



its global business, including that in Colombia, first by virtue of the “Bottler’s Agreement” it maintains with each bottler it has created, and second, through complex interlocking relationships involving shareholder agreements, joint ownership and joint management with its bottlers around the world.

3. While there may be some aspects of the bottlers’ operations that are dealt with by local management, Coke retains authority over major issues that affect product quality, marketing, and issues that could have a major impact on the Coke brand image. Compliance with international human rights standards at all of the Coke bottling plants is one of the areas that Coke controls and/or directs from its headquarters in Atlanta, Georgia. Coke has recently manifested such control by hiring a senior manager as the Director of Global Labor Relations. As described more fully below, Coke has also established, through various documents and other expressions of company policy, that the parent company, Coke, is firmly in charge of human rights compliance within the entire Coke empire, including Coke’s bottling plants.

4. This case is brought under the Alien Tort Statute (“ATS”), the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350, Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq*, and Florida state tort law. The case seeks remedial relief for the Plaintiffs, and injunctive relief to prevent the Defendants herein from utilizing murder, torture and other forms of brutality to intimidate and coerce their workers to prevent them from exercising their

fundamental rights to join a union and bargain collectively.

5. Plaintiffs bring this human rights action against Defendants Coke and Coca-Cola FEMSA (all of the Coke entities are collectively referred to as the “Coke Defendants”).

6. Plaintiff and other victims of human rights abuses lack access to an independent and functioning legal system within Colombia, a country with a judiciary which is corrupt and which has been undermined by the intimidation and murder of witnesses, prosecutors, lawyers and judges involved in human rights cases. As the U.S. State Department has reported, there is almost complete impunity for officials accused of human rights abuses, particularly those committed against trade unionists. Indeed, according to the U.S. State Department, while there have been thousands of cases of trade union assassinations in Colombia in the past two decades, only a handful of individuals have ever been successfully prosecuted for any of these assassinations. Finally, even if there were remedies available to Plaintiffs in Colombia, such remedies are inadequate and would not afford the complete relief available to Plaintiffs by this Complaint. Defendants, because they do business in Colombia, are well aware of these conditions, and know that Plaintiffs do not have the option of seeking justice in Colombia for human rights violations that target trade unionists.

## **II. JURISDICTION AND VENUE**

10. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, the ATS and the TVPA, 28 U.S.C. §1350, for the alleged violations of international human rights law, and RICO, 18 U.S.C. § 1961 *et seq.* for the alleged racketeering activity. Supplemental jurisdiction exists over the state law causes of action pursuant to 28 U.S.C. § 1367.

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

## **III. PARTIES**

### **Plaintiff**

12. Plaintiff Gladys Cecilia Rincon de Munera is the widow of Adolfo de Jesus Munera Lopez, a truck driver at the Barranquilla Coke bottling plant who was murdered on August 31, 2002. Plaintiff brings this action as an heir of the decedent, Adolfo de Jesus Munera, for the losses she has suffered as a result of his violent and untimely death, and as an individual who has suffered her own independent injuries as a result of the paramilitary violence set into motion by Defendants. Ms. Munera also brings this case as Representative of the Estate of Adolfo Jesus Munera, and in particular on behalf of her children -- Habral Dagoberto Munera, Gladys Cristina Munera, Nadir Munera and Adolfo Carlos

Munera --who are also heirs of the Estate of Adolfo Jesus Munera.

13. Plaintiff SINALTRAINAL is a Colombian trade union that represents workers in the food and beverage industry in various locations in Colombia, including at the Coke bottling plant operated by Coca-Cola FEMSA in Barranquilla. SINALTRAINAL has had numerous members and leaders assassinated and tortured by paramilitary forces. Based on the allegations herein, this murder and torture has been perpetrated by paramilitary units that were acting as agents for one or more of the Defendants. SINALTRAINAL brings this action for injunctive relief to stop any further murder, unlawful detention, or torture of its leaders by the agents of Defendants. In addition, SINALTRAINAL seeks money damages to recover funds spent to protect its members and leaders who have received threats of death from the agents of Defendants, and funds provided for medical care, safe houses, and living expenses for members and leaders who have received threats of death from the agents of Defendants.

### **Defendants**

13. Defendant Coke, a for-profit corporation incorporated in Delaware, is the world's largest manufacturer, distributor, and marketer of soft drinks. Its principal place of business is located at One Coca-Cola Plaza, Atlanta, Georgia 30313. Coke has offices, production and marketing facilities, and bottling plants throughout the United States and the world, including major business operations in Miami, Florida. Coke sells and distributes its products in Colombia almost solely through Coca-Cola FEMSA which owns and operates all but one of the Coke bottling plants in Colombia.

14. Defendant Coca-Cola FEMSA is Coca-Cola's chief Latin American bottling partner. Coca-Cola FEMSA is jointly owned by Defendant Coke and another company known as FEMSA, and operates, by explicit agreement, as a joint venture between those two companies. Coca-Cola FEMSA maintains offices on Waterford Way in Miami, Florida. In May of 2003, Coca-Cola FEMSA acquired Panamerican Beverages, Inc. ("Panamco") and, through this acquisition, 19 of the 20 Coke bottling plants in Colombia, including the Coke bottling plant in Barranquilla. As Coca-Cola FEMSA has announced in its own 20-F SEC Report, Coca-Cola FEMSA stepped into the shoes of Panamco when it acquired this company and consequently assumed any liabilities Panamco might have for labor and human rights abuses in Colombia which predated the date of the acquisition. As Coca-Cola FEMSA states in its 2004 20-F Report in regard to analogous claims filed against its predecessor in 2001:

During 2001, a labor union and several individuals from the Republic of Colombia filed a lawsuit in the US District Court for the Southern District of Florida against certain of **our** subsidiaries. In the complaint, the plaintiffs alleged that the subsidiaries of the company acquired in the Panamco acquisition engaged in wrongful acts against the labor union and its members in Colombia, including kidnapping, torture, death threats and intimidation. The complaint alleges claims under the U.S. Alien Tort Claims Act, Torture Victims Protection Act, Racketeer Influenced and Corrupt Practices Act and state tort law and seeks injunctive and declaratory relief and damages of more than US \$500 million . . . **We** filed a motion to dismiss the complaint for lack of subject matter and personal jurisdiction. . . .

#### **IV. DEFENDANTS' SPECIFIC VIOLATIONS AGAINST PLAINTIFFS**

15. Defendant Coke controls all aspects of its global business from the United States. One of its major objectives of the last several years is to use whatever means are available within the local context of its global operations to avoid the formation of trade unions in its bottling plants and among its transport workers. For example, in Guatemala in the late 1970's and in Colombia in the 1990's, Defendant Coke's local managers arranged for the murders of key leaders of trade unions that were attempting to organize the Coke bottling plants. In those countries, it was possible to murder trade union leaders with impunity. Defendant Coke and its Colombian bottlers are already the subject of litigation over the murder and torture of trade union leaders in Colombia. Recently, despite Coke's past intervention to stop the violence against trade union leaders in Guatemala, threats of death and other violence have been renewed against trade union leaders at Coke's Guatemalan bottling plant. There has also been recent violence and retaliation against trade union leaders at Coke suppliers in Indonesia.

16. At the time of the events alleged herein, the Coke Defendants knew or were substantially certain that they were doing business in an environment in Colombia where their unionized workers were at great risk of being tortured and/or killed by paramilitary forces who have been responsible for the murder of thousands of trade unionists in Colombia in the past two decades. Indeed, counsel

for Plaintiff in this case have specifically apprised Defendant Coke of the fact that paramilitaries have been permitted to enter the Coke bottling plant in Barranquilla, have met with management at this facility, and have posed an imminent threat to the trade union workers at this plant.

17. In addition, Defendants at all relevant times have been aware of the fact that the paramilitaries, especially those of the Autodefensas Unidas de Colombia (“AUC”), have a close, symbiotic relationship with the Colombian government, including the Colombian military and the Departamento Administrativo de Seguridad (“DAS”). Thus, as the State Department has reported for a number of years, the Colombian military closely collaborates with the paramilitaries, providing them with logistical support, intelligence, ammunition and even troops and directly participating with the paramilitaries in atrocities against civilians. Moreover, the DAS, a Colombian governmental agency with intelligence, immigration, police and security responsibilities, has been collaborating with the paramilitaries for years, including at all times relevant herein. Indeed, the DAS, which has tasked to protect trade union leaders under threat, has been creating and maintaining hit lists of trade union leaders which it has been providing to the AUC paramilitaries to act upon.

18. Plaintiff’s deceased husband, Adolfo de Jesus Munera Lopez, was hired at the Coke bottling plant in Barranquilla in 1983. Mr. Munera worked as a truck

driver for this facility. In 1996, Mr. Munera, who had been a vocal pro-union activist since his commencement of work with the Coke bottler, organized a successful strike against the Coke facility in Barranquilla. Because of his role in leading this strike, management at the Coke facility began a campaign of persecution against Mr. Munera, a campaign which included publicly denouncing him, without factual basis, as a “guerilla” and prevailing upon both the AUC paramilitaries and the DAS to intimidate, harass, arrest and ultimately murder Mr. Munera. As part of this campaign, Mr. Munera began receiving death threats from AUC paramilitaries in the region shortly after the 1996 strike. From 1996 until the present time, managers at the Coke bottler in Barranquilla have permitted AUC paramilitary forces to freely enter the bottling facility and have met with these paramilitaries inside the bottling plant.

19. In 1997, Mr. Munera was elected Vice-President of SINALTRAINAL and was also elected Vice-President of the Central Unitaria de Trabajadores (“CUT”), the largest union confederation in Colombia.

20. On March 6, 1997, shortly after Mr. Munera was elected to his leadership posts at SINALTRAINAL and the CUT, Coke bottling manager Emilio Hernandez brought agents from the DAS to the Munera home. When the Coke Manager and DAS agents came to the Munera home, only the Plaintiff and two Munera children (Nadir and Adolfo Carlos) were there. The DAS agents told the

Plaintiff that Mr. Munera was a “union guerilla” and that the DAS was looking for him. The same agents also stated that they was there to search for illegal guns and bombs. The DAS officials, with Coke Manager Emilio Hernandez present, searched the home for almost two hours and found nothing. Later that day, these same DAS officials came to the Coke bottling plant in Barranquilla to search for Mr. Munera.

21. Adolfo Jesus Munera Lopez, who found out that he was being tracked down by the DAS, went to a friend’s house where Plaintiff met him and brought him some clothes. Mr. Munera, who had committed no crime but was in fact being pursued solely for his pro-union activities, then fled Barranquilla in order to avoid arrest by the DAS. On her way back from meeting with Mr. Munera to bring him clothes for his trip and to say goodbye, Plaintiff was intercepted by three paramilitaries who told her that her husband had been assassinated. He had not been, but the paramilitaries were testing her to see if she responded with certainty that he had not been killed, and therefore knew his location. At this point, Plaintiff decided that it was not safe to stay in Barranquilla, and she therefore fled with her children into exile, moving from time to time throughout Colombia as well as to Veneuzela for a short period.

22. Meanwhile, the Coke bottler in Barranquilla terminated the employment of Adolfo de Jesus Munera Lopez on the pretense that he was a “guerilla” wanted by Colombian authorities. In fact, Mr. Munera was fired because

of his pro-union activities. Mr. Munera, while in exile, commenced proceedings with the Colombian labor courts claiming that he was fired unlawfully and seeking to reclaim his job at the Coke bottler in Barranquilla. Mr. Munera initially won his case for reinstatement but then lost his case when the Coke bottler appealed this initial decision to the appellate court. Mr. Munera then sought review by the Constitutional Court of Colombia which has discretion over which cases it will hear upon appeal.

23. After spending over five (5) years in forced exile, Plaintiff Gladys Munera returned to Barranquilla with her children on August 2, 2002. However, a DAS agent immediately began surveillance around the Munera home, presumably trying to discover the whereabouts of Mr. Munera who remained in exile. On August 22, 2002, the Constitutional Court of Colombia accepted the appeal through which Mr. Munera was seeking to be reinstated to the Coke bottler. Then, on August 31, 2002, AUC paramilitary forces shot and killed Adolfo de Jesus Munera on the steps of his mother's home in Barranquilla. Mr. Munera had just returned to Barranquilla for a brief period to see his mother and his immediate family members.

24. In 2003, the Constitutional Court of Colombia found that the Coke bottler had terminated Adolfo de Jesus Munera unlawfully and issued a back pay

award, to be paid to his family, for the period from 1997 until his murder in 2002.

25. Meanwhile, managers at the Coca-Cola FEMSA plant in Barranquilla continue to meet with and collaborate with AUC paramilitaries and to provide these paramilitaries free access to the bottling plant. For example, as Plaintiff's counsel, Daniel Kovalik, informed Coca-Cola General Counsel Deval Patrick by letter dated January 16, 2003, members of management at Panamco's Barrancabermeja bottling plant met with known paramilitary leaders, including Saul Rincon, in October of 2002. When one of these managers, Reynaldo Gonzalez, was confronted about this meeting and asked if the individuals he was meeting with were indeed paramilitaries, he responded, "yes, they are paramilitaries, and members of an association, why don't you say that to them?" *Id.* Paramilitary leader Saul Rincon later appeared at the bottling plant and told a union leader that manager Reynaldo Gonzalez had specifically asked Rincon about this union leader.

26. On January 13, 2003, paramilitary forces publicly announced that they intended to kill members of SINALTRAINAL because of their alleged interference with the business of the Coke bottler in Barranquilla. These paramilitaries announced that they had indeed been ordered by the management at the Coke bottler to carry out such violence.

27. Again, counsel for Plaintiffs informed Panamco Vice-President Carlos Hernandez and Coca-Cola General Counsel Deval Patrick by letter dated January 16, 2003, of these threats, and implored them to investigate such problems at the Coke bottling plants and to act

immediately to correct them.

28. On August 30, 2003, the Vice-President of Colombia, moved by such events, took the unprecedented step of publicly denouncing the links between corporations and paramilitary killers, particularly in the town of Barranquilla where attacks and threats against workers had increased in the weeks preceding this announcement.

29. Shortly thereafter, on September 10, 2003, four masked individuals kidnapped 15-year-old David Jose Carranza Calle, son of Limberto Carranza, a Coca-Cola worker at the Coke bottling plant in Barranquilla and national director of SINALTRAINAL. This kidnapping became the subject of Amnesty International's November, 2003 briefing to the United Nations Committee Against Torture on the Republic of Colombia. As Amnesty International explained to the United Nations,

On 10 September 2003, at approximately 1:00 pm, four hooded gunmen reportedly abducted 15-year-old David Jose Carranza Calle, in Barranquilla. The gunmen forced him into a van and drove away. The gunmen reportedly tortured him to reveal the whereabouts of his father Limberto Carranza. Limberto Carranza is a national leader of the SINALTRAINAL trade union. At 4:30 pm David Jose was released. At the same time, a death threat was received in the house of Limberto Carranza from an anonymous caller: . . . "son-of-a-bitch trade unionist, we are going to break you, if we don't break you we will attack your home."

30. As a result of the acts of the Coke Defendants, including the orchestration of the murder of Adolfo de Jesus Munera and the orchestration of the continued threats and intimidation against the SINALTRAINAL leadership in Barranquilla, the SINALTRAINAL union has been irreparably harmed. To wit, the

SINALTRAINAL union has lost a large percentage of its membership as a result of this conduct, has lost valuable membership and negotiating power, and has been forced to spend its limited resources on providing security to its leaders and their families.

**V. THE INTERRELATIONSHIPS BETWEEN THE COKE DEFENDANTS AND COKE'S ULTIMATE CONTROL OVER AND LIABILITY FOR THE INJURIES TO THE PLAINTIFFS**

31. Defendant Coke, which generates the vast majority of its operating income outside the United States, controls a highly organized network of bottling facilities throughout the world in order to ensure uniform quality and efficient distribution of Coke products. Any bottler that is awarded a contract to bottle and distribute Coke is required to conform absolutely to Coke's requirements as to product quality, presentation and production. According to the 10-K Report filed by Defendant Coke on December 31, 2003, and other public sources, the specific details of Coke's control over any particular bottler are governed by a "Bottler's Agreement." These Bottler's Agreements provide Defendant Coke with the flexibility to assert the necessary degree of control and supervision over a particular bottler, depending upon the circumstances. As is indicated in the paragraphs below, Defendant Coke – through its Bottler's Agreements, Shareholders Agreements, controlling shares of stock and voting rights, and through its operation of Coca-Cola FEMSA as a joint venture – exercises a particularly high level of control and supervision over Coca-Cola FEMSA.

32. Indeed, over the last few years, Coke has moved toward greater concentration and control over its vast bottling network. With regard to the domestic bottlers, Coke adopted in a plan in 1986 to consolidate its power over the bottlers. “The Plan was known as the ‘49 percent solution.’ It called for Coke to spend \$3 billion to buy the bottlers that were for sale. Then Coke would reconfigure them as a revolutionary kind of bottler, in which Coke would be the largest single stake-holder, wielding power that would ensure the bottler followed Coke’s plans.” Constance Hays, *The Real Thing, Truth and Power at the Coca Cola Company*, p. 42 (2004). In addition, Coke’s executives populate the board of directors of the bottlers, which also gives greater control to Coke. Part and parcel of this new arrangement with the bottlers was a new contract, in which at any time there could be price increases for concentrate. With a controlling ownership stake, Coke attained unprecedented influence over the bottlers, including Coca-Cola FEMSA, without owning them outright. *Id.*

33. Further, as illustrated by a similar situation in Guatemala in the early 1980's, Defendant Coke specifically has control over whether a bottler such as Coca-Cola FEMSA can continue to do business in Coke’s name if the bottler engages in violence against trade union leaders. Based on its Bottler Agreement, Coke forced an independently owned franchisee in Guatemala to sell its bottling business to a third party following the murder of three trade union leaders and an attempted murder of a fourth at the bottling plant. Coke’s action was the result of a massive

public campaign against the company, but its action, however motivated, shows specifically that Coke has the control to prevent and/or remedy violence against workers and trade union leaders in its foreign bottling plants, including the plants at issue in this case. And indeed, Coke has admitted to both consumers and its shareholders, at its 2003, 2004, and 2005 annual meetings, in response to various shareholder resolutions, that it has control over all of its bottlers. Specifically, as it admits, Coke can inspect these bottlers for whether they abide by international human rights conventions and local laws, and can force them to abide by such conventions/laws upon penalty of stripping them of their bottling franchise. Despite its various public pronouncements regarding its firm resolve to require its bottlers to comply with international and local law, as well as Coke's own policies, Coke has taken no action to punish the local managers or anyone else following the undisputed acts of violence taken against the Plaintiff Union members, who were, it is undisputed, terminated from their jobs because they joined the Union.

34. Further, Coke has made specific representations to consumers – in order to assure them that they can continue to purchase Coke products without concern that Coke is profiting from violence against trade union leaders -- that “we require that everyone within the Coca-Cola system abides by the laws and regulations of the countries in which they do business.” This requirement necessarily derives from Coke's ultimate and absolute authority to terminate a bottler's ability to do business under the Coke umbrella.

35. There are numerous other public and binding indications where Coke has asserted to the public that it retains control over its bottlers and suppliers with respect to issues of compliance with international standards of worker rights, including the right to form a union. In a March 15, 2005, agreement with the International Union of Food Workers (IUF), Coke, through its Director of Global Labor Relations, represented that in its global system, “Coca-Cola acknowledges that Coca-Cola workers are allowed to exercise rights to union membership and collective bargaining without pressure or interference. Such rights are exercised without fear of retaliation, repression, or any other form of discrimination.”

36. Coke has also issued a “Code of Conduct” (“Code”) that purports to apply to all directors, officers and employees of Coke and its subsidiaries globally. Every company director, officer and employee is responsible for fulfilling the requirements of the Code. One such requirement mandated by Coke is that every director, officer and employee “must follow the law wherever they are around the world.” The General Counsel and Chief Financial Officer of Coke are responsible for administering the Code, including investigating violations and determining disciplinary actions. Coke has the authority to demote or terminate the employment of a director, officer or employee if they are found in violation of the Code. All of the wrongful acts alleged herein were committed by a director, officer and/or employee of Coke, or by an agent empowered by a director, officer and/or employee of Coke.

37. Due to an effective campaign by the United Students Against Sweatshops (“USAS”) and Stop Killer Coke, college students around the country have been demanding to their university administrators that contract with Coke to supply Coca-Cola products to the universities be terminated, or in some cases, not renewed. Numerous universities have cancelled or declined to renew exclusive supply contracts with Coke as a result of Coke’s failure to take appropriate action in response to the murder and torture of trade union leaders in Colombia. The campaign has largely been focused on holding Coke accountable for the murder and torture of trade union leaders in Colombia at Coke bottling plants. Litigation involving other claims for murder and torture of union leaders at Coca-Cola bottling plants in Colombia is pending, and an outstanding issue is the liability of Coke and its Colombian bottlers for these actions.

38. To address the growing animosity towards the company and to respond to the hostility towards Coke’s initial position that it has nothing to do with the Coke bottling plants in Colombia, Coke has mounted a massive public relations response and has sent numerous Coke executives and consultants to college campuses around the country. Rather than assert the untenable position that Coke has nothing to do with its bottling plants, these Coke executives have consistently and firmly represented to students and university administrators around the country that Coke does not violate human rights and is taking effective action to ensure that human rights violations do not occur in its bottling plants around the

world. The Coke managers have further stated, repeatedly, to the university audiences that Coke will not tolerate human rights violations in any aspect of Coke's operations, including its bottling plants. These admissions are conclusive on the issue of whether Coke has responsibility, control and liability for human rights violations occurring in its bottling plants.

39. In this case, Coke's responsibility and liability for the events in Colombia as described herein is particularly strong. As an initial matter, it was Defendant Coke which initiated and orchestrated the acquisition of the Coke bottling plants in Colombia by Coca-Cola FEMSA in the first place. In addition, Coke required the bottlers in Colombia, including those operated by Coca-Cola FEMSA, to submit to an assessment of their labor and human rights policies by a firm known as Cal-Safety. Coke has also promised college administrators that it would subject its bottlers in Colombia to an independent investigation by the ILO. While Plaintiffs contend that these efforts have been woefully inadequate, these efforts nonetheless demonstrate Coke's ultimate control over the Colombian bottlers, particularly over the type of labor and human rights issues at the heart of this case.

40. Defendant Coca-Cola FEMSA, like other foreign bottling facilities, is governed by the Coke Bottler's Agreement as well as a shareholders' agreement through which Defendant Coke and a company known as FEMSA have agreed to operate Coca-Cola FEMSA as a joint venture. The aforesaid agreements, along

with Coke's previously mentioned policies and admissions that apply to and require bottling partners to comply with human rights, gives Coke complete authority over and control of Defendant Coca-Cola FEMSA with respect to the events alleged herein. Coca-Cola FEMSA does not have any independent authority to make or implement decisions regarding its business practices or direction, but is the agent, alter-ego, and/or instrumentality of Coke. Through its business decisions, Coke has controlled Coca-FEMSA's day-to-day activities, and further utilized Coca-Cola FEMSA's corporate form to accomplish and profit from the allegations contained herein.

41. Defendant Coke, according to its written policies and public admissions, has monitored and controlled all aspects of Coca-Cola FEMSA's compliance with the Coke Bottler's Agreement, including Defendant Coke's requirements for product quality, presentation, marketing, and bottling. Defendant Coke's control through the specific Bottler's Agreement and various Shareholders' Agreements with Coca-Cola FEMSA, its control of stock shares and strategic placement of directors, has extended to the smallest details of Coca-Cola FEMSA's production. Defendant Coke must also approve the types of containers used in bottling, and controls the design and decoration of the bottles, boxes cartons, stamps, and other materials used in production. The Bottler's Agreement grants Coke the right to inspect the products, facilities and other aspects of production of Coca-Cola FEMSA.

42. In addition, Coke, through the Bottler's Agreement, its control of stock shares and strategic placement of directors, imposes standards concerning employee qualifications and appearance and standards for the appearance and condition of transport trucks. Further, Defendant Coke also provides direction on issues of environmental preservation and compliance with its Code governing the treatment of employees. Coke also monitors the labor relations practices of its subsidiaries and bottlers, including Coca-Cola FEMSA, and requires that subsidiaries and bottlers refrain from activities that will damage Coke's brand-name in the market place. Specifically, Coke monitors its bottlers for compliance with human rights conventions and domestic law, and may strip them of their bottling franchise should Coke determine that they are not abiding by such conventions/laws to Coke's satisfaction. As previously alleged, Coke is currently, through its Director of Global Labor Relations and other senior managers, claiming to be addressing the issues of violence in Colombia to avoid damage to Coke's marketing of its products in the US and other lucrative markets.

43. Because Coca-Cola FEMSA is a joint venture between Coke and Coca-Cola FEMSA and Coke and FEMSA are jointly and severally liable for all acts of the joint venture done in furtherance of the business enterprise. All of the actions taken by Coca-Cola FEMSA that resulted in the injuries to the Plaintiffs alleged herein were taken on behalf of or at the direction of the managers, employees, or

agents of Coca-Cola FEMSA or its predecessor. Further, the co-venturers that own Coca-Cola FEMSA, including Coke, are jointly and severally liable for all of the injuries sustained by the Plaintiffs herein.

44. Defendant Coke ultimately has complete control over Coca-Cola FEMSA because Coca-Cola FEMSA exists solely to bottle and distribute Coke products. If there was ever any failure to follow the directives and submit to the control of Defendant Coke, Coca-Cola FEMSA would have lost its bottling concession. Defendant Coke is also liable because of its joint-venture ownership, alter-ego relationship and/or agency relationship with Coca-Cola FEMSA. Further, Defendant Coke is jointly and severally liable for all of the tortuous actions committed when its alter ego, agent and/or joint venture, Coca-Cola FEMSA, acted in concert with, aided and abetted or otherwise conspired with any other person or entity in furtherance of Coke's business interests and activities. All of the wrongful acts alleged herein were committed by individuals who were acting on behalf of Coca-Cola FEMSA with the advance knowledge, acquiescence or subsequent ratification of Coca-Cola FEMSA or its predecessor, or they were agents empowered by Coca-Cola FEMSA or its predecessor to do the wrongful acts alleged herein.

45. Defendant Coke, acting by and through its alter ego, agent and/or joint venture, Coca-Cola FEMSA, acted in concert with, conspired with, aided and abetted or otherwise retained as agents the individuals who committed the violent acts against Plaintiffs, as described herein. The individuals who committed the

violent acts against Plaintiffs were acting as agents and/or co-conspirators of Coca-Cola FEMSA and committed the tortuous actions described in this Complaint in connection with and in furtherance of Coke's business interests and activities. In committing these tortuous actions, the individual perpetrators were acting within the course and scope of the agency relationship, with the advance knowledge, acquiescence or subsequent ratification of Coke. Coke is therefore vicariously liable for all of the tortuous actions committed by its agents done in connection with and in furtherance of its business interests and activities in Colombia as described herein.

46. With respect to all of the causes of action described below, the harm to Plaintiffs was either caused directly by the acts or omissions of Defendant Coke and/or Coca-Cola FEMSA, or was caused by the acts or omissions of Coke's alter ego, agent, and/or joint venture, Coca-Cola FEMSA, making Coke jointly and severally liable or making Defendant Coke vicariously liable for this harm.

#### **VI. DEFENDANTS' VIOLATIONS OF LAW**

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

(a) Alien Tort Statute, 28 U.S.C. § 1350;

- (b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- (c) Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq*;
- (c) Common law of the United States of America;
- (d) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- (e) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
  - (f) International Covenant on Civil and Political Rights, G.A. Res. 2220A(XXI), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
- (g) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)(ratified 10/28/98);
- (h) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- (i) Vienna Declaration and Programme of Action (World Conference on Human Rights, 1993); and
- (j) Statutes and common law of the State of Florida.

## VII. CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350 FOR TORTURE on Behalf of All Plaintiffs Against All Defendants**

48. Plaintiffs incorporate by reference ¶¶ 1 - 47 of this Complaint as is set forth herein.

49. As is alleged herein, the Coke Defendants' employees and/or agents engaged in joint action with, and/or conspired with, the Colombian DAS and AUC paramilitaries, both of which were operating under color of law, and, so acting, intimidated, threatened, and forced into exile Plaintiff Gladys Cecilia Rincon de Munera and her four children; intimidated, threatened, forced into exile and then killed Adolfo de Jesus Munera; and intimidated, threatened and tortured other SINALTRAINAL leaders and their family members. These violent actions against the Plaintiffs were done intentionally and with malice in order to punish Adolfo de Jesus Munero; his family members, including Plaintiff; and SINALTRAINAL for their union activities, including the lawful strike they organized in 1996. These violent acts have caused Plaintiff Gladys Cecilia Rincon de Munera and her children severe physical pain and suffering, and prolonged mental anguish. These acts have also caused Plaintiff SINALTRAINAL irreparable harm in that they have resulted in a radically decreased membership base for the union, the loss of vital leadership and bargaining power, and have forced the union to expend precious resources on security for its members and leaders. These acts amounted to torture, and violate 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 ¶ 47, *supra*.

50. The Coke Defendants are jointly and severally liable for the acts of any

and all alter-ego subsidiaries that are in violation 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 ¶47, *supra*. Defendants are also vicariously liable for any violations of their employees or agents 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 ¶ 47, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

51. The acts described herein are actionable as torture under the ATS. The acts were committed by the Colombian DAS and the AUC paramilitaries, acting jointly with, or in conspiracy with, or with the aid of the Coke Defendants. These DAS and AUC are state actors, and acted under color of law when violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in ¶ 47, *supra*.

**SECOND CAUSE OF ACTION**  
**THE TORTURE VICTIMS PROTECTION ACT, 28 U.S.C. §1350**  
**FOR TORTURE**  
**on Behalf of All Plaintiffs Against All Defendants**

52 Plaintiffs incorporate by reference ¶¶ 1 - 51 of this Complaint as is set

forth herein.

53. As is alleged herein, the Coke Defendants' employees and/or agents engaged in joint action with, and/or conspired with, the Colombian DAS and AUC paramilitaries, both of which were operating under color of law, and, so acting, intimidated, threatened, and forced into exile Plaintiff Gladys Cecilia Rincon de Munera and her four children; intimidated, threatened, forced into exile and then killed Adolfo de Jesus Munera; and intimidated, threatened and tortured other SINALTRAINAL leaders and their family members. These violent actions against the Plaintiffs were done intentionally and with malice in order to punish Adolfo de Jesus Munero; his family members, including Plaintiff; and SINALTRAINAL for their union activities, including the lawful strike they organized in 1996. These violent acts have caused Plaintiff Gladys Cecilia Rincon de Munera and her children severe physical pain and suffering, and prolonged mental anguish. These acts have also caused Plaintiff SINALTRAINAL irreparable harm in that they have resulted in a radically decreased membership base for the union, the loss of vital leadership and bargaining power, and have forced the union to expend precious resources on security for its members and leaders. These acts amounted to torture, and violate 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 ¶ 47, *supra*.

54. The Coke Defendants are jointly and severally liable for the acts of any and all alter-ego subsidiaries that are in violation 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 ¶47, *supra*. Defendants are also vicariously liable for any violations of their employees or agents 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 ¶47, *supra*.

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

55. The acts described herein are actionable as torture under the Torture Victims Protection Act. The acts were committed by the Colombian DAS and the AUC paramilitaries, acting jointly with, or in conspiracy with, or with the aid of the Coke Defendants. These DAS and AUC are state actors, and acted under color of law when violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in ¶ 47, *supra*.

### **THIRD CAUSE OF ACTION**

#### **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350 FOR EXTRA-JUDICIAL KILLING on Behalf of All Plaintiffs Against All Defendants**

56. Plaintiffs incorporate by reference ¶¶ 1 - 55 of this Complaint as is set

forth herein.

57. As is alleged herein, the Coke Defendants' employees and/or agents engaged in joint action with, and/or conspired with, the Colombian DAS and AUC paramilitaries, both of which were operating under color of law, and, so acting, killed Adolfo de Jesus Munera. The killing of Adolfo de Jesus Munera was done without warrant or other judicial order and was done intentionally and with malice in order to punish Adolfo de Jesus Munero; his family members, including Plaintiff; and SINALTRAINAL for their union activities, including the lawful strike they organized in 1996. The killing of Adolfo de Jesus Munera has caused the Plaintiff Gladys Cecilia Rincon de Munera severe physical pain and suffering, and prolonged mental anguish. This killing has also caused Plaintiff SINALTRAINAL irreparable harm in that it has resulted in a radically decreased membership base for the union, the loss of vital leadership and bargaining power, and has forced the union to expend precious resources on security for its members and leaders. The aforesaid conduct of Defendants amounts to an extra-judicial killing, and violates 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 ¶ 47, *supra*.

58. The Coke Defendants are jointly and severally liable for the acts of any and all alter-ego subsidiaries that are in violation 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 ¶ 47, *supra*. Defendants are also vicariously liable for any violations of their employees or agents 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 ¶ 47, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

59. The acts described herein are actionable as an extra-judicial killing under the ATS. The acts were committed by the Colombian DAS and the AUC paramilitaries, acting jointly with, or in conspiracy with, or with the aid of the Coke Defendants. These DAS and AUC are state actors, and acted under color of law when violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in ¶ 47, *supra*.

#### **FOURTH CAUSE OF ACTION**

#### **THE TORTURE VICTIMS PROTECTION ACT, 28 U.S.C. § 1350 FOR EXTRA-JUDICIAL KILLING on Behalf of All Plaintiffs Against All Defendants**

60. Plaintiffs incorporate by reference ¶¶ 1 - 59 of this Complaint as is set forth herein.

61. As is alleged herein, the Coke Defendants' employees and/or agents engaged in joint action with, and/or conspired with, the Colombian DAS and AUC paramilitaries, both of which were operating under color of law, and, so acting, killed Adolfo de Jesus Munera. The killing of Adolfo de Jesus Munera was done without warrant or other judicial order and was done intentionally and with malice in order to punish Adolfo de Jesus Munero; his family members, including Plaintiff; and SINALTRAINAL for their union activities, including the lawful strike they organized in 1996. The killing of Adolfo de Jesus Munera has caused the Plaintiff Gladys Cecilia Rincon de Munera and her four children severe physical pain and suffering, and prolonged mental anguish. This killing has also caused Plaintiff SINALTRAINAL irreparable harm in that it has resulted in a radically decreased membership base for the union, the loss of vital leadership and bargaining power, and has forced the union to expend precious resources on security for its members and leaders. The aforesaid conduct of Defendants amounts to an extra-judicial killing, and violates 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 ¶ 47, *supra*.

62. The Coke Defendants are jointly and severally liable for the acts of any and all alter-ego subsidiaries that are in violation 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 ¶ 47, *supra*. Defendants are also vicariously liable for any violations of their employees or agents 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 ¶ 47, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

63. The acts described herein are actionable as an extra-judicial killing under the Torture Victims Protection Act. The acts were committed by the Colombian DAS and the AUC paramilitaries, acting jointly with, or in conspiracy with, or with the aid of the Coke Defendants. These DAS and AUC are state actors, and acted under color of law when violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in ¶ 47, *supra*.

**FIFTH CAUSE OF ACTION**  
**THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**  
**FOR CRUEL, INHUMANE, OR DEGRADING**  
**TREATMENT OR PUNISHMENT**  
**on Behalf of All Plaintiffs Against All Defendants**

64. Plaintiffs incorporate by reference ¶¶ 1 - 63 of this Complaint as is set forth herein.

65. As is alleged herein, the Coke Defendants' employees and/or agents engaged in joint action with, and/or conspired with, the Colombian DAS and AUC

paramilitaries, both of which were operating under color of law, and, so acting, stigmatized, intimidated, threatened, forced into exile and killed Adolfo de Jesus Munera; intimidate, threatened and forced into exile Plaintiff Gladys Cecilia Rincon de Munera and her four children; and threaten, intimidate and tortured other SINALTRAINAL leaders and their family members. These acts were done intentionally and with malice in order to punish Adolfo de Jesus Munero; his family members, including Plaintiff; and SINALTRAINAL for their union activities, including the lawful strike they organized in 1996. These acts have caused the Plaintiff Gladys Cecilia Rincon de Munera severe physical pain and suffering, and prolonged mental anguish. These acts have also caused Plaintiff SINALTRAINAL irreparable harm in that it has resulted in a radically decreased membership base for the union, the loss of vital leadership and bargaining power, and has forced the union to expend precious resources on security for its members and leaders. The aforesaid acts of Defendants amount to cruel, inhumane and degrading treatment or punishment, and violate 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 ¶ 47, *supra*.

66. The Coke Defendants are jointly and severally liable for the acts of any and all alter-ego subsidiaries that are in violation 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 ¶ 47, *supra*. Defendants are also vicariously liable for any violations of their employees or agents 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 ¶ 47, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

67. The acts described herein are actionable as Cruel, Inhumane and Degrading Treatment or Punishment under the ATS. The acts were committed by the Colombian DAS and the AUC paramilitaries, acting jointly with, or in conspiracy with, or with the aid of the Coke Defendants. These DAS and AUC are state actors, and acted under color of law when violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in ¶ 47, *supra*.

**SIXTH CAUSE OF ACTION**  
**RICO VIOLATIONS**  
**18 U.S.C. § 1961 *et seq.***  
**on Behalf of All Plaintiffs Against All Defendants**

68. Plaintiffs incorporate by reference ¶¶ 1 - 67 of this Complaint as is set forth herein.

69. Defendants Coke and Coke FEMSA are persons within the meaning of 18 U.S.C. § 1961(3). Defendants Coke collectively as an association constitute an enterprise (hereafter referred to as the "Coke Enterprise") within the meaning of 18 U.S.C. § 1961(4). In violation of 18 U.S.C. § 1962(c), Defendant Coke, through its

employees and agents, has conducted, and continues to conduct, the affairs of its Colombian bottling facilities, particularly the facility in Barranquilla, through a pattern of racketeering activity consisting of multiple acts and threats of murder, torture and other acts of violence as set forth specifically in ¶¶ 15 - 30. Further, based on a conspiracy that was entered into either at Coke's headquarters in Atlanta or at some other location in the United States, Coke sends its senior managers to university campuses to affirmatively misrepresent Coke's efforts and intentions with respect to honoring the rights of workers to form trade unions at Coke's foreign bottling facilities. While Coke participates in allowing extreme violence to be used to suppress trade union rights in its foreign bottling facilities, such as the violence against Plaintiffs alleged herein, Coke at the same time affirmatively misrepresents this to consumers in the United States. Coke is doing this first to increase its profits from the offshore bottlers by using violence to suppress trade unions, and at the same time, it is seeking to preserve or bolster its market share in the United States, Canada and Europe by affirmatively misrepresenting its actions in using extreme, unlawful, and criminal acts of violence to prevent trade unions from forming in its bottling facilities outside the U.S.

70. In violation of 18 U.S.C. § 1962(d), Defendant Coke has conspired, and continues to conspire, to violate 18 U.S.C. § 1962(c). As a result of this unlawful conspiracy, Plaintiffs were brutally tortured and subjected to other acts of brutality.

Plaintiffs are entitled to compensatory and punitive damages, as well as statutory damages under RICO, including treble damages, as well as injunctive relief, in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION**  
**Wrongful Death**  
**on Behalf of Plaintiff Gladys Cecilia Rincon de Munera Against All**  
**Defendants**

71. Plaintiffs incorporate by reference ¶¶ 1 - 70 of this Complaint as is set forth herein.

72 The Coke Defendants and/or their employees, co-venturers, and/or agents acted in concert to commit acts which resulted in the violent and wrongful death of Adolfo de Jesus Munera. Plaintiff and her four children have suffered loss of consortium, loss of support and grave mental anguish and suffering as a result of the wrongful death of Mr. Munera. In addition, because Plaintiff is the representative of the Estate of Mr. Munera and because Plaintiff and her children are all heirs of Mr. Munera, they sue for the losses and suffering inflicted upon Mr. Munera by Defendants' wrongful actions is causing his death.

73. The acts described herein constitute wrongful, actionable under the laws of the State of Florida. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

**EIGHTH CAUSE OF ACTION**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
on Behalf of Plaintiff Gladys Cecilia Rincon de Munera Against All  
Defendants**

74. Plaintiffs incorporate by reference ¶¶ 1 - 73 of this Complaint as is set forth herein.

75. The acts described herein constitute outrageous conduct against Plaintiff and her four children and were without privilege.

76. The Coke Defendants and/or their employees, co-venturers, and/or agents committed or acted in concert to commit acts that were intended to cause the Plaintiff, Mr. Munera and their four children to suffer emotional distress. In the alternative, the Coke Defendants engaged in conduct with reckless disregard of the probability of causing the aforesaid individuals to suffer emotional distress that resulted in them in fact suffering emotional distress. These individuals were present at the time the outrageous conduct occurred, and the Coke Defendants and/or their employees, co-venturers, or agents knew that the Plaintiffs were present.

77. Plaintiff, her four children, and Mr. Munera, whose Estate Plaintiff represents, suffered severe emotional distress caused by the outrageous conduct of the Coke Defendants.

78. Defendants' outrageous conduct constitutes intentional infliction of

emotional distress and is actionable under the laws of the State of Florida.

**NINTH CAUSE OF ACTION**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**On Behalf of All Plaintiffs Against Defendant Coke**

79. Plaintiffs incorporate by reference ¶¶ 1 - 78 of this Complaint as if set forth herein.

80. Defendant Coke's fraudulent and deceptive practices as alleged herein constitute ongoing and continuous unfair business practices within the meaning of the Florida Statute forbidding Deceptive and Unfair Trade Practices. *See*, Florida Statutes, Sections 501.201, et seq. Such practices include, but are not limited to, knowingly misrepresenting to the consumers of Florida, as well as the rest of the United States, Canada and Europe, that Coke requires its bottlers, and all other participants in the Coke global enterprise, to comply with internationally-recognized human rights standards, the laws of the countries where Coke operates, and the policies and directives of Coke, including its Code, which explicitly states that Coke will respect the rights of workers to associate, form or join unions, and bargain collectively. Coke further misrepresents to the consumers of Florida, as well as the rest of the United States, Canada and Europe, that it has implemented effective mechanisms to ensure that any bottlers or other participants in the Coke global enterprise in fact do comply with these laws and policies, and that Coke will not tolerate any violations. In making these affirmative misrepresentations, Coke seeks to mislead the consumers of Florida, as well as the rest of the United States, Canada and Europe, and induce them to continue buying Coke products despite

the fact that Coke in reality encourages, allows or knowingly permits its bottlers to use violent means to suppress the rights of workers to associate, form or join unions, and bargain collectively.

81 Coke has aggressively advertised that it has a Code, that it complies with labor laws, international standards and its Code, and that it requires its bottlers, and all other participants in the Coke global enterprise, to comply with the standards of the Code. Coke deliberately and intentionally seeks to mislead the public by stating that its Code of Conduct does apply to its bottlers, and all other participants in the Coke global enterprise, when Coke in fact does little or nothing to ensure that workers in the global bottling plants are provided the rights guaranteed them by the Code, or the other stated policies and practices Coke has misled the public into believing protect workers at its foreign bottling plants.

82. The statements and assertions described in the proceeding two paragraphs were made to the general public by Coke officials and agents who knew that the statements and assertions were false. These officials are sent by Coke to rebut charges that workers in Coke's bottling plants are subjected to violence for asserting trade union rights. Consistent with Coke's purpose in making them, such statements and assertions have induced consumers in Florida and elsewhere to believe that Coke is an ethical company and that it requires all aspects of its global enterprise, including its offshore bottlers, to comply with Coke's Code or the other stated policies and practices Coke has misled the public into believing protect workers at its foreign bottling plants. This has counteracted any consumer pressure on Coke to actually improve the conditions of its bottling plants and actually require its offshore bottlers to comply with the

Code, the other stated policies and practices Coke Plaintiffs. In addition, Defendant Coke's violent acts against Plaintiffs have had the intended result of suppressing and chilling trade union activity at its Colombian bottlers and has thereby given Defendant Coke an unfair business advantage over its competitors in Florida and the rest of the United States.

83. The Plaintiffs, in seeking to require Coke to cease and desist from further deceptive practices, are not only protecting their own interests, but are acting in the general public interest of the consumers of Florida. If Plaintiffs are successful in their action, the consumers of Florida will no longer be subjected to false and deceptive statements made by Coke in violation of the Florida Deceptive and Unfair Business Practices Law.

84. Coke has the ability to instantly change its practices so that in fact workers could exercise their fundamental rights at Coke's offshore bottling facilities. Because Coke knowingly receives profits and continued business from consumers based on its misrepresentations, Defendant Coke is under a duty of restitution to Plaintiffs for the benefits received therefrom. Further, in order to remedy the injuries suffered by the Plaintiffs herein, the sole entity that has the power to do so is Defendant Coke, and requiring Coke to disgorge profits unlawfully obtained will result in the change of policy or practice that currently allows Coke's bottlers to use violence to repress trade union rights.

**TENTH CAUSE OF ACTION**  
**NEGLIGENCE**  
**on Behalf of All Plaintiffs Against All Defendants**

85. Plaintiffs incorporate by reference ¶¶ 1 -84 of this Amended Complaint

as is set forth herein.

86. At all relevant times, the Coke Defendants' owed the Plaintiffs a duty to act with reasonable care. The Coke Defendants knew or should have known that by permitting their Colombian managers to collaborate with the AUC and corrupt members of DAS, injury to the Plaintiffs was reasonably foreseeable.

87. The Coke Defendants failed to use ordinary or reasonable care in order to avoid injury to the Plaintiffs by the paramilitaries and DAS, and thus they breached their duty to the Plaintiffs.

88. Defendants' negligence was a cause of injury, damage, loss and harm to Plaintiffs. As a result of these acts, Plaintiffs suffered harm including, but not limited to, physical harm, pain and suffering, and severe emotional distress.

89. Defendants' conduct constitutes negligence and is actionable under the laws of the State of Florida. Plaintiffs are entitled to recover compensatory damages in amounts to be ascertained at trial. Additionally, the Coke Defendants' acted recklessly with deliberate and conscious disregard for Plaintiffs' safety such that the Plaintiffs are entitled to recover punitive damages.

**ELEVENTH CAUSE OF ACTION**  
**NEGLIGENT HIRING AND SUPERVISION**  
**On Behalf of All Plaintiffs Against All Defendants**

90. Plaintiffs incorporate by reference paragraphs 1 - 89 of this Complaint as if

fully set forth herein.

9A. As a regular part of its operations, the Coke Defendants selected, hired, retained and contracted with local managers to oversee their bottling operations in Colombia.

92. The Coke Defendants failed to exercise reasonable care in selecting, hiring, retaining and contracting with these managers. At the time that defendants selected, hired, retained and contracted with the managers, defendants knew or reasonably should have known that these managers would violate Plaintiffs' rights and that, as a direct and proximate result of those violations, the Plaintiffs would suffer injuries as alleged herein.

93. Once the managers were retained by Defendants, they were acting as joint employers, and Coke exercised control over the operative details of the production process of the bottling operations identified herein. This includes Coke's control over the operative details of production.

94. Defendants knew or reasonably should have known that their managers would violate Plaintiffs' rights, and that, as a direct and proximate result of those violations, the Plaintiffs would suffer injuries as alleged herein.

95. Regardless of whether it was a joint employer, Defendant Coke had the authority to supervise, prohibit, control, and/or regulate its bottling plants, including the one identified herein, so as to prevent these acts and omissions from occurring.

96. Defendant Coke knew or reasonably should have known unless it intervened to protect Plaintiffs and properly supervise, prohibit, control and/or regulate the conduct described herein, the bottling plant managers, the paramilitaries, and the

DAS would perceive their acts and omissions as being ratified and condoned by Coke. This is reinforced by Coke's pervasive failure to require any of the Colombian bottling plants to comply with the Code of Conduct, local laws, and well-established international standards, including ILO Conventions.

97. As a direct and proximate result of defendant Coke's negligent selection, hiring, retention and contracting with the managers identified herein, as well as the subsequent failure to supervise, Plaintiffs have suffered and continue to suffer injuries entitling them to damages in amounts to be proven at trial.

**THIRTEENTH CAUSE OF ACTION**  
**UNJUST ENRICHMENT**  
**On Behalf of All Plaintiffs Against Defendant Coke**

98. Plaintiffs incorporate by reference ¶¶ 1 - 97 of this Complaint as if set forth herein.

99. Defendant Coke profited from and continues to profit from its products in the United States, Canada and Europe based on knowing misrepresentations it makes to consumers, both that it respects human rights, including the fundamental rights of workers to associate, form or join trade unions, and bargain collectively, and that it is taking effective steps to ensure that all workers in the Coke system are able to realize these rights, including workers in Coke's offshore bottling facilities. As a result of Coke's

misrepresentations to consumers, particularly university students and administrators, Coke is able to willfully deny the rights of its bottling plant workers, including the Plaintiff union members, in violation of international law, Colombian law, and the stated policies and practices of Coke itself. Coke makes these misrepresentations knowing that the consumers will continue to purchase Coke products as long as they don't know the true facts about Coke's various actions that result in the use of violence against workers in bottling plants who seek to exercise their fundamental rights to form or join trade unions. If Coke were an ethical company that did not engage in the systematic misrepresentations regarding its respect for fundamental worker rights, and its policies and practices asserted to protect these rights, Plaintiffs would not have been subjected to the extreme violence alleged herein.

100. Coke has the ability to instantly change its practices so that in fact workers could exercise their fundamental rights at Coke's offshore bottling facilities. Because Coke knowingly receives profits and continued business from consumers based on its misrepresentations, Defendant Coke is under a duty of restitution to Plaintiffs for the benefits received therefrom. Further, in order to remedy the injuries suffered by the Plaintiffs herein, the sole entity that has the power to do so is Defendant Coke, and requiring Coke to disgorge profits unlawfully obtained will result in the change of policy or practice that currently allows Coke's bottlers to use violence to repress trade union rights.

## **VIII. DEMAND FOR JURY TRIAL**

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

## **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court to:

- (a) enter judgment in favor of Plaintiffs on all counts of the Complaint;
- (b) declare that Defendants have violated Plaintiffs' human rights and the laws of the State of Florida and the United States, as set forth herein;
- (c) award Plaintiffs compensatory and punitive damages;
- (d) grant Plaintiffs equitable relief, permanently enjoining Defendants from further engaging in human rights abuses against Plaintiffs, their fellow members of the Union, and their families.
- (e) award Plaintiffs compensatory and punitive damages, as well as statutory damages and treble damages under RICO;
- (f) award Plaintiffs the statutory remedies available under the Florida Deceptive and Unfair Business Practice Law, Sections 501.201, et seq.
- (g) award Plaintiffs the costs of suit including reasonable attorneys' fees, and
- (h) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

Respectfully submitted this \_\_\_ day of June, 2006.

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