. Further, Defendant Panamco is vicariously liable for any wrongful
19 acts alleged herein that were committed by any of its agents or employees, or any agent or
20 employee of its alter ego and/or agent, Panamco Colombia, that resulted in harm to any
21 of the Plaintiffs.

22
23 33. Regardless of whether Defendants Richard I. Kirby or Richard Kirby
24 Keilland are found to be an alter ego or agent of Defendant Coke, they are liable for any
25 and all acts done by or on behalf of their alter ego and/or agent Defendant Bebidas y
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1 Alimentos that resulted in harm to any of the Plaintiffs. Further, Defendants Richard I.
2 Kirby and Richard Kirby Keilland are vicariously liable for any wrongful acts alleged
3 herein that were committed by any of their agents or employees, or any agent or employee
4 of their alter ego and/or agent, Defendant Bebidas y Alimentos, that resulted in harm to
5 any of the Plaintiffs.

6
7
8
9 **V. BACKGROUND FACTS CONCERNING VIOLENCE AGAINST TRADE**
10 **UNION LEADERS AND MEMBERS IN Colombia.**

11 34. Colombia is widely known as a country that is torn by a long-standing
12 civil war involving armed leftist groups on the one side and the Colombian military as
13 well as right-wing paramilitaries on the other. It is widely acknowledged that the regular
14 military in Colombia, and the civil government authorities, tolerate the paramilitaries,
15 allow them to operate, and often cooperate, protect and/ or work in concert with them.

16
17 35. Under "Law 48," passed in 1968, the Defense Ministry was authorized to
18 create and provide weapons to civil patrols. It is by this authorization that most of the
19 paramilitaries were created and sustained in Colombia. The current government of
20 Colombia has made some official efforts to curb the powers of paramilitaries, but such
21 groups continue to thrive, often with the ongoing cooperation of the Colombian military.

22
23 36. According to Human Rights Watch, 78% of the murders in Colombia from
24 October 1999 to March 2000 were attributable to the paramilitaries. These and other
25 murders go unpunished by the military. This is largely because of the symbiotic
26 relationship that exists between the regular military and paramilitaries. A large number of
27 the paramilitary units were created by active, reserve or retired military personnel. In

1 addition, police officers throughout the country are likewise aligned with the
2 paramilitaries and refuse to take action against known murderers who were acting on
3 behalf of a paramilitary unit.

4
5 37. The Government of Colombia does not officially sanction the murders and
6 other human rights violations committed by the paramilitaries. However, there have been
7 few successful prosecutions of paramilitaries. Further, the Government of Colombia has
8 taken little or no action to reign in the participation of military officers in paramilitary
9 activities even though such participation is a violation of the Government's official policy
10 towards paramilitary activity.

11
12 38. The paramilitaries in Colombia are particularly well-known for murdering,
13 abducting and torturing trade union leaders who they view as being subversives. The
14 paramilitaries' characterization of trade unionists as subversives is in accord with the view
15 of the Colombian government which, in Decree 180, has designated trade union leaders
16 as "terrorists." This is also in accord with the U.S. government which is funding the
17 Colombian military in the amount of over \$1 billion, making Colombia the 3rd largest
18 recipient of U.S. military aid in the world. The U.S. government has trained over 10,000
19 of Colombia's military troops at the School of the Americas ("SOA") in Fort Benning,
20 Georgia. And, SOA training manuals which the Pentagon was forced to turn over in 1996
21 show that the U.S. encouraged these troops to engage in torture and murder of those who,
22 inter alia, do "union organizing and recruiting"; pass out "propaganda in favor of the
23 interests of the workers"; and "sympathize with demonstrators or strikes." As a
24 consequence of the official vilification of trade unionists by the Colombian and U.S.
25 governments as well as corporations operating in Colombia, Colombia has lead the world

1 in the number of murders of trade unionists for the past 10 years. More than 50 trade
2 union leaders have been killed so far this year, 128 were killed in the year 2000, and in
3 the last 10 years, over 1,500 have been murdered. A much larger number have been
4 subjected to torture, including regular threats of death, unlawful detention, and
5 kidnapping.

6
7 39. There is comprehensive public reporting on the systematic human rights
8 violations occurring in Colombia by the paramilitaries, as well as on the specific targeting
9 for murder and other human rights violations of trade union leaders and members. At the
10 time of the events alleged herein, Defendants knew, or were substantially certain, that
11 they were doing business in an environment in Colombia where their workers who were
12 members of trade unions were at great risk of being murdered, tortured, kidnapped or
13 unlawfully detained by paramilitaries working for or on behalf of Defendants' alter egos
14 and/or agents in Colombia.

15 16 **VI. SPECIFIC INJURIES AND HARM SUFFERED BY THE PLAINTIFFS**

17 **A. The Events at Bebidas y Alimentos in Carepa**

18 40. In April of 1994, paramilitary forces murdered Jose Eleazar Manco David
19 and Luis Enrique Gomez Granado, both of whom were workers at Bebidas y Alimentos
20 and members of SINALTRAINAL.

21
22 41. The paramilitary forces in Carepa then began to intimate other
23 SINALTRAINAL members as well as the local leadership of SINALTRAINAL, telling
24 them, upon threat of physical harm, to resign from the union or to flee Carepa altogether.
25 The management of Bebidas y Alimentos permitted these paramilitary forces to appear
26 within the plant to deliver this message to Union members and leaders. A number of
27 Union members began leaving town as a result. And, in April of 1995, following more
28

1 death threats, every member of the executive board of the SINALTRAINAL local
2 representing the Bebidas y Alimentos workers fled Carepa in fear for their lives.

3
4 42. In June of 1995, the SINALTRAINAL local union elected a new executive
5 board to replace the one that had fled. Isidro Gil was elected as a member of this new
6 board as was an individual named Dorlahome Tuborquia. Shortly thereafter, in July of
7 1995, Bebidas y Alimentos began to hire members of the paramilitaries who had
8 threatened the first Union executive board into fleeing. These members of the
9 paramilitaries were hired both into the sales and production departments.

10
11 43. In September of 1995, Ariosto Milan Mosquera took over as the manager
12 of the Bebidas y Alimentos plant in Carepa. Mosquera proceeded to discharge
13 Dorlahome Tuborquia. SINALTRAINAL challenged this discharge through the legal
14 process, and a judge, finding the discharge to be unlawful, ordered Bebidas y Alimentos
15 to rehire Tuborquia. He returned to work at Bebidas y Alimentos in December of 1995.

16
17 44. Shortly after the return of Tuborquia, Bebidas Y Alimentos Manager
18 Mosquera began threatening to destroy the union. Specifically, Mosquera announced in
19 public that he had given an order to the paramilitaries to carry out the task of destroying
20 the union. In addition, Mosquera, in the presence of paramilitary forces, told a member
21 of the local SINALTRAINAL executive board that he would "sweep away the union." In
22 keeping with these threats of Mosquera, the paramilitaries began to renew threats against
23 SINALTRAINAL members, including Dorlahome Tuborquia. Specifically, the
24 paramilitaries threatened to kill Tuborquia. In response to these threats, Tuborquia fled

1 Carepa and went into hiding. The paramilitaries then seized Tuboquia's home to use for
2 their operations.

3
4 45. Throughout 1996, SINALTRAINAL members witnessed Bebidas y
5 Alimentos Manager Mosquera socializing with members of the paramilitary forces and
6 providing the paramilitaries with Coke products for their parties.

7
8 46. Meanwhile, Bebidas y Alimentos and SINALTRAINAL began negotiating
9 a new labor agreement at the outset of 1996. These negotiations included
10 SINALTRAINAL's proposals for increased security for threatened trade unionists and a
11 cessation of Manager Mosquera's threats against the union as well as his collusion with
12 the paramilitaries. Defendant Richard Kirby Keilland personally participated in these
13 negotiations on behalf of Bebidas y Alimentos and he flatly refused the union's requests
14 in this regard.

15
16 47. In response to the aforesaid events, SINALTRAINAL began a national
17 campaign in August of 1996 to call upon Bebidas y Alimentos, as well as Panamco
18 Colombia and Coca Cola Colombia, to protect the SINALTRAINAL leadership and
19 members in Carepa from what it feared was the imminent threat of attack by the
20 paramilitaries.

21
22 48. By letter to Bebidas y Alimentos Manager Aristo Milan Mosquera dated
23 September 27, 1996, national leaders of SINALTRAINAL accused Mosquera of working
24 with the paramilitaries to destroy the union, and they urged that Bebidas y Alimentos
25 ensure the security of the workers in the Carepa plant in the face of the paramilitary
26 threats. Copies of this letter were contemporaneously sent to Coca Cola Colombia as
27

1 well as Panamco Colombia. A copy of this letter is attached hereto as Exhibit B. In
2 response to this letter, Mosquera told the union to retract its accusations.

3
4 49. On or around November 18, 1996, SINALTRAINAL presented a written
5 labor contract proposal to Defendant Bebidas y Alimentos. This proposal included a
6 provision entitled, "Seguro de Vida" ("Assurance of Life"), which would have required
7 Bebidas y Alimentos to provide heightened security in the plant to protect workers from
8 assault by paramilitary forces. Manager Mosquera brought this labor contract proposal to
9 Bogota to discuss it with Defendant Richard Kirby Keilland.

10
11 50. On December 5, 1996, at 9:00 in the morning, two paramilitaries
12 approached Isidro Gil, who was then involved in negotiations on behalf of the union with
13 Bebidas y Alimentos, as he stood in the entrance of the Bebidas y Alimentos plant. They
14 asked him if he was in fact Isidro Gil. Isidro Gil responded, "what for?" The
15 paramilitaries stated that they needed to go into the plant to talk to someone inside. Isidro
16 Gil proceeded to open the door and the two paramilitaries then shot him to death inside
17 the plant. That same night, these same paramilitaries went to the local union hall of
18 SINALTRAINAL and started a fire therein.

19
20 51. On December 6, 1996, paramilitaries approached several more members of
21 the local SINALTRAINAL executive board. These paramilitaries told the union board
22 members that they killed Isidro Gil and burned the union office and that they would kill
23 the remaining board members if they did not leave town. The paramilitaries also
24 explained that they would have a meeting with the workers at the Bebidas y Alimentos

1 plant the next day to tell them that they would have to resign from the union or face being
2 killed.

3
4 52. On December 7, 1996 at 8:00 a.m., the paramilitaries appeared at the
5 Bebidas y Alimentos plant as threatened. They assembled the workers and told them that
6 Bebidas y Alimentos did not want the union at the plant. The paramilitaries explained
7 that the workers had the option of either resigning from the union or leaving Carepa
8 altogether lest they be killed. The paramilitaries then proceeded to direct the workers into
9 the manager's office to sign resignation forms which were prepared by Defendant
10 Bebidas y Alimentos itself. As a result of the threats of the paramilitaries, workers
11 resigned en masse from SINALTRAINAL. A copy of one of the resignation forms signed
12 by a Bebidas y Alimentos worker is attached hereto as Exhibit C.

13
14 53. In fear for their life, fourteen SINALTRAINAL members, including the
15 remainder of the local SINALTRAINAL executive board, fled Carepa after this meeting
16 on December 7, 1996. As a result of the flight of these individuals and the resignation of
17 the other workers from the union, the local SINALTRAINAL union in Carepa was
18 destroyed. This union has never returned to Carepa.

19
20 54. The SINALTRAINAL members who fled Carepa on December 7, 1996
21 continue to fear for their life and continue to remain in hiding, moving frequently from
22 house to house. Plaintiff SINALTRAINAL, as it does for all such displaced members,
23 helps provide support to these individuals.

24
25 55. After the murder of Isidro Gil, the paramilitaries presented themselves at
26 the Bebidas y Alimentos plant with the medical cards of workers which they had taken
27 from the local union office before they burned it. Bebidas y Alimentos paid the

1 paramilitaries remuneration in the amount owed under these cards. The paramilitaries
2 repaired the union office which they had burned and took it over for the purpose of
3 storing their weapons.

4
5 56. On December 26, 1996, the paramilitaries killed another Bebidas y
6 Alimentos worker, José Herrera. The same paramilitaries later killed the wife of Isidro
7 Gil in 2000, leaving their two children without parents.

8
9 57. In 1997, Peggy Ann Keilland, a close relative of Defendants Richard I.
10 Kirby and Richard Kirby Keilland, took over as the Manager of the Bebidas y Alimentos
11 plant in Carepa. Very shortly after taking over, Ms. Keilland worked with the Chief of
12 the Colombian military in the zone to ensure that the paramilitaries were kept out of the
13 plant.

14
15 58. Also in 1997, Defendants Richard I. Kirby and Richard Kirby Keilland
16 asked Defendant Coke if they could sell the Bebidas y Alimentos business along with the
17 Carepa plant. Defendant Coke denied them this request and these Defendants still
18 maintain ownership of the Carepa operations, under the direction and control of
19 Defendants Coke and Coke Colombia.

20
21 **B. The Events At Panamco Colombia (Bucaramanga)**

22 59. The Panamco Colombia plant in Bucaramanga is known as
23 "Embotelladora de Santander, S.A." Prospective employees at all Panamco Colombia
24 sites, such as that in Bucaramanga, are required to fill out an employment application.
25 The only trade mark name on this application is "Coca Cola." Along with the Coke logo

1 is a plant designation which, in type written words reads "Anexo #5 Embotelladors de ___
2 _____." Then, in the blank space is written in hand the specific plant location. In
3 the case of the Bucaramanga site, the word "Santander" is hand-written in this blank.
4 Similarly, the employee badges of those working at the various Panamco Colombia sites,
5 including the Bucaramanga site, include the trade mark "Coca Cola" symbol as well as a
6 plant designation.

7
8 60. For many years, SINALTRAINAL has had a bargaining relationship with
9 Panamco at the Bucamaranga site. In 1992, the Panamco Colombia management at this
10 location began to exhibit antipathy toward SINALTRAINAL. For example, the manager
11 at this plant, Jose Castro, with the intent to undermine support for the union, told workers
12 during 1992 contract negotiations that SINALTRAINAL's labor contract proposal was
13 supported by the "guerillas." Castro also accused the unionists of being "guerillas."

14
15 61. In 1995, Panamco began to renege on its obligations under the labor
16 agreement with SINALTRAINAL. For example, Panamco ceased the contractually-
17 required medical insurance for employees. In response, the local members of
18 SINALTRAINAL went out on a 120-hour strike against Panamco at the Bucaramanga
19 location. This strike was led by the members of the local SINALTRAINAL executive
20 board, including Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez, and José Domingo
21 Flores.

22
23 62. Shortly after this strike, the chief of security for the Bucaramanga plant,
24 Jose Alejo Aponte, told authorities that he found a bomb in the plant, and he accused five
25 members of the local union executive board, including the aforesaid Plaintiffs, of planting
26 the bomb. In response to this allegation, local police entered the plant on March 6, 1996,
27
28

1 and arrested Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez and José Domingo
2 Flores while they were working.

3
4 63. In the process of being arrested, and while in transit to the jail, Plaintiff
5 José Domingo Flores was repeatedly and brutally beaten by police. In addition, police
6 pointed a gun at him, threatening to shoot him.

7
8 64. As the official criminal documents demonstrate, charges against these
9 three individuals, as well as the other two members of the union executive board, were
10 then pressed by "COCA COLA EMBOTELLADORA SANTANDER."

11
12 65. As a result of these charges, the three aforesaid Plaintiffs, who were all
13 married at the time and had at least one child each, were incarcerated in the local
14 Bucaramanga prison for six (6) months. These Plaintiffs were permitted to see their
15 families only once a month during this period and earned no income during this time. In
16 addition, the Plaintiffs and their families were stigmatized as "terrorists" in the
17 community. As a result of this, the wife of Plaintiff Alvaro Gonzalez Perez lost her job.
18 The separation, stigma and income loss placed a great psychological and economic
19 hardship on the Plaintiffs and their families. Plaintiff SINALTRAINAL did provide
20 some financial assistance to the Plaintiffs' families during this time.

21
22 66. While in prison, all of the aforesaid Plaintiffs were confined to filthy and
23 overcrowded cells. This prison provided one (1) shower and two (2) toilets for every 300
24 prisoners. In addition, the prisoners, including Plaintiffs, were forced to pay guards

1 money for, inter alia, using the phone or being permitted to take shelter in the yard from
2 inclement weather.

3
4 67. Plaintiffs Luis Eduardo Garcia and José Domingo Flores were confined to
5 the highest security and toughest section of the prison where the majority of prisoners
6 were paramilitaries. These Plaintiffs had to conform to the rules set by the paramilitaries
7 upon threat of being beaten or killed. These Plaintiffs went out of their way to avoid the
8 shower and toilets as much as possible because every foray there put them at risk of
9 assault.

10
11 68. After being imprisoned for six (6) months upon these charges by "COCA
12 COLA EMBOTELLADORA SANTANDER," Plaintiffs Luis Eduardo Garcia, Alvaro
13 Gonzalez Perez and José Domingo Flores were finally released upon the order of the
14 Regional Prosecutor who found the charges to be completely without basis. To wit, the
15 Prosecutor concluded not only that the Plaintiffs had nothing to do with placing a bomb
16 in the plant as charged, but that there in fact was never a bomb in the plant as the
17 company had claimed.

18
19 69. As it turned out, Defendant Panamco Colombia (d/b/a Embottellador de
20 Santander, S.A.) brought charges against the aforesaid Plaintiffs in retaliation for their
21 trade union activities. Their resulting prolonged unlawful detention and accompanying
22 torture was therefore the result of Panamco Colombia's malicious prosecution.

23
24 70. To this day, the Plaintiffs and their family suffer from the psychological
25 trauma and economic impact, as well as the social stigma, of the aforementioned events.

26
27 **C. The Events At Panamco Colombia (Cúcata)**

1 71. Plaintiff SINALTRAINAL has represented employees at Panamco
2 Colombia's plant in Cúcata (known as Embotelladoras de Santander, S.A.) for a number
3 of years. At all time relevant hereto, Cúcata has been dominated by paramilitary forces
4 which have engaged in summary executions of a number of individuals (many of whom
5 were targeted as a result of their (peaceful) participation in the social change movement).
6 These paramilitary forces have created an explosive and dangerous environment in the
7 city.

8
9 72. Panamco Colombia management in Cúcata began to exhibit antagonism
10 toward SINALTRAINAL in 1997. Specifically, Panamco Colombia management,
11 without any basis, began to publicly accuse local SINALTRAINAL leadership of being
12 dangerous subversives. Given the threat in Cúcata posed by the paramilitaries, such
13 accusations reasonably could be expected to place this leadership in imminent danger.

14
15 73. On the night of January 17, 1998, local SINALTRAINAL Secretary of
16 Cultural Affairs, Rafael Caravajal Peñaranda, an employee of Panamco Colombia, stood
17 outside the Cúcata plant waiting for a ride home. As no ride was forthcoming, he decided
18 to go back into the plant to call for a taxi. For this purpose, Sen. Caravajal entered the
19 plant and was approached by a security guard, Martín Ortega. Caravajal, who exhibited
20 his employee badge, tried to explain to Ortega that he wished to use the phone to call for
21 a taxi and to wait inside the plant until the taxi came. Whereupon, Ortega pulled out a
22 revolver and shot at Caravajal, barely missing him. Carajaval was able to flee the plant
23 without being harmed. This is one of many concrete examples of retaliation suffered by
24 members of SINALTRAINAL at the Coke facility in Cúcata.

1 74. The next day, January 18, the plant security guard, Martín Ortega, visited
2 Carajaval at his house. Ortega begged Carajaval's forgiveness for the aforesaid incident.
3 Ortega explained that he had reacted in fear of Carajaval as a result of the fact that
4 Panamco Colombia management had told him that Carajaval was a "dangerous" and
5 "explosive" person. The same day, Ortega visited the local SINALTRAINAL union hall
6 while the leadership was having a meeting. Ortega repeated his plea for forgiveness and
7 again related that his reaction was the result of his being told by Panamco Colombia
8 management that they feared the union and that the members of the union executive
9 board, Carajaval in particular, were dangerous persons.

10
11 75. Threats against Rafael Carajaval continued. Thus, on July 15, 1999, his
12 wife received a call from an anonymous security guard from the Panamco Colombia plant
13 telling her that Rafael, along with some other union brothers working at Coca Cola, were
14 on the black list of the paramilitaries and that it was necessary for Rafael and his family
15 to leave their neighborhood, a neighborhood where the paramilitaries maintained a
16 particularly strong presence. In response to this call, the Caravajal family did in fact flee
17 their neighborhood, and they have never gone back. Carajaval continues to live in fear
18 for his life.

19
20 76. Plaintiff Jorge Humberto Leal is also an employee at the Panamco
21 Colombia plant in Cúcata and a SINALTRAINAL official. Among his responsibilities
22 for the union was his work on the "claims commission," which hears employee
23 complaints and seeks redress from the employer. On December 13, 1999, at 7:15 a.m., he
24 was in a taxi going to his house. Two armed men in a truck intercepted the taxi and
25 forced Plaintiff Jorge Jorge Humberto Leal into their truck at gunpoint. They took him,
26 blindfolded, and, after a long drive, placed him in a dark room. One of the men asked him
27 questions about his role in the union. The aggressor showed him a copy of a press account
28

1 of his work on the claims commission, and an accompanying dispute with defendant
2 Panamco Colombia, and threatened both him and Rafael Carajaval.

3
4 77. Plaintiff Jorge Humberto Leal was eventually released after being
5 kidnapped, tortured, and unlawfully detained. He was specifically told to refrain from
6 his activities with the union or he would face his tormentors again. He reasonably fears
7 that his life is at great risk. Paramilitary forces have subsequently visited and threatened
8 Jorge Humberto Leal at his home on a number of occasions, including on September 6,
9 2000.

10
11 78. Plaintiff Jorge Humberto Leal lives in constant fear that he will be killed or
12 that he will again be kidnapped, tortured, and unlawfully detained. Defendants Coke,
13 Coke Colombia, Panamco, and Panamco Colombia have failed to take any action to
14 protect Plaintiff Jorge Humberto Leal from the specific death threats that Defendants
15 knew about and that originated from Defendants' actions to use the paramilitaries as
16 agents to oust the local SINALTRAINAL union.

17
18 **D. Events At Panamco Colombia (Barrancabermeja)**

19 79. Plaintiff SINALTRAINAL also represents workers at Panamco
20 Colombia's plant in Barrancabermeja (also known as "Embotelladoras de Santander,
21 S.A."). Plaintiff Juan Carlos Galvis is the President of the local SINALTRAINAL union
22 representing these workers. He is also the treasurer for the local CUT chapter and
23 performs volunteer social work.

1 80. The local management of Panamco Colombia have openly sided with the
2 paramilitaries in the civil war which is intensely manifested in Barrancabermeja. This
3 management has had meetings with paramilitary leaders and has provided refreshments to
4 paramilitary forces when they have demonstrated against the ongoing peace process
5 between the Colombian government and the ELN, one of the two major guerilla groups in
6 Colombia. Without basis, Panamco Colombia has publicly released communications
7 accusing SINALTRAINAL of being an arm of the guerillas. Such an accusation is
8 incredibly provocative and dangerous in Barrancabermeja which is now wholly controlled
9 by paramilitary forces which are presently assassinating people at a rate of about fifty (50)
10 individuals per month. These paramilitary forces are specifically targeting, among others,
11 human rights workers, and union and peasant leaders.

12
13 81. Plaintiff Galvis has personally been receiving death threats from paramilitary
14 forces for the past ten years. In particular, the paramilitaries have threatened him and his
15 wife, both in person, over the phone and in writing, that they will kill him if he does not
16 stop his union activities and leave Coca Cola. Some of these threats have appeared in
17 writing on the walls inside the Panamco Colombia plant. For example, in June of 2000,
18 the words, "Get Out Galvis From Coca Cola, Signed AUC" appeared on the walls of the
19 plant. The AUC is the largest paramilitary force in Colombia. Galvis complained to the
20 regional Panamco Colombia manager about this threat. Other such threats by
21 paramilitary forces have appeared on the plant walls.

22
23 82. Plaintiff Galvis is presently in imminent danger of being killed by the
24 paramilitaries. And indeed, the Human Rights Division of the Colombian Ministry of the
25 Interior reached this very conclusion in March of this year and has enrolled Galvis in the
26 state protection program specifically created to assist trade unionists under imminent
27 threat. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia have failed

1 to take any action to protect Plaintiff Galvis from the specific death threats that
2 defendants knew about and that originated from Defendants' actions to use the
3 paramilitaries as agents to oust the local SINALTRAINAL union.

4
5 **VII. DEFENDANTS' VIOLATIONS OF LAW**

6 83. Defendants' actions violate, and Plaintiffs' causes of action arise from, the
7 following laws, agreements, conventions, resolutions and treaties, which constitute
8 specific examples of the applicable law of nations or customary international law:

- 9 (a) Alien Tort Claims Act, 28 U.S.C. § 1350;
- 10 (b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- 11 (c) Common law of the United States of America;
- 12 (d) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- 13 (e) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc.
14 A/810 (1948);
- 15 (f) International Covenant on Civil and Political Rights, G.A. Res.
16 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc.
17 A/6316 (1966);
- 18 (g) Convention Against Torture and Other Cruel, Inhuman or Degrading
19 Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp.
20 (No. 51) at 197, U.N. Doc. A/39/51 (1984)(ratified 10/28/98);
- 21 (h) Declaration on the Protection of All Persons From Being Subjected to
22 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
23 G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc.
24 A/10034 (1976);
- 25
26
27
28

- 1 (i) Vienna Declaration and Programme of Action (World Conference on
2 Human Rights, 1993);
- 3 (j) International Labor Organization Conventions 87 and 98, which protect
4 the fundamental rights to associate and organize; and
- 5 (k) Statutes and common law of the State of Florida, including but not limited
6 to, assault and battery, false imprisonment, kidnapping, negligence,
7 recklessness, intentional infliction of emotional distress, and negligent
8 infliction of emotional distress.

9
10 **VIII. CAUSES OF ACTION**

11 **First Cause of Action**

12 **The Alien Tort Claims Act, 28 U.S.C. § 1350
For Murder on Behalf of the Estate of Isidro Segundo Gil Against
Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos**

13 84. Plaintiffs incorporate by reference paragraphs 1 through 83 of this
14 Complaint as if set forth herein.

15
16 85. Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y
17 Alimentos engaged in acts and omissions of intentionally and tortiously causing their
18 employees and/or agents to murder Isidro Segundo Gil. These acts violate the law of
19 nations, customary international law, and worldwide industry standards and practices,
20 including, but not limited to, the specific laws, agreements, conventions, resolutions and
21 treaties listed in paragraph 83, *supra*. The acts described herein are actionable under the
22 ATCA, and, if such a showing is required, were done with the complicity of state actors.
23 In acting together with their agent, the paramilitary security force permitted to exist and
24 openly operate under the laws of Colombia, and assisted by government military
25 officials, Defendants acted under color of law in violating each of the applicable laws,
26 agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*. Further,
27

1 the Government of Colombia fails to enforce its laws that would prevent or remedy the
2 violations alleged herein.

3
4 86. Defendants' conduct in violation of the law of nations, customary
5 international law, and worldwide industry standards and practices, including, but not
6 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
7 paragraph 83, *supra*, resulted in the death of Isidro Segundo Gil. Defendants are jointly
8 and severally liable for the acts of any and all subsidiaries that are in violation of the law
9 of nations, customary international law, and worldwide industry standards and practices,
10 including, but not limited to, the specific laws, agreements, conventions, resolutions and
11 treaties listed in paragraph 83, *supra*. Defendants are also vicariously liable for any
12 violations of their employees or agents of the law of nations, customary international law,
13 and worldwide industry standards and practices, including, but not limited to, the specific
14 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*. The
15 Estate of Isidro Segundo Gil seeks compensatory and punitive damages in amounts to be
16 ascertained at trial.

17 **Second Cause of Action**

18 **The Torture Victim Protection Act, 28 U.S.C. § 1350**

19 **For Extrajudicial Killing on Behalf of the Estate of Isidro Segundo Gil Against**
20 **Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos**

21 87. Plaintiffs incorporate by reference paragraphs 1 through 86 of this
22 Complaint as if set forth herein.

23 88. Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y
24 Alimentos engaged in acts and omissions of intentionally and tortiously causing their
25 employees and/or agents to murder Isidro Segundo Gil. These acts amounted to an
26 extrajudicial killing for purposes of the TVPA, violate the law of nations, customary
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1 international law, and worldwide industry standards and practices, including, but not
2 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
3 paragraph 83, *supra*. In acting together with their agent, the paramilitary force permitted
4 to exist and openly operate under the laws of Colombia, and assisted by government
5 military officials, Defendants acted under color of law in violating each of the applicable
6 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*.
7 Further, the Government of Colombia fails to enforce its laws that would prevent or
8 remedy the violations alleged herein.

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10 89. Defendants' conduct in violation of the law of nations, customary
11 international law, and worldwide industry standards and practices, including, but not
12 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
13 paragraph 83, *supra*, resulted in the death of Isidro Segundo Gil. Defendants are jointly
14 and severally liable for the acts of any and all subsidiaries that are in violation of the law
15 of nations, customary international law, and worldwide industry standards and practices,
16 including, but not limited to, the specific laws, agreements, conventions, resolutions and
17 treaties listed in paragraph 83, *supra*. Defendants are also vicariously liable for any
18 violations of their employees or agents of the law of nations, customary international law,
19 and worldwide industry standards and practices, including, but not limited to, the specific
20 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*. The
21 Estate of Isidro Segundo Gil seeks compensatory and punitive damages in amounts to be
22 ascertained at trial.

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25 **Third Cause of Action**
26 **RICO Violations**
27 **18 U.S.C. § 1961 *et seq***
28 **on Behalf of the Estate of Isidro Segundo Gil and SINALTRAINAL Against**
Defendants Coke, Coke Colombia, Kirby, Kirby Keiland and Bebidas y Alimentos

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2 90. Plaintiffs incorporate by reference paragraphs 1 through 89 of this
3 Complaint as if set forth herein.
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5 91. Defendant Coke is a person within the meaning of 18 U.S.C. § 1961(3).
6 Defendants Coke Columbia, Kirby, Kirby Keilland and Bebidas y Alimentos collectively
7 as an association in fact constitute an enterprise (hereafter referred to as the “Bebidas
8 Enterprise”) within the meaning of 18 U.S.C. § 1961(4). In violation of 18 U.S.C. §
9 1962(c), Defendant Coke through its employees and agents has conducted, and continues
10 to conduct, the affairs of the Bebidas Enterprise through a pattern of racketeering activity
11 consisting of multiple acts and threats of murder, kidnapping and extortion, as set forth
12 specifically in Paragraphs 40 through 58.
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14 92. In violation of 18 U.S.C. § 1962(d), Defendant Coke has conspired, and
15 continues to conspire, to violate 18 U.S.C. § 1962(c). As a result of this unlawful
16 conspiracy, Isidro Segundo Gil was brutally murdered. The Estate of Isidro Segundo Gil
17 is entitled to compensatory and punitive damages, as well as statutory damages under
18 RICO, including treble damages, as well as injunctive relief, in an amount to be
19 determined at trial. Further, Plaintiff SINALTRAINAL was harmed by the intended loss
20 of members and leaders caused by the targeted violence against Isidro Segundo Gil, and is
21 entitled to compensatory and punitive damages, as well as statutory damages under
22 RICO, including treble damages, as well as injunctive relief, in an amount to be
23 determined at trial. Plaintiff SINALTRAINAL and current members and leaders of
24 SINALTRAINAL continue to suffer harm from the ongoing conspiracy.
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Fourth Cause of Action
The Alien Tort Claims Act, 28 U.S.C. § 1350
For Denial of Fundamental Rights to Associate and Organize
on Behalf of the Estate of Isidro Segundo Gil and SINALTRAINAL Against
Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos

93. Plaintiffs incorporate by reference paragraphs 1 through 92 of this Complaint as if set forth herein.

94. Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos committed, or acted in concert to commit, or Defendants' co-venturers or agents committed, violent acts against Isidro Segundo Gil, described fully in the preceding paragraphs, resulting in his murder. This violence was intentionally designed and carried out to deny Isidro Segundo Gil and his colleagues in SINALTRAINAL their fundamental rights to associate and organize, and did in fact result in the denial of these rights.

95. The acts described herein constitute violations of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*. The acts described herein are actionable under the ATCA, and, if such a showing is required, were done with the complicity of state actors. In acting together with their agent, the paramilitary force permitted to exist and openly operate under the laws of Colombia, and assisted by government military officials, Defendants acted under color of law in violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*. Further, the

1 Government of Colombia fails to enforce its laws that would prevent or remedy the
2 violations alleged herein.

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4 96. Defendants' conduct in violation of the law of nations, customary
5 international law, and worldwide industry standards and practices, including, but not
6 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
7 paragraph 83, *supra*, resulted in the murder of Isidro Segundo Gil, and has caused
8 significant injury to Plaintiff SINALTRAINAL, which has lost significant membership
9 because of death threats directed against, and the murders of, leaders of local unions.
10 Further, SINALTRAINAL must expend substantial resources to protect and support
11 union members who are targets of death threats. SINALTRAINAL must also provide
12 material support and protection to family members of murdered trade union leaders.
13 Defendants are jointly and severally liable for the acts of any subsidiaries that are in
14 violation of the law of nations, customary international law, and worldwide industry
15 standards and practices, including, but not limited to, the specific laws, agreements,
16 conventions, resolutions and treaties listed in paragraph 83, *supra*. Defendants are also
17 vicariously liable for any violations of their employees and/or agents of the law of
18 nations, customary international law, and worldwide industry standards and practices,
19 including, but not limited to, the specific laws, agreements, conventions, resolutions and
20 treaties listed in paragraph 83, *supra*. The Estate of Isidro Segundo Gil and Plaintiff
21 SINALTRAINAL are entitled to injunctive relief and to recover compensatory and
22 punitive damages in amounts to be ascertained at trial.

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Fifth Cause of Action
Wrongful Death
on Behalf of the Estate of Isidro Segundo Gil Against
Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos

97. Plaintiffs incorporate by reference paragraphs 1 through 95 of this Complaint as if set forth herein.

98. Defendants Coke, Coke Colombia, Kirby, Kirby Keilland and Bebidas y Alimentos committed, or acted in concert to commit, or Defendants' co-venturers or agents committed acts that constitute wrongful death under the laws of the State of Florida, the laws of the United States and the laws of Colombia, and that caused the death of Isidro Segundo Gil. The Estate of Isidro Segundo Gil represents his heirs at law herein. The Estate of Isidro Segundo Gil, on behalf of his heirs at law, seeks damages herein for pecuniary loss resulting from loss of society, comfort, attention, services and support.

99. Defendants' actions and omissions were a direct and substantial cause of the deaths of Isidro Segundo Gil. Defendants failed to use due care to protect him from injury and harm, thereby proximately causing his wrongful death. The Estate of Isidro Segundo Gil is entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

Sixth Cause of Action
The Alien Tort Claims Act, 28 U.S.C. § 1350
For Kidnapping, Unlawful Detention, Torture, and Crimes Against Humanity
on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,
José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,
and SINALTRAINAL Against
Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia

1 100. Plaintiffs incorporate by reference paragraphs 1 through 99 of this
2 Complaint as if set forth herein.

3
4 101. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, and José Domingo
5 Flores were all forcibly captured and detained as a result of knowingly false charges
6 brought against them by employees and/or agents of Defendants Coke, Coke Colombia,
7 Panamco, and Panamco Colombia, and were held against their will for a lengthy period of
8 time. These removals and detentions were done intentionally and with malice to cause
9 Plaintiffs severe mental and physical pain and suffering. Plaintiff Jorge Humberto Leal
10 was kidnapped and unlawfully detained by paramilitary agents of Defendants. These acts
11 amounted to kidnapping and unlawful detention and violate the law of nations, customary
12 international law, and worldwide industry standards and practices, including, but not
13 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
14 paragraph 83, *supra*.

15
16 102. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez and José Domingo
17 Flores were all sent, based on the false charges knowingly brought by Defendants, to
18 dangerous, filthy prison facilities. There, they were threatened constantly with death and
19 serious bodily injury and were subjected to regular and systematic forms of brutality and
20 cruelty. Plaintiff Jorge Humberto Leal was subjected to violence and the threat of death
21 by paramilitary agents of Defendants. Plaintiff Juan Carlos Galvis was, and continues to
22 be, subjected to ongoing threats against his life by notorious paramilitary groups acting on
23 behalf of Defendants. These acts were inflicted intentionally and with malice to cause
24 Plaintiffs severe mental and physical pain and suffering, and to have the lasting effect of
25 forever causing Plaintiffs to live in fear of being subjected to similar acts. These acts

1 amounted to torture and violate the law of nations, customary international law, and
2 worldwide industry standards and practices, including, but not limited to, the specific
3 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*.

4
5 103. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia,
6 committed, through their employees and/or agents, acts that had the intent and the effect
7 of grossly humiliating and debasing Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez
8 Perez José Domingo Flores, Jorge Humberto Leal, and Juan Carlos Galvis, forcing them
9 to act against their will and conscience, inciting fear and anguish, and breaking their
10 physical and/or moral resistance. Plaintiffs were placed in great fear for their lives and
11 forced to suffer severe physical and psychological abuse and agony. The acts described
12 herein constitute cruel, inhuman or degrading treatment in violation of the law of nations,
13 customary international law, and worldwide industry standards and practices, including,
14 but not limited to, the specific laws, agreements, conventions, resolutions and treaties
15 listed in paragraph 83, *supra*.

16
17 104. As a result of Defendants' wrongful acts directed against Plaintiffs Luis
18 Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal,
19 Juan Carlos Galvis, and others, Plaintiff SINALTRAINAL has lost significant
20 membership because other potential members and leaders have been intimidated and fear
21 that similar acts of reprisal would be directed against them. Further, SINALTRAINAL
22 expended substantial resources to protect and support the families of Plaintiffs Luis
23 Eduardo Garcia, Alvaro Gonzalez Perez, and José Domingo Flores while they were
24 wrongfully detained.

25
26 105. Defendants' conduct in violation of the law of nations, customary
27 international law, and worldwide industry standards and practices, including, but not
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1 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
2 paragraph 83, *supra*, has caused Plaintiffs significant injury. Defendants are jointly and
3 severally liable for the acts of any and all subsidiaries that are in violation of the law of
4 nations, customary international law, and worldwide industry standards and practices,
5 including, but not limited to, the specific laws, agreements, conventions, resolutions and
6 treaties listed in paragraph 83, *supra*. Defendants are also vicariously liable for any
7 violations of their employees or agents of the law of nations, customary international law,
8 and worldwide industry standards and practices, including, but not limited to, the specific
9 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*.

10 Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive
11 damages in amounts to be ascertained at trial.

12
13 106. The acts described herein are actionable under the ATCA, and, if such a
14 showing is required, were done with the complicity of state actors. In acting together with
15 their agent, the paramilitary force permitted to exist and openly operate under the laws of
16 Colombia, and assisted by government military officials, Defendants acted under color of
17 law in violating each of the applicable laws, agreements, conventions, resolutions and
18 treaties listed in paragraph 83, *supra*. Further, the Government of Colombia fails to
19 enforce its laws that would prevent or remedy the violations alleged herein.

20
21 **Seventh Cause of Action**
22 **The Torture Victim Protection Act, 28 U.S.C. § 1350**
23 **For Torture**
24 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
25 **José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,**
26 **and SINALTRAINAL Against**
27 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**
28

1 107. Plaintiffs incorporate by reference paragraphs 1 through 106 of this
2 Complaint as if set forth herein.

3
4 108. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez and José Domingo
5 Flores were all sent, based on the false charges knowingly brought by Defendants, to
6 dangerous, filthy prison facilities. There, they were threatened constantly with death and
7 serious bodily injury and were subjected to regular and systematic forms of brutality and
8 cruelty. Plaintiff Jorge Humberto Leal was subjected to violence and the threat of death
9 by paramilitary agents of Defendants. Plaintiff Juan Carlos Galvis was, and continues to
10 be, subjected to ongoing threats against his life by notorious paramilitary groups acting on
11 behalf of Defendants. These acts were inflicted intentionally and with malice to cause
12 Plaintiffs severe mental and physical pain and suffering, and to have the lasting effect of
13 forever causing Plaintiffs to leave in fear of being subjected to similar acts. These acts
14 amounted to torture and violate the law of nations, customary international law, and
15 worldwide industry standards and practices, including, but not limited to, the specific
16 laws, agreements, conventions, resolutions and treaties listed in paragraph 82, *supra*.

17
18 109. As a result of Defendants' wrongful acts directed against Plaintiffs Luis
19 Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal,
20 and Juan Carlos Galvis, Plaintiff SINALTRAINAL has lost significant membership
21 because other potential members and leaders have been intimidated and fear that similar
22 acts of reprisal would be directed against them.

23
24 110. Defendants' conduct in violation of the law of nations, customary
25 international law, and worldwide industry standards and practices, including, but not
26 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
27 paragraph 83, *supra*, has caused Plaintiffs significant injury. Defendants are jointly and
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1 severally liable for the acts of any and all subsidiaries that are in violation of the law of
2 nations, customary international law, and worldwide industry standards and practices,
3 including, but not limited to, the specific laws, agreements, conventions, resolutions and
4 treaties listed in paragraph 83, *supra*. Defendants are also vicariously liable for any
5 violations of their employees or agents of the law of nations, customary international law,
6 and worldwide industry standards and practices, including, but not limited to, the specific
7 laws, agreements, conventions, resolutions and treaties listed in paragraph 83, *supra*.
8 Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive
9 damages in amounts to be ascertained at trial.

10
11 111. The acts described herein are actionable under the ATCA, and, if such a
12 showing is required, were done with the complicity of state actors. In acting together with
13 their agent, the paramilitary force permitted to exist and openly operate under the laws of
14 Colombia, and assisted by government military officials, Defendants acted under color of
15 law in violating each of the applicable laws, agreements, conventions, resolutions and
16 treaties listed in paragraph 83, *supra*. Further, the Government of Colombia fails to
17 enforce its laws that would prevent or remedy the violations alleged herein.

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20 **Eighth Cause of Action**
21 **RICO Violations**
22 **18 U.S.C. § 1961 *et seq***
23 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
24 **José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,**
25 **and SINALTRAINAL Against**
26 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

27 112. Plaintiffs incorporate by reference paragraphs 1 through 111 of this
28 Complaint as if set forth herein.

1 113. Defendant Coke is a person within the meaning of 18 U.S.C. § 1961(3).
2 Defendants Coke Columbia, Panamco, and Panamco Colombia collectively as an
3 association in fact constitute an enterprise (hereafter referred to as the “Panamco
4 Enterprise”) within the meaning of 18 U.S.C. § 1961(4). In violation of 18 U.S.C. §
5 1962(c), Defendant Coke through its employees and agents has conducted, and continues
6 to conduct, the affairs of the Panamco Enterprise through a pattern of racketeering
7 activity consisting of multiple acts and threats of murder, kidnapping and extortion, as set
8 forth specifically in Paragraphs 59 through 82.

9
10 114. In violation of 18 U.S.C. § 1962(d), Defendant Coke has conspired, and
11 continues to conspire, to violate 18 U.S.C. § 1962(c). As a result of this unlawful
12 conspiracy, Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo
13 Flores, Jorge Humberto Leal, and Juan Carlos Galvis were subjected to violent acts and
14 were severely harmed. Further, Plaintiff SINALTRAINAL was harmed by the intended
15 loss of members and leaders caused by the targeted violence and threats of death against
16 Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge
17 Humberto Leal, and Juan Carlos Galvis. Plaintiffs are entitled to compensatory and
18 punitive damages, as well as statutory damages under RICO, including treble damages, as
19 well as injunctive relief, in an amount to be determined at trial. Plaintiff
20 SINALTRAINAL and current members and leaders of SINALTRAINAL continue to
21 suffer harm from the ongoing conspiracy.

22
23 **Ninth Cause of Action**
24 **The Alien Tort Claims Act, 28 U.S.C. § 1350**
25 **For Denial of Fundamental Rights to Associate and Organize**
26 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
27 **José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,**
28 **and SINALTRAINAL Against**
Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia

1 115. Plaintiffs incorporate by reference paragraphs 1 through 114 of this
2 Complaint as if set forth herein.

3
4 116. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
5 committed, or acted in concert to commit, or Defendants' co-venturers or agents
6 committed, violent acts and/or made death threats against Plaintiffs Luis Eduardo Garcia,
7 Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,
8 and others, as is described fully in the preceding paragraphs. This violence was
9 intentionally designed and carried out to deny Plaintiffs and their colleagues in
10 SINALTRAINAL their fundamental rights to associate and organize, and did in fact
11 result in the denial of these rights.

12
13 117. The acts described herein constitute violations of the law of nations,
14 customary international law, and worldwide industry standards and practices, including,
15 but not limited to, the specific laws, agreements, conventions, resolutions and treaties
16 listed in paragraph 83, *supra*. The acts described herein are actionable under the ATCA,
17 and, if such a showing is required, were done with the complicity of state actors. In acting
18 together with their agent, the paramilitary force permitted to exist and openly operate
19 under the laws of Colombia, and assisted by government military officials, Defendants
20 acted under color of law in violating each of the applicable laws, agreements,
21 conventions, resolutions and treaties listed in paragraph 83, *supra*. Further, the
22 Government of Colombia fails to enforce its laws that would prevent or remedy the
23 violations alleged herein.

1 118. Defendants' conduct in violation of the law of nations, customary
2 international law, and worldwide industry standards and practices, including, but not
3 limited to, the specific laws, agreements, conventions, resolutions and treaties listed in
4 paragraph 83, *supra*, resulted in acts of severe violence against Plaintiffs Luis Eduardo
5 Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, and Juan
6 Carlos Galvis, and has caused significant injury to Plaintiff SINALTRAINAL, which has
7 lost significant membership because of violence, death threats directed against, and the
8 murders of, leaders of local unions. Further, SINALTRAINAL must expend substantial
9 resources to protect and support union members who are targets of violence and death
10 threats. SINALTRAINAL must also provide material support and protection to family
11 members of trade union leaders who are kidnapped and/or unlawfully detained.
12 Defendants are jointly and severally liable for the acts of any subsidiaries that are in
13 violation of the law of nations, customary international law, and worldwide industry
14 standards and practices, including, but not limited to, the specific laws, agreements,
15 conventions, resolutions and treaties listed in paragraph 83, *supra*. Defendants are also
16 vicariously liable for any violations of their employees and/or agents of the law of
17 nations, customary international law, and worldwide industry standards and practices,
18 including, but not limited to, the specific laws, agreements, conventions, resolutions and
19 treaties listed in paragraph 83, *supra*. Plaintiffs are entitled to injunctive relief and to
20 recover compensatory and punitive damages in amounts to be ascertained at trial.

21
22 **Tenth Cause of Action**
23 **Arbitrary Arrest and Detention**
24 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
25 **José Domingo Flores, Jorge Humberto Leal and SINALTRAINAL Against**
26 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

27 119. Plaintiffs incorporate by reference paragraphs 1 through 118 of this
28 Complaint as if set forth herein.

1 120. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
2 committed, or acted in concert to commit, or Defendants' employees or agents committed
3 acts which caused Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, and José
4 Domingo Flores to be arrested and detained. Such arrest and detention of Plaintiffs was
5 illegal and unjust, carried out without a warrant, probable cause or reasonable suspicion.
6 Further, Defendants committed, or acted in concert to commit, or Defendants' employees
7 or agents committed acts which caused Plaintiff Jorge Humberto Leal to be arrested and
8 detained without judicial process by paramilitary agents of Defendants.

9
10 121. Plaintiffs were placed in fear for their lives, were deprived of their
11 freedom, separated from their families and forced to suffer severe physical and mental
12 abuse. Plaintiffs did not consent to such conduct, which caused injury, damage, loss and
13 harm to each of them.

14
15 122. The acts described herein constitute arbitrary arrest and detention,
16 actionable under the laws of Florida, the laws of the United States, and the laws of
17 Colombia. Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores,
18 and Jorge Humberto Leal are entitled to injunctive relief and to recover compensatory and
19 punitive damages in amounts to be ascertained at trial.

20
21 123. The arbitrary arrest and detention of Plaintiffs Luis Eduardo Garcia,
22 Alvaro Gonzalez Perez, José Domingo Flores and Jorge Humberto Leal has also caused
23 significant injury to Plaintiff SINALTRAINAL, which has lost significant membership
24 because of violence directed against leaders of local unions. Further, SINALTRAINAL
25 must expend substantial resources to protect and support union members who are targets
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1 of violence and death threats. SINALTRAINAL must also provide material support and
2 protection to family members of trade union leaders who are victims of arbitrary arrest
3 and detention. Plaintiff SINALTRAINAL is entitled to injunctive relief and to recover
4 compensatory and punitive damages in amounts to be ascertained at trial.

5
6 **Eleventh Cause of Action**
7 **False Imprisonment**
8 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
9 **José Domingo Flores, Jorge Humberto Leal and SINALTRAINAL Against**
10 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

11 124. Plaintiffs incorporate by reference paragraphs 1 through 123 of this
12 Complaint as if set forth herein.

13 125. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
14 committed, or acted in concert to commit, or Defendants' employees or agents committed
15 acts to unlawfully exercise force or the express or implied threat of force to restrain,
16 detain or confine Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo
17 Flores, and Jorge Humberto Leal. The restraint, detention or confinement compelled
18 Plaintiffs to stay or go somewhere against their will for some appreciable time.

19 126. Plaintiffs were placed in fear for their lives, were deprived of their
20 freedom, separated from their families and forced to suffer severe physical and mental
21 abuse. Plaintiffs did not consent to such conduct, which caused injury, damage, loss and
22 harm to each of them.

23
24 127. The acts described herein constitute false imprisonment, actionable under
25 the laws of Florida, the laws of the United States, and the laws of Colombia. Plaintiffs
26 Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, and Jorge Humberto
27

1 Leal are entitled to injunctive relief and to recover compensatory and punitive damages in
2 amounts to be ascertained at trial.

3
4 128. The false imprisonment of Plaintiffs Luis Eduardo Garcia, Alvaro
5 Gonzalez Perez, José Domingo Flores, and Jorge Humberto Leal has also caused
6 significant injury to Plaintiff SINALTRAINAL , which has lost significant membership
7 because of violence directed against leaders of local unions. Further, SINALTRAINAL
8 must expend substantial resources to protect and support union members who are targets
9 of violence and death threats. SINALTRAINAL must also provide material support and
10 protection to family members of trade union leaders who are victims of false
11 imprisonment. Plaintiff SINALTRAINAL is entitled to injunctive relief and to recover
12 compensatory and punitive damages in amounts to be ascertained at trial.

13
14 **Twelfth Cause of Action**

15 **Battery**

16 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,
17 José Domingo Flores, Jorge Humberto Leal and SINALTRAINAL Against
18 Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

19
20 129. Plaintiffs incorporate by reference paragraphs 1 through 128 of this
21 Complaint as if set forth herein.

22 130. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
23 committed, or acted in concert to commit, or Defendants' employees or agents committed
24 acts which resulted in harmful or offensive contact with the bodies of Plaintiffs. Plaintiffs
25 did not consent to the contact, which caused injury, damage, loss and harm to Plaintiffs
26 Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, and Jorge Humberto
27 Leal.

1 131. The acts described herein constitute battery, actionable under the laws of
2 Florida, the laws of the United States and the laws of Colombia. Plaintiffs Luis Eduardo
3 Garcia, Alvaro Gonzalez Perez, José Domingo Flores, and Jorge Humberto Leal are
4 entitled to injunctive relief and to recover compensatory and punitive damages in
5 amounts to be ascertained at trial.

6
7 132. The battery of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,
8 José Domingo Flores, and Jorge Humberto Leal has also caused significant injury to
9 Plaintiff SINALTRAINAL , which has lost significant membership because of violence
10 directed against leaders of local unions. Further, SINALTRAINAL must expend
11 substantial resources to protect and support union members who are targets of violence
12 and death threats. Plaintiff SINALTRAINAL is entitled to injunctive relief and to recover
13 compensatory and punitive damages in amounts to be ascertained at trial.

14
15 **Thirteenth Cause of Action**

16 **Assault**

17 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
18 **José Domingo Flores, Jorge Humberto Leal, Juan Carlos Galvis,**
and SINALTRAINAL Against
Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia

19 133. Plaintiffs incorporate by reference paragraphs 1 through 132 of this
20 Complaint as if set forth herein.

21
22 134. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
23 committed, or acted in concert to commit, or Defendants' employees or agents committed
24 acts which caused Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo
25 Flores, Jorge Humberto Leal, and Juan Carlos Galvis to be apprehensive that Defendants
26 would subject them to imminent batteries and/or intentional invasions of their rights to be
27 free from offensive and harmful contact, and said conduct demonstrated that Defendants

1 had a present ability to subject Plaintiffs to an immediate, intentional, offensive and
2 harmful touching. Plaintiffs did not consent to such conduct, which caused injury,
3 damage, loss and harm to each of the Plaintiffs.

4
5 135. The acts described herein constitute assault, actionable under the laws of
6 the Florida, the laws of the United States and the laws of Colombia. Plaintiffs Luis
7 Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, and
8 Juan Carlos Galvis are entitled to injunctive relief and to recover compensatory and
9 punitive damages in amounts to be ascertained at trial.

10
11 136. The assault of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,
12 José Domingo Flores, Jorge Humberto Leal, and Juan Carlos Galvis has also caused
13 significant injury to Plaintiff SINALTRAINAL, which has lost significant membership
14 because of violence directed against leaders of local unions. Further, SINALTRAINAL
15 must expend substantial resources to protect and support union members who are targets
16 of violence and death threats. Plaintiff SINALTRAINAL is entitled to injunctive relief
17 and to recover compensatory and punitive damages in amounts to be ascertained at trial.

18
19 **Fourteenth Cause of Action**
20 **Negligence Per Se**
21 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
22 **José Domingo Flores, Jorge Humberto Leal and SINALTRAINAL Against**
23 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

24
25 137. Plaintiffs incorporate by reference paragraphs 1 through 136 of this
26
27
28 Complaint as if set forth herein.

1 138. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
2 failed to use ordinary or reasonable care in order to avoid injury to Plaintiffs Luis
3 Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, and
4 SINALTRAINAL. Defendants' negligence was a cause of injury, damage, loss and harm
5 to Plaintiffs.

6
7 139. As a result of these acts, Plaintiffs suffered harm including, but not limited
8 to, physical harm, pain and suffering, and severe emotional distress. Defendants' conduct
9 constitutes negligence and is actionable under the laws of Florida, the United States,
10 Colombia, the law of nations, customary international law, and worldwide industry
11 standards and practices, including, but not limited to, the specific laws, agreements,
12 conventions, resolutions and treaties listed in paragraph 83, *supra*. Plaintiffs are entitled
13 to recover compensatory damages in amounts to be ascertained at trial.

14
15 **Fifteenth Cause of Action**
16 **Intentional Infliction of Emotional Distress**
17 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
18 **José Domingo Flores, Jorge Humberto Leal,**
19 **and Juan Carlos Galvis Against**
20 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

21
22 140. Plaintiffs incorporate by reference paragraphs 1 through 139 of this
23 Complaint as if set forth herein.

24 141. The acts described herein constitute outrageous conduct against Plaintiffs
25 Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto
26 Leal, and Juan Carlos Galvis, and were without privilege.

27 142. Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia
28 committed, or acted in concert to commit, or Defendants' co-venturers or agents

1 committed acts, which were intended to cause Plaintiffs to suffer emotional distress. In
2 the alternative, Defendants engaged in the conduct with reckless disregard of the
3 probability of causing Plaintiffs to suffer emotional distress. Plaintiffs were present at the
4 time the outrageous conduct occurred, and Defendants, or Defendants' alter egos or
5 agents, knew that the Plaintiffs were present.

6
7 143. Plaintiffs suffered severe emotional distress and the outrageous conduct of
8 Defendants was a cause of the emotional distress suffered by Plaintiffs.

9
10 144. Defendants' outrageous conduct constitutes the intentional infliction of
11 emotional distress and is actionable under the laws of the State of Florida, and the laws of
12 the United States.

13 **Sixteenth Cause of Action**
14 **Negligent Infliction of Emotional Distress**
15 **on Behalf of Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez,**
16 **José Domingo Flores, Jorge Humberto Leal,**
17 **and Juan Carlos Galvis Against**
18 **Defendants Coke, Coke Colombia, Panamco, and Panamco Colombia**

19 145. Plaintiffs incorporate by reference paragraphs 1 through 144 of this
20 Complaint as if set forth herein.

21 146. At all relevant times, Defendants Coke, Coke Colombia, Panamco, and
22 Panamco Colombia, and each of them, owed Plaintiffs Luis Eduardo Garcia, Alvaro
23 Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, and Juan Carlos Galvis a
24 duty to act with reasonable care, and at all relevant times, harm and/or injury to these
25 Plaintiffs was reasonably foreseeable if such duty of care was breached.

1 147. At all relevant times, Defendants Coke, Coke Colombia, Panamco, and
2 Panamco Colombia, and each of them, had the power, ability, authority and duty to stop
3 engaging in the conduct described herein and to intervene to prevent or prohibit such
4 conduct.

5
6 148. At all relevant times, Defendants, Coke, Coke Colombia, Panamco, and
7 Panamco Colombia, and each of them, knew, or reasonably should have known, that the
8 conduct described herein would and did proximately result in physical and emotional
9 distress to Plaintiffs Luis Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores,
10 Jorge Humberto Leal, and Juan Carlos Galvis.

11
12 149. Despite said knowledge, power, and duty, Defendants, and each of them,
13 breached their duty to Plaintiffs, and thereby negligently failed to act so as to stop
14 engaging in the conduct described herein and to prevent or to prohibit such conduct or to
15 otherwise protect Plaintiffs. To the extent that said negligent conduct was perpetrated by
16 certain Defendants, and each of them, the remaining Defendants confirmed and ratified
17 said conduct with the knowledge that Plaintiffs' emotional and physical distress would
18 thereby increase and with a wanton and reckless disregard for the deleterious
19 consequences to Plaintiffs.

20
21 150. As a direct and legal result of Defendants' wrongful acts, Plaintiffs Luis
22 Eduardo Garcia, Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal, and
23 Juan Carlos Galvis have suffered and will continue to suffer significant physical injury,
24 pain and suffering and extreme and severe mental anguish and emotional distress.

1 151. Defendants' conduct constitutes the negligent infliction of emotional
2 distress and is actionable under the laws of the State of Florida, and the laws of the
3 United States.

4
5 **Seventeenth Cause of Action**
6 **Aiding and Abetting**
7 **on Behalf of the Estate of Isidro Segundo Gil, Plaintiffs Luis Eduardo Garcia,**
8 **Alvaro Gonzalez Perez, José Domingo Flores, Jorge Humberto Leal,**
9 **Juan Carlos Galvis and SINALTRAINAL Against**
10 **Defendants Coke, Coke Colombia, Panamco, Panamco Colombia,**
11 **Kirby, Kirby Keilland and Bebidas y Alimentos**

12 152. Plaintiffs incorporate by reference paragraphs 1 through 151 of this
13 Complaint as if set forth herein.

14 153. All of the Defendants knowingly provided substantial assistance to their
15 agents and/or employees, including the paramilitary security forces that committed the
16 wrongful acts delineated in the preceding causes of action at the time such wrongful acts
17 were perpetrated.

18 154. Defendants' aiding and abetting the wrongful acts delineated in the
19 preceding causes of action is actionable under the laws of Florida.

20 **IX. DEMAND FOR JURY TRIAL**

21 155. Plaintiffs demand a trial by jury on all issues so triable.

22
23 **X. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs respectfully request the Court to:

25 (a) enter judgment in favor of Plaintiffs on all counts of the Complaint;

- 1 (b) declare that Defendants have violated Plaintiffs' human rights and the laws
2 of the State of Florida and the United States, as set forth herein;
- 3 (c) award Plaintiffs compensatory and punitive damages, as well as statutory
4 damages and treble damages under RICO;
- 5 (d) grant Plaintiffs equitable relief, permanently enjoining Defendants from
6 further engaging in human rights abuses against Plaintiffs and their fellow
7 members of SINALTRAINAL ;
- 8 (e) award Plaintiffs the costs of suit including reasonable attorneys' fees, and
9 (f) award Plaintiffs such other and further relief as the Court deems just under
10 the circumstances.

11 Respectfully submitted this 20th day of July, 2001,

12
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