

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

CASE NO. 01-3399 - CIV- MORENO / DUBE

ANGEL ENRIQUE VILLEDA)
ALDANA, [address redacted];)
JORGE AGUSTIN PALMA ROMERO)
[address redacted];)
OSCAR LEONEL GUERRA EVANS)
[address redacted];)
LYIONHEL McINTOSCH)
RODRIGUEZ [address redacted];)
and MAREL MARTINEZ [address)
redacted];)

Plaintiffs,)

v.)

FRESH DEL MONTE PRODUCE, INC.)
C/O 800 Douglas Road)
North Tower, 12th Floor)
Coral Gables, FL 33134)

DEL MONTE FRESH)
PRODUCE COMPANY)
800 Douglas Road)
North Tower, 12th Floor)
Coral Gables, FL 33134)

and)

COMPANIA DE DESARROLLO DE)
GUATEMALA, S.A. (BANDEGUA))
C/O 800 Douglas Road)
North Tower, 12th Floor)
Coral Gables, FL 33134)

Defendants.)

**SECOND AMENDED COMPLAINT
FOR EQUITABLE RELIEF AND
DAMAGES; JURY TRIAL
DEMANDED**

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I. NATURE OF THE ACTION

1. Plaintiffs Angel Enrique Villeda Aldana, Jorge Agustin Palma Romero, Oscar Leonel Guerra Evans, Lyonhel McIntosch Rodriguez, and Marel Martinez (hereafter referred to as “Plaintiffs” unless otherwise specified) bring this Complaint for equitable relief and for damages to remedy the injury to their persons caused by the wrongful conduct of the Defendants Fresh Del Monte Produce, Inc. (“Del Monte, Inc.”), Del Monte Fresh Produce Company (“Del Monte Fresh”), and Compania de Desarrollo Banaero de Guatemala, S.A. (“Bandegua”) (hereinafter collectively referred to as “Del Monte” or Defendants unless otherwise specified).

2. The claims in this action arise from Defendants’ wrongful actions in connection with their banana production operations in Guatemala, which are conducted by Defendant Bandegua, a wholly-owned subsidiary of Defendant Del Monte, Inc. The individual Plaintiffs have been subjected to serious human rights abuses, including kidnapping, unlawful detention, and torture in violation of the Alien Tort Claims Act (ATCA), 28 U.S.C. §1350, the Torture Victims Protection Act (TVPA), international human rights law, and the common tort law of the state of Florida. Further, Defendants engaged in a conspiracy to cause physical and mental harm to Plaintiffs in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*

3. Plaintiffs do not have access to an independent or functioning legal system within Guatemala to raise their complaints. They made every effort to utilize that system, but the perpetrators of the illegal actions against them remain free and at large in Guatemala, and have

made ongoing threats of death to the Plaintiffs. The Plaintiffs have sought refuge for themselves and their families in the United States. Having arrived in the United States in March 24, 2001, Plaintiffs have pursued the claims set forth herein within a reasonable time of gaining access to the courts of the United States.

II. JURISDICTION AND VENUE

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, the ATCA and the TVPA, 28 U.S.C. §1350, for the alleged violations of international human rights law. Federal question jurisdiction is further based on violations of RICO, 18 U.S.C. § 1961 *et seq.* Supplemental jurisdiction exists over the state law causes of action pursuant to 28 U.S.C. § 1367. Federal jurisdiction also exists under 28 U.S.C. § 1332 based on diversity. Plaintiffs Angel Enrique Vileda Aldana, Lyonhel Mcintosh Rodriquez, and Marel Martinez reside in Los Angeles, California. Plaintiffs Jorge Agustin Palma Romero and Oscar Leonel Guerra Evans reside in Las Vegas, Nevada. Defendant Del Monte, Inc. is a corporation incorporated in the Cayman Islands with a principle place of business in Coral Gables, Florida. Defendant Del Monte Fresh is a corporation incorporated in Delaware with a principle place of business also in Coral Gables, Florida. Defendant Bandegua is, upon information and belief, a corporation incorporated under the laws of Guatemala, with a principle place of business in Coral Gables, Florida.

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

III. PARTIES

Plaintiffs

6. Plaintiff Angel Enrique Villeda Aldana is a citizen of Guatemala residing in Los

Angeles, California. He brings this action for equitable relief and for damages to remedy the injuries to his person caused by the wrongful conduct of the Defendants, as more fully set forth herein.

7. Plaintiff Jorge Agustin Palma Romero is a citizen of Guatemala residing in Las Vegas, Nevada. He brings this action for equitable relief and for damages to remedy the injuries to his person caused by the wrongful conduct of the Defendants, as more fully set forth herein.

8. Plaintiff Oscar Leonel Guerra Evans is a citizen of Guatemala residing in Las Vegas, Nevada. He brings this action for equitable relief and for damages to remedy the injuries to his person caused by the wrongful conduct of the Defendants, as more fully set forth herein.

9. Plaintiff Lyionhel McIntosch Rodriguez is a citizen of Guatemala residing in Los Angeles, California. He brings this action for equitable relief and for damages to remedy the injuries to his person caused by the wrongful conduct of the Defendants, as more fully set forth herein.

10. Plaintiff Marel Martinez is a citizen of Guatemala residing in Los Angeles, California. He brings this action for equitable relief and for damages to remedy the injuries to his person caused by the wrongful conduct of the Defendants, as more fully set forth herein.

Defendants

11. Defendant Del Monte, Inc. is a for-profit company which distributes fresh produce

throughout the United States and the world, specifically including within the state of Florida. Its principal place of business is located at 800 Douglas Road, North Tower, 12th Floor, Coral Gables, Florida 33134. Defendant Del Monte, Inc. has exclusive rights to market fresh produce under the Del Monte brand name.

12. Upon information and belief, Defendant Del Monte, Inc. owns, and through its Board of Directors, controls the family of companies operating under the Fresh Del Monte Produce name, through its Florida office located at 800 Douglas Road, North Tower, 12 Floor, Coral Gables, Florida 33134. According to the 20-F Report filed by Defendant Del Monte, Inc. on December 29, 2000 with the Securities and Exchange Commission, and other public sources, Defendant Del Monte, Inc. controls, manages or supervises all aspect of production, distribution and marketing of its fresh produces on a worldwide basis.

13. Defendant Del Monte Fresh is a Delaware company with a principal place of business located at 800 Douglas Road, North Tower, 12th Floor, Coral Gables, Florida 33134. Del Monte Fresh is a wholly-owned subsidiary of Defendant Del Monte, Inc. and its address serves as Del Monte, Inc.'s principle executive office. Upon information and belief, Del Monte Fresh is under the direct supervision and control of its parent company, Del Monte, Inc.

14. Defendant Bandegua is also a wholly-owned subsidiary of Defendant Del Monte, Inc., and is responsible, under the direct supervision and control of Defendant Del Monte, Inc. and/or Defendant Del Monte Fresh, for the production of bananas for distribution and sale by Defendant

Del Monte, Inc.

15. Defendant Del Monte, Inc. for the purpose of attempting to shield itself from liability or responsibility for wrongful acts committed in furtherance of its business activities, created, or caused to have created, several wholly-owned subsidiaries, divisions and/or affiliated companies. These entities include, but are not limited to, Defendants Del Monte Fresh and Bandegua.

16. Defendant Del Monte, Inc. is fully liable for its own acts and the acts of any subsidiaries, affiliates, divisions or other entities directly or indirectly under its ownership and control, including Defendants Del Monte Fresh and Bandegua. Any such subsidiaries, affiliates, divisions or other entities are alter egos of Defendant Del Monte, Inc. or, alternatively, are in an agency relationship with it. Further, Defendant Del Monte, Inc. is vicariously liable under the doctrine of *respondeat superior* for the acts or omissions of any subsidiaries, affiliates, divisions or other entities under its ownership and control.

17. Upon information and belief, these subsidiaries including Del Monte Fresh and Bandegua were created for the sole purpose of achieving Del Monte, Inc.'s objectives with respect to the production, marketing, sale, and distribution of its fruit products, and are under the direct managerial and financial control of Del Monte, Inc. to the extent that such subsidiaries have no or insignificant financial assets of their own.

18. Regardless of whether Defendant Del Monte Fresh is found to be an alter ego or agent

of Defendant Del Monte, Inc., Defendant Del Monte Fresh is fully liable for its own acts and the acts of any subsidiaries, affiliates, divisions or other entities directly or indirectly under its ownership and control, including Defendant Bandegua. Any such subsidiaries, affiliates, divisions or other entities are alter egos of Defendant Del Monte Fresh or, alternatively, are in an agency relationship with it. Further, Defendant Del Monte Fresh is vicariously liable under the doctrine of *respondeat superior* for the acts or omissions of any subsidiaries, affiliates, divisions or other entities under its ownership and control, including those of Defendant Bandegua.

19. Regardless of whether Defendant Bandegua is found to be an alter ego or agent of Defendants Del Monte, Inc. and/or Del Monte Fresh, Defendant Bandegua is liable for any and all wrongful acts done by it or on its behalf by any of its agents or employees.

IV. BACKGROUND FACTUAL ALLEGATIONS

20. Defendant Del Monte, Inc. is one of the world's largest producers and distributors of bananas. One of its major sources of bananas is Guatemala. Through its wholly-owned subsidiaries, Defendants Del Monte Fresh and Bandegua, Del Monte, Inc. owns, leases and/or operates banana plantations in Guatemala. Among the plantations it owns and operates in Guatemala is the Zaculeu Lanquin Arapahoe Plantation in the Bobos District Municipality of Morales Izabal (hereinafter referred to as the "Bobos plantation").

21. In September and October, 1999, when the wrongful acts alleged herein occurred, the Bobos plantation was owned and operated by Bandegua through the General Manager employed

by Bandegua, Jorge Arturo Osborne Escalante.

22. The workers at the Bobos plantation were represented by SITRABI, a national trade union of plantation workers affiliated to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (hereinafter referred to as "IUF"). Plaintiffs, as is described more fully below, were all officers of SITRABI's union at the Bobos plantation.

23. Guatemala is widely known as a country that is struggling to maintain peace and reduce violence and armed conflict. However, the country also officially permits and regulates the use of private, armed security forces. The Ministry of Interior has specific jurisdiction to regulate these private security forces, and commonly allows them to operate.

24. Defendant Del Monte, Inc. and its wholly owned subsidiary, Bandegua, were engaged in negotiations with SITRABI for a new collective bargaining agreement covering the workers at the Bobos plantation. Defendant Del Monte, Inc. through its regional agents, including but not limited to Defendant Del Monte Fresh, was directly involved in these negotiations. Without legal justification, and in violation of the operative collective bargaining agreement, Defendants Del Monte, Inc., Del Monte Fresh, and Bandegua terminated 918 workers at the Bobos plantation, all of whom who were members of SITRABI.

25. In response to the illegal termination of 918 of its members who were employed at the

Bobos plantation, SITRABI filed an appropriate complaint in the Labor Court of Guatemala and also continued in good faith its negotiations with Defendants.

V. INJURIES AND HARM SUFFERED BY THE PLAINTIFFS

26. On or before October 13, 1999, Defendants Del Monte, Inc., Del Monte Fresh and Bandegua hired or otherwise created an agency relationship with an armed and organized security force (hereinafter referred to as the “security force”) to use violence to intimidate the SITRABI leadership in order to affect the outcome of the ongoing collective bargaining negotiations and the associated labor disputes concerning the workforce of the Bobos plantation. This security force was given specific direction by employees or agents of Del Monte, Inc., Del Monte Fresh and/or Bandegua.

27. The security force was heavily armed and was permitted to operate openly due to the provisions and practices pursuant to the law of Guatemala under which the Ministry of Interior regulates the creation and use of private, armed security forces.

28. On the afternoon of October 13, 1999, the security force met with employees and/or agents of Del Monte, Inc., Del Monte Fresh and/or Bandegua to plan violent action against the Plaintiffs and other SITRABI leaders. This meeting occurred at a restaurant in the Municipality of Morales Izabal. Among the Del Monte employees present was the Director of Operations, Teodoro Jiménez Falla, who, on information and belief, is still employed by Del Monte and working in Brazil after fleeing Guatemala to avoid criminal prosecution for his wrongful acts

described herein. Also present and actively participating in planning the violence was Carlos Enrique Hernandez, who was head of security for Del Monte's operations in Guatemala. As is described in paragraph 40 below, Carlos Enrique Hernandez was present during the violent acts that followed the planning session described herein, and was relaying information as it occurred to allow his superiors at Del Monte to coordinate the steps of the plan to use violence to force the resignation of the SITRABI leaders from the union and from the company. On information and belief, the Bandegua General Manager, Jorge Arturo Osborne Escalante, was also present at this meeting, or it occurred at his direction and with his coordination.

29. Based on information and belief, the security force was represented at the meeting by its leaders, Obdulio Mendoza Matta, Edvin Mendoza Mata, Carlos Castro Garcies, and Carlos Régil Beker. At least two of these leaders, Obdulio Mendoza Matta and Carlos Castro Garcies, were contractors for Del Monte, Inc., Del Monte Fresh and/or Bandegua, and performed regular services in Guatemala as agents for the banana plantations owned by the Defendants.

30. The result of the meeting was a specific plan and agreement between the security force and Del Monte, Inc., Del Monte Fresh and/or Bandegua pursuant to which the security force would capture, kidnap and terrorize the Plaintiffs in order to break the SITRABI union, eliminate its experienced leadership, and gain a significant advantage in the ongoing collective bargaining negotiations and the associated labor disputes concerning the workforce of the Bobos plantation. This plan was in furtherance of the business activities and interests of Defendants Del Monte, Inc., Del Monte Fresh, and/or Bandegua, and constituted an express conspiracy to commit violent acts

against the Plaintiffs.

31. On October 13, 1999, at 5:45 p.m. the security force, which was a gang of over 200 heavily armed men, came to the SITRABI headquarters in the Municipality of Morales Izabal to carry out and implement the conspiracy, described in more detail below, on behalf of, and under the direction and control of, Defendants Del Monte, Inc., Del Monte Fresh, and/or Bandegua.

32. Plaintiffs Jorge Agustin Palma Romero and Oscar Leonel Guerra Evans were in the SITRABI office when the security force arrived. They were both detained unlawfully at gunpoint by the security force, and they were tortured with physical violence and the threat of death. The security force kept multiple weapons pointed at them, frequently jabbing them with the weapons causing great physical pain and mental anguish. The aggressors threatened repeatedly that the Plaintiffs would be killed because of their activities on behalf of SITRABI.

33. Plaintiff Oscar Leonel Guerra Evans was eventually taken to a room within the SITRABI office and left with a subgroup of the security force. He was constantly tortured with guns and threats of death while he was detained against his will.

34. Plaintiff Jorge Agustin Palma Romero was forcibly detained and then removed from the SITRABI office at gunpoint by several leaders of the security force, including, but not limited to, Obdulio Mendoza Matta, Edvin Mendoza Mata, Carlos Castro Garcies, and Carlos Régil Beker. He was kidnaped by the security force in a car that belonged to SITRABI. He was ordered

at gunpoint to show the security force where another of the Plaintiffs, and a leader of SITRABI, Plaintiff Marel Martinez, lived. During the drive, a leader of the security force, Obdulio Mendoza Matta, said to Plaintiff Jorge Agustin Palma Romero, while holding a gun to his head, that they were going to kill him and his body would be rotten by the time the human rights people heard that he is dead.

35. The security force arrived at the home of Plaintiff Marel Martinez, and in front of his wife and children, abducted him at gunpoint. They shoved him with gun barrels, smashed his cell phone, and told him that they were going to kill him, all while his family observed helplessly.

36. The security force took Plaintiff Marel Martinez and Plaintiff Jorge Agustin Palma Romero back to the SITRABI office, all the while again torturing them with guns and threats that they were going to be killed in a brutal and grotesque way. When they arrived back at the SITRABI office, the security force took them inside and, at gunpoint, forced Plaintiff Marel Martinez to telephone Plaintiff Angel Enrique Villeda Aldana, another SITRABI leader, and tell him he had to come at once to the SITRABI office to sort out a problem with Bandegua and the Bobos Chamber of Commerce. Mr. Martinez had a gun to his head the entire time he made the call, and he was told that if he warned or otherwise failed to deliver the message to Plaintiff Angel Enrique Villeda Aldana, he would be killed instantly. The security force also forced Mr. Martinez to call other SITRABI leaders and summon them to the office. While waiting for the other leaders to arrive, Plaintiffs Jorge Agustin Palma Romero, Oscar Leonel Guerra Evans, and Marel Martinez were subjected to ongoing torture as the security force members pointed guns at them

and described how they were going to be killed.

37. At some point while the security force was waiting for Plaintiff Angel Enrique Villeda Aldana to arrive, Plaintiff Lyonhel McIntosch Rodriguez, another SITRABI leader, arrived at the SITRABI office. He was ordered at gunpoint by a leader of the security force, Obdulio Mendoza Matta, to get out of his car and go into the SITRABI office. Shortly thereafter, Plaintiff Angel Enrique Villeda Aldana arrived at the office and was likewise taken inside the SITRABI office at gunpoint.

38. Once the five SITRABI leaders, the Plaintiffs herein, were present, the security force took them, and other SITRABI members who were present in the office, to the auditorium of the union office. A leader of the security force, Carlos Castro Garcias, who claimed to be the President of the Chamber of Commerce for the Municipality of Morales Izabal, told the Plaintiffs that they were responsible for the declining business in the area, and that if Del Monte abandons the Bobos plantation and the plantations in the rest of the country, it would be their fault. He continued that the security force would not allow that to happen. At this point, another leader of the security force, Obdulio Mendoza Matta, interrupted to say that there had been enough talk and it was time to kill the SITRABI leaders, the five Plaintiffs herein.

39. Obdulio Mendoza Matta then ordered his men to “get the AK-47s.” He then used a Polaroid camera and took pictures of the five Plaintiffs, stating that he wanted a clear photo of the faces before he killed them all. The five Plaintiffs were shoved and jabbed with guns while the

members of the security forces were discussing what to do next. The Plaintiffs all believed reasonably that they were going to be killed by the out of control mob. Another member of the security force, Mario Benildo Alvarez, grabbed Plaintiff Jorge Agustin Palma Romero by the hair and shouted, “Let’s start with this one. Let’s burn him alive. He’s big and tall, let’s kill Jorge.” Obdulio Mendoza Matta then came from behind and hit Mr. Romero in the back, and said, “Do you want to see who wants to burn you alive you son of a bitch?”

40. The security force had become an unruly mob and the Plaintiffs were pushed and shoved with guns as the aggressors competed to shout what should be done to kill them. All of the Plaintiffs sustained injuries and suffered severe trauma as they waited to be brutally killed by the mob.

41. At some point in the confusion, the candidate for Mayor of Morales District, Manuel Sosa Castaneda, who is now the current Mayor of Morales Municipality, arrived. He was with the security force and joined in the mob action. Thereafter, the security force reached a consensus that the two main leaders of SITRABI, Plaintiffs Angel Enrique Villeda Aldana and Marel Martinez, would be taken to a radio station owned by a leader of the security force, Carlos Castro Garcias, where they would be forced to denounce the union. Accompanied by Carlos Castro Garcias, Israel Vargas, who was Mayor of Morales District at the time of the events herein, and several other armed aggressors, Plaintiffs Angel Enrique Villeda Aldana and Marel Martinez were taken by force, at gunpoint, and against their wills, to the radio station.

42. On the way to the radio station, with guns to their heads and bodies, Plaintiffs were further tortured and threatened with death. Carlos Castro Garcias took out a video camera and filmed much of the scene and taunted them, saying “they were not celebrities and would be giving their last messages.”

43. At the radio station, Plaintiffs Angel Enrique Villeda Aldana and Marel Martinez were forced at gunpoint to make an announcement over the radio that the labor dispute with Del Monte was over, the workers should return to work, the workers who had been discharged from Bobos should get the money owed them and go elsewhere for work, and that the leaders of SITRABI would resign their posts.

44. When the announcement was completed, Plaintiffs Angel Enrique Villeda Aldana and Marel Martinez were taken back at gunpoint to the SITRABI office. The five Plaintiffs herein were then gathered in an office and were further tortured at gunpoint with threats of brutal death. A lawyer from the area, Jorge Salguero, was brought in, and another man, Rufino Sosa, joined to type the lawyer’s dictation. Another lawyer, who was clearly with the security force, was telling the other lawyer, Salguero, what to do. Two video cameras controlled by the security force were recording the events. A fax arrived in the office. On information and belief, the fax was sent by officials of Del Monte, Inc., Del Monte Fresh, and/or Bandegua. It was a model resignation and release form. The lawyers directed the typist who prepared a resignation and release letter for the five Plaintiffs and the six additional SITRABI leaders. They were all forced, at gunpoint, to sign the resignation letters. During all of these events, the Chief of Security for Del Monte, Inc., Del

Monte Fresh, and/or Bandegua, Carlos Enrique Hernandez Diaz, was present and was communicating by walkie talkie to persons believed to be management staff of Del Monte.

45. Once the letters were signed, then again unruly calls from the mob of the security force were made to kill the Plaintiffs. Manuel Sosa Castaneda, a leader of the security force and now the Mayor of Morales Municipality, made a speech mocking the Plaintiffs and thanking them for their public service of resigning from Del Monte. He had been one of the armed aggressors throughout the events of the evening.

46. Plaintiffs Marel Martinez and Jorge Agustin Palma Romero made statements to the mob to the effect that “you have what you wanted, now please let us go.”

47. Obdulio Mendoza Matta, a leader of the security force, told the five Plaintiffs that they had better leave the area or he would find them and kill them. He further stated that even if they went to Mexico, he would find them. He pounded Plaintiffs Angel Enrique Villeda Aldana and Jorge Agustin Palma Romero in the chest as he was saying this.

48. Plaintiffs were released from their detention around 2 a.m. on October 14, 1999. As they walked outside, they all were able to see the National Police office, which was no more than 100 meters from the SITRABI office. It was an absolute certainty that the National Police were aware of all of the events of the night, and yet they did nothing to intervene to protect the SITRABI leaders. Positive that they would not be safe if they remained in the area, the Plaintiffs

gathered their families and fled to Guatemala City where they sought police protection.

49. At the conclusion of the events of the evening of October 13 and the early morning of October 14, 1999, Obdulio Mendoza Matta had custody of the resignation letters of the five Plaintiffs. The next day, in response to an inquiry from the Ministry of Labor, the Bandegua General Manager, Jorge Arturo Osborne Escalante, asserted that he had the “voluntary resignations” of the SITRABI leaders in his possession. Escalante made this statement at a meeting with the Ministry of Labor and at a separate meeting with the Public Ministry. The Plaintiffs were present in the meeting with the Ministry of Labor.

50. Within weeks of the events of October 13 and 14, two of the main leaders of the security force, Obdulio Mendoza Matta and Carlos Castro Garcias, who had been contractors and agents for Del Monte, Inc., Del Monte Fresh, and/or Bandegua, were rewarded by Del Monte, Inc. for their leadership roles in the violence described herein with favorable long term leases and became the administrators for banana plantations in Guatemala that Del Monte, Inc. had decided not to operate directly any longer.

51. Shortly after the events described herein, senior management for Del Monte, in response to demands made by the IUF, promised to remove Obdulio Mendoza Matta and Carlos Castro Garcias, and others who had been involved in the violence of October 13 and 14, from management positions at any Del Monte-controlled plantation in Guatemala. Further, acknowledging the ongoing danger to their lives and the lives of their families, Del Monte

promised to assist the five Plaintiffs to get out of Guatemala. Ultimately, Del Monte provided \$50,000 to the IUF dedicated to covering the costs of relocating the Plaintiffs and their families. These funds were for travel costs only, and Plaintiffs in no way indicated that these funds applied to settle any claims that could be brought against Del Monte for its acknowledged direct role in the events of October 13 and 14, 1999.

52. In March, 2001, Plaintiffs, after being forced to live in hiding and in constant fear of their lives, and the lives of their family members, for 17 months, were relocated to the United States with the direct intervention of the U.S. embassy in Guatemala.

VI. DEFENDANTS' VIOLATIONS OF LAW

53. 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 Claims Act, 28 U.S.C. § 1350;
- (b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- (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);
- (j) International Labor Organization Conventions 87 and 98, which protect the fundamental rights to associate and organize; and
- (k) Statutes and common law of the State of Florida, including but not limited to, assault and battery, false imprisonment, kidnaping, negligence, recklessness, intentional infliction of emotional distress, and negligent infliction of emotional distress.

VII. DEFENDANTS' VICARIOUS LIABILITY

54. Defendant Del Monte, Inc. controls and operates a number of wholly owned subsidiaries, including, but not limited to, Defendants Del Monte Fresh and Bandegua. As the owner of its wholly owned subsidiaries, Defendant Del Monte, Inc. is jointly and severally liable for all of the tortious actions committed by any of its subsidiaries when such subsidiaries were acting in concert with any other person or entity in furtherance of Del Monte, Inc.'s business interests and activities. All of the wrongful acts alleged herein were committed by individuals who

were acting within the course and scope of a business relationship with Del Monte, Inc. with the advance knowledge, acquiescence or subsequent ratification of Del Monte, Inc.

55. Defendant Del Monte, Inc. acting by and through its subsidiaries Defendant Del Monte Fresh and/or Bandegua, hired, contracted with, 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 of Del Monte, Inc., Del Monte Fresh, and/or Bandegua, and committed the tortious actions described in this Complaint in connection with and in furtherance of Del Monte, Inc.'s business interests and activities. In committing these tortious actions, the individual agents were acting within the course and scope of the agency relationship with Del Monte, Inc. with Del Monte, Inc.'s advance knowledge, acquiescence or subsequent ratification. Defendant Del Monte, Inc. is therefore vicariously liable for all of the tortious actions committed by its agents done in connection with and in furtherance of its business interests and activities in Guatemala as described herein.

56. 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 Defendants or was caused by the acts or omissions of Defendants' wholly owned subsidiaries, making Defendants jointly and severally liable, or by the acts or omissions of Defendants' agents, making Defendants vicariously liable.

VIII. CAUSES OF ACTION

First Cause of Action **The Alien Tort Claims Act, 28 U.S.C. § 1350** **For Torture, Kidnaping,** **Unlawful Detention, and Crimes Against Humanity**

57. Plaintiffs incorporate by reference paragraphs 1 through 56 of this Complaint as if set forth herein.

58. Defendants' acts and omissions of intentionally and tortiously hiring and directing its employees and/or agents to kidnap, unlawfully detain, torture, and cruelly threaten with death the Plaintiffs herein resulted in serious human rights abuses against Plaintiffs. These acts 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 paragraph 53, *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 its agent, the security force permitted to exist and openly operate under the laws of Guatemala, and assisted by government officials of the Bobos District, Defendants acted under color of law in violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph 53, *supra*. Further, the Government of Guatemala fails to enforce its laws that would prevent or remedy the violations alleged herein.

59. Plaintiffs were all subjected to being physically attacked, threatened constantly with death and serious bodily injury while being held captive at gunpoint, and other forms of

brutality and cruelty. These acts were inflicted intentionally and with malice to cause Plaintiffs severe mental and physical pain and suffering, and to have the lasting effect of forever causing Plaintiffs to live in fear of being subjected to similar acts. 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 paragraph 53, *supra*.

60. All of the Plaintiffs were forcibly captured and detained by employees and/or agents of Defendants, and were held against their will for a lengthy period of time. These removals and detentions were done intentionally and with malice to cause Plaintiffs severe mental and physical pain and suffering. These acts amounted to kidnaping and unlawful detention 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 paragraph 53, *supra*.

61. Defendants committed, through their employees and/or agents acts that had the intent and the effect of grossly humiliating and debasing all of the Plaintiffs, forcing them to act against their will and conscience, inciting fear and anguish, and breaking their physical and/or moral resistance. Plaintiffs were placed in great fear for their lives and forced to suffer severe physical and psychological abuse and agony. The acts described herein constitute cruel, inhuman or degrading treatment 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 paragraph 53, *supra*.

62. Defendants' conduct 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 paragraph 53, *supra*, has caused Plaintiffs significant injury. Defendants are jointly and severally liable for the acts of any and all 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 paragraph 53, *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 paragraph 53, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

Second Cause of Action
The Torture Victim Protection Act, 28 U.S.C. § 1350
For Torture and Extrajudicial Killing

63. Plaintiffs incorporate by reference paragraphs 1 through 62 of this Complaint as if set forth herein.

64. Defendants' acts and omissions of intentionally and tortiously hiring and directing its employees and/or agents to torture the Plaintiffs and threaten with them with death were inflicted intentionally and with malice to cause Plaintiffs severe mental and physical pain and

suffering. These acts amounted to torture for purposes of the TVPA, 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 paragraph 53, *supra*. In addition, that Defendants employees and/or agents threatened Plaintiffs with extrajudicial killing, and created a concrete fear in Plaintiffs that they would be killed, is actionable as an attempted extrajudicial killing under the TVPA. In acting together with its agent, the security force permitted to exist and openly operate under the laws of Guatemala, and assisted by the government officials of the Municipality of Morales Izabal, Defendants acted under color of law in violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph 53, *supra*. Further, the Government of Guatemala fails to enforce its laws that would prevent or remedy the violations alleged herein.

65. Defendants' conduct 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 paragraph 53, *supra*, has caused Plaintiffs significant injury. Defendants are jointly and severally liable for the acts of any 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 paragraph 53, *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 paragraph 53, *supra*.

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

Third Cause of Action
The Alien Tort Claims Act, 28 U.S.C. § 1350
For Denial of Fundamental Rights to Associate and Organize

66. Plaintiffs incorporate by reference paragraphs 1 through 65 of this Complaint as if set forth herein.

67. Defendants committed, or acted in concert to commit, or Defendants' co-venturers or agents committed violent acts against Plaintiffs, described fully in the preceding paragraphs. This violence was intentionally designed and carried out to deny Plaintiffs and their colleagues in SITRABI their fundamental rights to associate and organize, and did in fact result in the denial of these rights.

68. 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 53, *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 its agent, the security force permitted to exist and openly operate under the laws of Guatemala, and assisted by the government officials of the Municipality Morales Izabal, Defendants acted under color of law in

violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph 53, *supra*. Further, the Government of Guatemala fails to enforce its laws that would prevent or remedy the violations alleged herein.

69. Defendants' conduct 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 paragraph 53, *supra*, has caused Plaintiffs significant injury. Defendants are jointly and severally liable for the acts of any 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 paragraph 53, *supra*. Defendants are also vicariously liable for any violations of their employees and/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 paragraph 53, *supra*. Plaintiffs are entitled to injunctive relief and to recover compensatory and punitive damages in amounts to be ascertained at trial.

Fourth Cause of Action
RICO Violations
18 U.S.C. § 1961 *et seq*

70. Plaintiffs incorporate by reference paragraphs 1 through 69 of this Complaint as if set forth herein.

71. Defendant Del Monte, Inc. is a person within the meaning of 18 U.S.C. § 1961(3). Defendants Del Monte, Inc., Del Monte Fresh and/or Bandegua, and the security force collectively as an association, in fact constitute an enterprise (hereafter referred to as the “Bandegua Enterprise”) within the meaning of 18 U.S.C. § 1961(4). In violation of 18 U.S.C. § 1962(c), Defendant Del Monte, Inc. or Del Monte Fresh through its employees and agents has conducted, and continues to conduct, the affairs of the Bandegua Enterprise through a pattern of racketeering activity consisting of multiple acts and threats of murder, kidnaping and extortion, as set forth specifically in Paragraphs 22 through 48. The purpose of this conspiracy was to give Defendant Del Monte, Inc. and/or Del Monte Fresh a financial advantage through the nullification of contractual and statutory rights of its employees on the Bobos plantation. This would increase Del Monte’s revenues and profits.

72. In violation of 18 U.S.C. § 1962(d), Defendant Del Monte, Inc., Del Monte Fresh and/or Bandegua has conspired, and continues to conspire, to violate 18 U.S.C. § 1962(c). As a result of this unlawful conspiracy, Plaintiffs were all subjected to being physically attacked, threatened constantly with death and serious bodily injury while being held captive at gunpoint, and other forms of brutality and cruelty. These acts were inflicted intentionally and with malice to cause Plaintiffs severe mental and physical pain and suffering, and to have the lasting effect of forever causing Plaintiffs to live in fear of being subjected to similar acts. They 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.

Fifth Cause of Action
Battery

73. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Complaint as if set forth herein.

74. Defendants committed, or acted in concert to commit, or Defendants' employees or agents committed acts which resulted in harmful or offensive contact with the bodies of Plaintiffs. Plaintiffs did not consent to the contact, which caused injury, damage, loss and harm to each of the Plaintiffs.

75. The acts described herein constitute battery, actionable under the laws of Florida, the laws of the United States and the laws of Guatemala.

Sixth Cause of Action
Assault

76. Plaintiffs incorporate by reference paragraphs 1 through 75 of this Complaint as if set forth herein.

77. Defendants committed, or acted in concert to commit, or Defendants' employees or agents committed acts which caused Plaintiffs to be apprehensive that Defendants would subject them to imminent batteries and/or intentional invasions of their rights to be free from offensive and harmful contact, and said conduct demonstrated that Defendants had a present ability to subject Plaintiffs to an immediate, intentional, offensive and harmful touching. Plaintiffs did not

consent to such conduct, which caused injury, damage, loss and harm to each of the Plaintiffs.

78. The acts described herein constitute assault, actionable under the laws of the Florida, the laws of the United States and the laws of Guatemala.

Seventh Cause of Action
Arbitrary Arrest and Detention

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

80. Defendants committed, or acted in concert to commit, or Defendants' employees or agents committed acts which caused Plaintiffs to be arrested and detained. Such arrest and detention of Plaintiffs was illegal and unjust, carried out without a warrant, probable cause, reasonable suspicion or notice of charges.

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

82. The acts described herein constitute arbitrary arrest and detention, actionable under the laws of Florida, the laws of the United States, and the laws of Guatemala.

Eighth Cause of Action
False Imprisonment

83. Plaintiffs incorporate by reference paragraphs 1 through 82 of this Complaint as if set forth herein.

83. Defendants committed, or acted in concert to commit, or Defendants' employees or agents committed acts to unlawfully exercise force or the express or implied threat of force to restrain, detain or confine Plaintiffs. The restraint, detention or confinement compelled Plaintiffs to stay or go somewhere against their will for some appreciable time.

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

85. The acts described herein constitute false imprisonment, actionable under the laws of Florida, the laws of the United States, and the laws of Guatemala.

Ninth Cause of Action
Intentional Infliction of Emotional Distress

86. Plaintiffs incorporate by reference paragraphs 1 through 85 of this Complaint as if set forth herein.

87. The acts described herein constitute outrageous conduct against Plaintiffs, and

were without privilege.

88. Defendants committed, or acted in concert to commit, or Defendants' employees or agents committed acts which intended to cause Plaintiffs to suffer emotional distress. In the alternative, Defendants engaged in the conduct with reckless disregard of the probability of causing Plaintiffs to suffer emotional distress, Plaintiffs were present at the time the outrageous conduct occurred, and Defendants knew that the Plaintiffs were present.

89. Plaintiffs suffered severe emotional distress, and the outrageous conduct of Defendants was a cause of the emotional distress suffered by Plaintiffs.

90. Defendants' outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of Florida and the laws of the United States.

Tenth Cause of Action
Negligent Infliction of Emotional Distress

91. Plaintiffs incorporate by reference paragraphs 1 through 90 of this Complaint as if set forth herein.

92. At all relevant times, Defendants, and each of them, owed Plaintiffs a duty to act with reasonable care, and at all relevant times, harm and/or injury to the Plaintiffs was reasonably foreseeable if such duty of care was breached.

93. At all relevant times, Defendants, and each of them, had the power, ability, authority and duty to stop engaging in the conduct described herein and to intervene to prevent or prohibit such conduct.

94. At all relevant times, Defendants, and each of them, knew, or reasonably should have known, that the conduct described herein would and did proximately result in physical and emotional distress to Plaintiffs.

95. Despite said knowledge, power, and duty, Defendants, and each of them, breached their duty to Plaintiffs, and thereby negligently failed to act so as to stop engaging in the conduct described herein and to prevent or to prohibit such conduct or to otherwise protect Plaintiffs. To the extent that said negligent conduct was perpetrated by employees or agents of Defendants, the Defendants confirmed and ratified said conduct with the knowledge that Plaintiffs' emotional and physical distress would thereby increase and with a wanton and reckless disregard for the deleterious consequences to Plaintiffs.

96. As a direct and legal result of Defendants' wrongful acts, Plaintiffs have suffered and will continue to suffer significant physical injury, pain and suffering and extreme and severe mental anguish and emotional distress.

97. Defendants' conduct constitutes the negligent infliction of emotional distress and is actionable under the laws of Florida, and the laws of the United States.

Eleventh Cause of Action
Negligence Per Se

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

99. Defendants failed to use ordinary or reasonable care in order to avoid injury to the Plaintiffs. Defendants' negligence was a cause of injury, damage, loss and harm to Plaintiffs.

100. As a result of these acts, Plaintiffs suffered harm including, but not limited to, physical harm, pain and suffering, and severe emotional distress. Defendants' conduct constitutes negligence and is actionable under the laws of Florida, the United States, Guatemala, 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 53, *supra*.

Twelfth Cause of Action
Aiding and Abetting

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

102. Defendants knowingly provided substantial assistance to its agents and/or employees, including the security force that committed the wrongful acts delineated in the preceding eleven causes of action at ¶¶ 53-100 at the time such wrongful acts were perpetrated.

103. Defendants' aiding and abetting the wrongful acts delineated in the preceding eleven causes of action at ¶¶ 53-100 is actionable under the laws of Florida.

IX. DEMAND FOR JURY TRIAL

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

X. 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, as well as statutory damages and treble damages under RICO;
- (d) grant Plaintiffs equitable relief, permanently enjoining Defendants from further engaging in human rights abuses against Plaintiffs and their fellow members of SITRABI;
- (e) award Plaintiffs the costs of suit including reasonable attorneys' fees, and
- (f) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

Respectfully submitted this _____ day of March, 2002,

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