

1 David Grunwald (California Bar 137155)
2 Attorney at Law
3 2029 Century Park East, Suite 4393
4 Los Angeles, CA 90067
5 P: (323)650-6088
6 F: (323) 622-8720

7 Terrence Collingsworth (*Pro Hac Vice pending*)
8 Conrad & Scherer, LLP
9 1156 15th St. NW, Ste. 502
10 Washington, D.C. 20005
11 P: 202-543-4001
12 F: 1-866-803-1125

13 *Attorneys for Plaintiffs*

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 FLOR MARINA CHAVARRO SALDAÑA,
17 HECTOR JULIO MARTINEZ CHAVARRO,
18 HILDA NATALIA MARTINEZ CHAVARRO,
19 FLOR AIDE MARTINEZ CHAVARRO, ANA
20 MILENA MARTINEZ CHAVARRO, LUCY
21 ESPERANZA GONZALEZ SANTAFE, TANIA
22 KARINA GOYENECHÉ GONZALEZ, PAOLA
23 ANDREA GOYENECHÉ GONZALEZ,
24 EUFROSINA DEL CARMEN GOYENECHÉ G.,
25 ROSA MARIA RAMIREZ GOMEZ, NELSON
26 PRIETO RAMIREZ, MIREYA PRIETO
27 RAMIREZ, YUDITH PRIETO RAMIREZ,
28 MAXIMINA CHAMUCERO DE PRIETO,
29 BELSY YASMIN SOLANO, RAFAEL ANDRES
30 PRIETO SOLANO, JHONATAN EDUARDO
31 PRIETO SOLANO, and JAZMIN ALEJANDRA
32 PRIETO SOLANO

33 c/o Oficina del Abogado Francisco Ramirez
34 Calle 12 No. 5-32, Oficina 1101
35 Bogota, Colombia

36 Plaintiffs,

37 v.

38 OCCIDENTAL PETROLEUM CORPORATION

39 10889 Wilshire Boulevard
40 Los Angeles, California 90024-4201

41 Defendant.

Civ. No.

COMPLAINT FOR (1) WAR
CRIMES, (2) EXTRAJUDICIAL
KILLINGS, (3) CRIMES AGAINST
HUMANITY, (4) WRONGFUL
DEATH, (5) INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS, (6) NEGLIGENT
INFLICTION OF EMOTIONAL
DISTRESS, (7) BATTERY, (8)
ASSAULT, (9) NEGLIGENT HIRING
AND SUPERVISION, AND (10)
NEGLIGENCE

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiffs are the wrongful death beneficiaries of three union leaders (the
3 “decedents”) who were executed by members of the Gabriel Revéis Pizarro 18th Mobile Brigade
4 (“18th Brigade”) of the Colombian national army (“CNA”) on August 5, 2004.
5

6 2. Defendant Occidental Petroleum Corporation (“Occidental”) is liable for the
7 decedents’ murders.

8 3. Plaintiffs, in their capacities as decedents’ wrongful death beneficiaries, bring
9 claims for war crimes, extrajudicial killings, and crimes against humanity under the Alien Tort
10 Statute (“ATS”). Additionally, Plaintiffs bring claims of wrongful death, negligent hiring and
11 supervision, and negligence under California law, as well as the following survival actions,
12 pursuant to California Code of Civil Procedure § 377.20: intentional infliction of emotional
13 distress; negligent infliction of emotional distress; battery; and assault.
14

15 4. Occidental entered into an agreement with Ecopetrol, the Colombian state oil
16 company, in June 1980 to create a joint venture, the Cravo Norte Association (the
17 “Association”), to explore a region of Colombia for suspected oil reserves.

18 5. Soon after its creation, the Association discovered a huge oilfield at Caño Limón,
19 which afterwards became the largest oilfield in Colombia.
20

21 6. Occidental is the operator of the Caño Limón oilfield, while Ecopetrol is the
22 operator of the pipeline serving the oilfield.

23 7. The Association agreement between Occidental and Ecopetrol was renewed in
24 2004 for the remainder of the field’s production life.

25 8. In 2004, the Caño Limón oilfield was producing 95,000 barrels of oil per day and
26 had reserves estimated at more than 1.1 billion barrels of oil.

27 9. As of December 2002, Occidental owned 7/16 (or 43.75%) of the Association.
28

1 10. From the outset of its operation, the Caño Limón oilfield and pipeline suffered
2 multiple attacks by the Revolutionary Armed Forces of Colombia (“FARC”) and the National
3 Liberation Army (“ELN”).

4 11. In response to those attacks, Occidental, through Ecopetrol, entered into an
5 agreement with the CNA in May 2004 (“2004 Security Agreement”) for security for the
6 Association.
7

8 12. The 2004 Security Agreement pledged CNA protection for the Association in
9 exchange for 17.4 billion Colombian pesos (“COP”) (approximately \$6.3 million) from the
10 Association.
11

12 13. The decedents’ August 2004 murders occurred while the 2004 Security
13 Agreement was in effect.

14 **II. JURISDICTION AND VENUE**

15 14. The decedents’ murders constitute, *inter alia*, extra-judicial killings in
16 contravention of the law of nations, and as such, are actionable under the ATS, 28 U.S.C. § 1350.
17 Accordingly, this Court has jurisdiction over the ATS claims pursuant to 28 U.S.C. § 1331 and
18 28 U.S.C. § 1350. Supplemental jurisdiction exists over the claims under California law
19 pursuant to 28 U.S.C. § 1367. This Court also has jurisdiction over all claims, including the
20 California claims, pursuant to 28 U.S.C. § 1332(a)(2).
21

22 15. Venue properly lies in this Judicial District pursuant to 28 U.S.C. § 1391 because
23 Occidental maintains its corporate headquarters in this District.

24 **III. PARTIES**

25 **A. Plaintiffs**

26 16. The following Plaintiffs in this action are the wrongful death beneficiaries of the
27 decedents.
28

1 17. Plaintiff Flor Marina Chavarro Saldaña is the wife of Hector Alirio Martinez
2 (“Martinez”). Plaintiffs Hector Julio Martinez Chavarro, Hilda Natalia Martinez Chavarro (born
3 February 12, 1998), Flor Aide Martinez Chavarro, and Ana Milena Martinez Chavarro are the
4 children of Hector Alirio Martinez. All are legal heirs and wrongful death beneficiaries of
5 Hector Alirio Martinez. Plaintiff Flor Marina Chavarro Saldaña brings this action on her own
6 behalf and on behalf of and as representative of her minor child, Plaintiff Hilda Natalia Martinez
7 Chavarro. On August 5, 2004, Hector Alirio Martinez was killed by a group of men belonging to
8 the Mobile Battalion Gabriel Reveis Pizzaro of the CNA 18th Brigade, which received support
9 from Occidental. Hector Alirio Martinez was the President of the Departmental Association of
10 Peasant Users of Arauca (*Asociación Departamental de Usuarios Campesinos* or “ADUC”) and
11 worked on many different social projects, such as Coagrosarare, Fundación Intercultural,
12 Ecoviapa, Salud Sarare, and Centro de Enfermedades Tropicales.
13
14

15 18. Plaintiff Lucy Esperanza Gonzalez Santafe is the wife of Leonel Goyeneche
16 Goyeneche (“Goyeneche Goyeneche”). Plaintiffs Tania Karina Goyeneche Gonzalez (born
17 November 18, 1995) and Paola Andrea Goyeneche Gonzalez (born April 14, 1993) are the
18 daughters of Leonel Goyeneche Goyeneche. Plaintiff Eufrosina del Carmen Goyeneche G. is the
19 mother of Leonel Goyeneche Goyeneche. All are legal heirs and wrongful death beneficiaries of
20 Leonel Goyeneche Goyeneche. Plaintiff Lucy Esperanza Gonzalez Santafe brings this action on
21 her own behalf and on behalf of and as representative of her minor children, Plaintiffs Tania
22 Karina Goyeneche Gonzalez and Paola Andrea Goyeneche Gonzalez. On August 5, 2004,
23 Leonel Goyeneche Goyeneche was killed by a group of men belonging to the Mobile Battalion
24 Gabriel Reveis Pizzaro of the CNA 18th Brigade, which received support from Occidental.
25 Leonel Goyeneche Goyeneche had a degree in Childhood Education and taught at El Colegio de
26 La Vereda Puerto Nidia. He was a member of the Araucan Educational Solutions Committee
27
28

1 and a member of the Educators Association of Arauca. He was also a managing member of the
2 Confederation of Colombian Workers union (“CUT”) in Arauca.

3 19. Plaintiff Rosa Maria Ramirez Gomez is the wife of Jorge Eduardo Prieto
4 Chamucero (“Prieto Chamucero”). Plaintiff Belsy Yasmin Solano is the domestic partner of
5 Jorge Eduardo Prieto Chamucero. Plaintiffs Nelson Prieto Ramirez, Mireya Prieto Ramirez,
6 Yudith Prieto Ramirez, Rafael Andres Prieto Solano (born October 23, 2000), Jhonatan Eduardo
7 Prieto Solano (born September 20, 1995), and Jazmin Alejandra Prieto Solano are the children of
8 Jorge Eduardo Prieto Chamucero. Plaintiff Maximina Chamucero De Prieto is the mother of
9 Jorge Eduardo Prieto Chamucero. All are legal heirs and wrongful death beneficiaries of Jorge
10 Eduardo Prieto Chamucero. Plaintiff Belsy Yasmin Solano brings this action on her own behalf
11 and on behalf of and as representative of her minor children, Plaintiffs Rafael Andres Prieto
12 Solano and Jhonatan Eduardo Prieto Solano. On August 5, 2004, Jorge Eduardo Prieto
13 Chamucero was killed by a group of men belonging to the Mobile Battalion Gabriel Reveis
14 Pizzaro of the CNA 18th Brigade, which received support from Occidental. Jorge Eduardo Prieto
15 Chamucero was the President for the National Hospital Workers Association (“ANTHOC”) in
16 Arauca. He was also general secretary of the CUT in Arauca and a member of the Human
17 Rights Committee of the Association of the Communal Action Board.

18
19
20 20. Plaintiff ADUC is a Colombian organization, made up of farmers from Arauca,
21 representing the interests of farmers in that region. ADUC brings this action for money damages
22 for the loss of services of ADUC’s president, Hector Alirio Martinez, and for other monetary
23 damages stemming from his murder.

24
25 21. Two of the decedents, Hector Alirio Martinez and Jorge Eduardo Prieto
26 Chamucero, were beneficiaries of precautionary measures granted by the Inter-American
27 Commission on Human Rights (“IACHR”), the human rights arm of the Organization of the
28

1 American States located in Washington, D.C.

2 22. Despite Colombia having the legal obligation to protect these two decedents
3 because they were beneficiaries of precautionary measures issued by the IACHR, Colombian
4 security forces—instead of protecting them—murdered them.

5 23. Colombia has thus shown that it is incapable of protecting the legal rights of the
6 decedents.
7

8 **B. Defendant and Defendant’s Corporate Structure**

9 24. Occidental is a corporation doing business within the United States and has its
10 principal headquarters located in Los Angeles, California.

11 25. Occidental de Colombia, Inc. (“Oxy Colombia”) is an Occidental subsidiary and a
12 privately-held Delaware corporation.
13

14 26. At all relevant times herein, Oxy Colombia was acting as Occidental’s agent or
15 was Occidental’s alter ego in Colombia.

16 27. Occidental has consistently portrayed itself and allowed itself to be portrayed as a
17 member of the Association and as the entity providing the CNA with financial support.

18 28. The U.S. State Department stated that: “Oil production at the Cano Limon
19 oilfield is undertaken by the Cravo Norte Association . . . , a for-profit joint venture between
20 Colombia’s state-owned oil company, Ecopetrol, and Occidental Petroleum Corporation (Oxy), a
21 United States private company.”
22

23 29. A September 2005 U.S. Government Accountability Office report (“GAO
24 Report”) stated that: “The Caño Limón oilfield is operated by an association comprised of
25 Colombia’s state-owned oil company, Ecopetrol; a United States company, Occidental
26 Petroleum Corporation; and a Spanish oil company, Repsol.” It further stated that “Ecopetrol
27 and Occidental have contributed financial support to the Colombian armed forces.”
28

1 30. Occidental's 2005 10-K stated that: "Occidental extended the term of its contract
2 with the Government of Colombia for the Cano Limon field."

3 **IV. THE CIVIL WAR IN COLOMBIA**
4 **AND OCCIDENTAL'S DIRECT RELATIONSHIP WITH THE CNA**

5 **A. Occidental Hired the CNA to Provide Security Services After a Series of Attacks in the**
6 **Caño Limón Concession Area**

7 31. Colombia is widely-known as a country that is torn by a long-standing civil war
8 involving armed leftist groups, primarily the FARC and the ELN, on the one side, and the CNA
9 and right-wing paramilitary groups on the other. Hostilities continue to this day.

10 32. Because oil exports are among Colombia's greatest sources of wealth, the FARC
11 and ELN made the Caño Limón oil installations a primary target for attacks.

12 33. According to one media report, there were 1,000 separate attacks on the
13 Caño Limón pipeline from 1988 to 2008.

14 34. Occidental's first strategy for protecting the Caño Limón oil installations was to
15 make illegal payments to the FARC and ELN.

16 35. In 2000, Occidental executive Lawrence Meriage admitted in testimony before
17 the U.S. House of Representatives that Occidental employees often made payments to members
18 of the FARC and ELN to keep those groups from interfering with Occidental's operations.
19

20 36. In that testimony, Meriage stated: "What our employees are confronting -- and
21 the workforce out there is exclusively Colombian, in the field area -- is that they are regularly
22 shaken down by both the FARC and the ELN. They are required to pay a 'war tax' to both of the
23 guerrilla groups, or they are not able to work."
24

25 37. In 1997, the U.S. State Department designated both the FARC and ELN as
26 "Foreign Terrorist Organizations," making it a crime to provide material support to them.

27 38. Despite Occidental's illegal payments to terrorist organizations, the attacks
28

1 continued to the point that Occidental was periodically forced to shut down operations at the
2 oilfield.

3 39. Meriage's testimony concerning Occidental's payments to Colombian terrorists is
4 consistent with the actions and admissions by long-time Occidental leader Armand Hammer.
5

6 40. According to a Hammer biography, Occidental used a former CIA officer and
7 local mercenaries to make contacts with the ELN and then to begin protection payments to the
8 ELN.

9 41. The Hammer biography further describes how James Sutton, Occidental's Latin
10 American security chief and a former FBI employee, was fired when he spoke out against
11 Occidental's payments to the ELN.

12 42. Hammer admitted that Occidental made payments to Colombian terrorists in a
13 1985 interview with the Wall Street Journal, saying that "We are giving jobs to the guerrillas . . .
14 and they in turn protect us from other guerrillas."
15

16 43. The statements by Meriage and Hammer concerning Occidental's payments to
17 Colombian terrorists are further corroborated by the media.

18 44. The L.A. Times reported that Occidental "funnel[led] money, jobs and food to the
19 [ELN] to buy its cooperation, according to Colombian law enforcement and locals who
20 participated in some of the deals. It is estimated, all told, that millions flowed to the ELN in the
21 early years of operations."
22

23 45. The L.A. Times article further stated that the ELN "used the money to gain new
24 recruits and weaponry. In effect, Occidental rescued the group that later turned against it."

25 46. Unable to purchase long-lasting peace from the FARC and ELN, Occidental then
26 tried to buy security from the CNA.

27 47. The CNA, not unlike the guerrilla groups it purports to fight, has a well-deserved
28

1 reputation for human rights abuses.

2 48. In or around 1996, the CNA and the Association entered into contracts pledging
3 cash support and supplies for the CNA in return for security for the Association.

4 49. According to the GAO Report, Occidental and Ecopetrol provided the CNA with
5 \$8.65 million a year.
6

7 50. The GAO Report states that the money “supports the army, air force, and fiscalia
8 [prosecutor] in the department and has been used for housing, food, land and air transportation,
9 communication equipment, gasoline, and medical assistance.”

10 51. The GAO Report goes on to explain how “Occidental has built barrack facilities
11 for soldiers on an army base near the town of Saravena.”

12 52. Occidental has touted its reliance on the CNA and other South American
13 militaries to the U.S. press.
14

15 53. In a 2001 PBS report on oil and drugs in South America, Occidental claimed to
16 “rely exclusively on the government to provide protection.”

17 54. Occidental further stated in the PBS report that it believed that it had “the right to
18 expect that . . . investments are going to be protected” in return for making the investments.

19 55. Accordingly, Occidental believed that its investments in the Caño Limón region
20 of Colombia gave it the “right” to CNA security in the region.
21

22 **B. Occidental Funded the CNA’s Operations in Arauca in 2004**

23 56. On May 19, 2004, Occidental renewed its commitment to supporting the CNA
24 through the 2004 Security Agreement.

25 57. Part of the CNA’s commitment to the Association was to defensively protect the
26 Association’s oil facilities. Specifically, the 2004 Security Agreement stated that certain units of
27 the CNA, including the 18th Brigade, “will support the protection of the [Association’s] areas of
28

1 interest.”

2 58. The CNA also affirmatively agreed to “make their best efforts” to “counterattack”
3 terrorists.

4 59. The 2004 Security Agreement was signed by Ecopetrol, representing the
5 Association, and by the Colombian Ministry of Defense.

6 60. The 2004 Security Agreement assigned many rights and duties to Occidental
7 through Oxy Colombia, which was referred to as the Field Operator in the Agreement.

8 61. The 2004 Security Agreement committed approximately \$3 million of
9 Oxy Colombia’s assets to the CNA.

10 62. The amount of aid Oxy Colombia committed to the CNA is so large that
11 Occidental’s U.S.-based leadership must have approved the 2004 Security Agreement.

12 63. The aid provided by Oxy Colombia to the CNA was directed to the military units
13 directly entrusted with the protection and security of the Association’s oil facilities.

14 64. Notably, Oxy Colombia was charged with the delivery of much of the assistance
15 in kind, meaning that its assistance came in the form of goods and services, rather than cash.

16 65. The 2004 Security Agreement created a Coordination Committee with the
17 objective of “guid[ing] the performance of the Agreement.”

18 66. Three members of the Coordination Committee were representatives of the
19 Association, including one direct representative of Oxy Colombia.

20 67. The specific aid that the Association committed to provide to the CNA in the
21 2004 Security Agreement included aid for the 18th Brigade of the CNA in the amount of COP\$
22 10.5 billion (approximately \$4 million).

23 68. The Association’s aid included: (1) COP\$ 48 million (approximately \$18
24 thousand) for the general expenses of the 18th Brigade Command; (2) up to COP\$ 295 million
25
26
27
28

1 (approximately \$108 thousand) for general expenses associated with the protection of the Caño
2 Limón oilfield by the 18th Brigade; (3) up to COP\$ 514 million (approximately \$188 thousand)
3 for the for general expenses associated with the protection of the Caño Limón pipeline by the
4 18th Brigade; and 4) aid in kind valued at up to COP\$ 3 billion (approximately \$1.1 million) for
5 the 18th Brigade for ground transportation equipment, including up to ninety seven (97)
6 motorcycles, seven (7) medium 4x4 vehicles, and sixteen (16) freight trucks.

8 69. Most of the aid described in Paragraph 68 was to be delivered by Oxy Colombia.

9 70. The aid that the Association committed to provide to the CNA in the 2004
10 Security Agreement also included air transportation in the form of up to 660 flight hours in a 24-
11 passenger helicopter to be used to patrol the areas near the pipeline.

12 71. The air transportation aid described in Paragraph 70 was valued at up to almost
13 COP\$ 5.5 billion (approximately \$2 million).

15 72. The air transportation aid described in Paragraph 70 was designated as aid in kind
16 to come from the joint account of the Association.

17 73. The Association's aid also included aid for other operational expenses, in the
18 amount of COP\$ 92 million (approximately \$34 thousand), incurred through the performance of
19 the agreement. Oxy Colombia was to deliver this aid in cash.

21 74. In addition to the aid to the 18th Brigade itself, the Association provided
22 significant aid in kind for aerial operations that directly supported the 18th Brigade.

23 75. The aid for aerial operations supporting the 18th Brigade was specifically intended
24 to bolster "the security of the [Association's] infrastructure."

25 76. The Association committed to providing aid in kind valued at up to COP\$ 250
26 million (approximately \$91 thousand) for the CNA and Colombian Air Force, including
27 helicopter fuel and lodging and meals for the helicopter crews.
28

1 77. The 2004 Security Agreement included bereavement aid of up to COP\$ 200
2 million (approximately \$73 thousand) to compensate the families and soldiers of the Second
3 Division of the CNA who were killed or wounded while protecting the Association’s interests.

4 78. The Agreement did not, however, include any funds to compensate civilians
5 harmed by the 18th Brigade or other CNA forces in the course of their execution of the
6 Agreement.
7

8 **C. Occidental Had a History of Effective Control of the CNA’s Activities In and Around**
9 **the Caño Limón-Coveñas Pipeline**

10 79. At all relevant times, Occidental viewed the CNA as its private security contractor
11 and acted as if the CNA was under its control.

12 80. In a 1997 press interview given by Oxy Colombia President Stephen Newton,
13 Occidental sent the clear message that it expected the CNA to provide Occidental with security.

14 81. Newton stated that Occidental felt that the CNA had the “obligation” to provide
15 Occidental with security in return for the profits the government received from Occidental’s
16 operations and the millions of dollars in direct aid to the CNA.
17

18 82. Newton left no doubt that Occidental was buying security services from the CNA,
19 saying that all of the oil companies “want to see results from the money that they have to pay in
20 security in their own area of influence.”

21 83. Newton further stated that “~~w~~e have 200 men from the Army and 90 from the
22 police.”

23 84. Newton then cited the creation of two anti-guerrilla units, and claimed that they
24 “make up part of the cooperation agreement that we have with the Army.”
25

26 85. Newton’s comments about Occidental were reinforced and confirmed by the 2001
27 PBS report, described above in Paragraphs 53-54.

28 86. In that report, Occidental claimed “the right to expect that . . . investments are

1 going to be protected” in return for making the investments.

2 **D. Occidental Continued to Fund the CNA Despite its Knowledge of Extensive CNA**
3 **Human Rights Abuses**

4 87. Despite its effective control of the CNA forces acting on its behalf, Occidental did
5 nothing to stop the widespread human rights violations committed in Arauca by the CNA.

6 88. Occidental knew or should have known that for years preceding the decedents’
7 murders, there were widespread human rights violations in Arauca committed by the CNA,
8 especially by the 18th Brigade.

9 89. The CNA, directly or indirectly (by supporting right-wing paramilitary groups),
10 participated in numerous massacres of civilians and the disappearances, extra-judicial killings,
11 arbitrary detentions, and beatings of social protestors.

12 90. Philip Alston, the United Nations (“U.N.”) Special Rapporteur on extrajudicial
13 killings, reported that the Colombian government acknowledged that there were 33 complaints in
14 Arauca of homicides committed by the CNA between 2000 and 2008.

15 91. In addition to the general wave of state-sponsored violence in Colombia, the
16 decedents’ murders fit squarely into an especially gruesome category of CNA-committed
17 murders: “false positives.”

18 92. Beginning in the early 2000s, an alarming number of innocent civilians were
19 executed by the CNA and then falsely accused of guerilla ties, with the CNA frequently
20 fabricating a scene or evidence to make it look like the innocent civilians died in combat.

21 93. This shocking practice became known simply as “false positives” and, according
22 to Alston, “began occurring with a disturbing frequency across Colombia from 2004.”

23 94. The “false positive” practice stemmed from the Colombian government’s offer of
24 significant incentives to CNA soldiers for killing guerillas. These perverse incentives led to
25 soldiers killing innocent civilians and then falsely reporting them as guerilla combat deaths to
26
27
28

1 gain rewards.

2 95. Despite irrefutable evidence of “false positives” taking place, the Colombian
3 government harassed and insulted human rights activists who sought to bring the practice to
4 light.

5 96. Ex-president Alvaro Uribe called such activists “spokespeople for terrorism” and
6 then-Defense Minister and current President Juan Manuel Santos called “false positive”
7 allegations “a pantomime with clear political intentions.”

8 97. The “false positives” were a real phenomenon, however, and were common in
9 Arauca.

10 98. The Colombian magazine Cambio reported that at least 31 cases of “false
11 positives” were under investigation in Arauca as of August 2009.

12 99. In Colombia as a whole, credible sources have placed the number of “false
13 positives” at more than 1,000.

14 100. The U.N. has correctly identified the executions of Plaintiffs’ decedents as
15 prominent examples of “false positives.”

16 101. In the February 2005 *Report of the High Commissioner for Human Rights on the*
17 *situation of human rights in Colombia*, the U.N. High Commissioner analyzed “executions of
18 civilians attributed to army personnel and which were subsequently presented as guerrillas killed
19 in combat.”

20 102. In its analysis, the U.N. High Commissioner described Plaintiffs’ decedents’
21 executions as “another notorious case” and as a “massacre of three trade unionists by members
22 of the army.”

23 103. The U.N. High Commissioner went on to note that the “authorities hastily
24 supported the version of army personnel referring to deaths in combat” but that “[j]udicial and
25

1 disciplinary investigations pointed to the existence of extrajudicial executions.”

2 104. The U.N. has thus identified Plaintiffs’ decedents’ murders as a textbook case of
3 “false positives.”

4 105. In addition to its “false positive” murders, the 18th Brigade has been involved in
5 other serious human rights abuses.

6 106. The 18th Brigade and the Colombian Air Force were responsible for a 1998
7 bombing in Santo Domingo in which 17 civilians, including 6 children, were killed, and in which
8 Occidental was complicit.

9 107. The 18th Brigade has been implicated in an extrajudicial execution in 2003 in
10 Pueblo Nuevo, Arauca; frequent rapes; the creation and operation of the “El Corral” paramilitary
11 group in Arauca, which stands accused of numerous murders; and using paramilitary disguises so
12 as to be able to commit abuses not easily traceable to the 18th Brigade.

13 108. A 2004 Amnesty International report on Arauca found that the “[18th] brigade has
14 been accused of human rights violations and collusion with paramilitary forces.”

15 109. The Amnesty International report also states that under the Uribe government,
16 “human rights and social activists continue to be killed, ‘disappeared’, arbitrarily detained,
17 threatened and harassed. Moreover, while expressing an interest in maintaining dialogue with
18 NGOs, in practice government, security force and other state officials are frequently and
19 increasingly treating human rights defenders and social activists as subversives, labeling them as
20 such in public statements and targeting them during intelligence and counter-insurgency
21 operations. This has exposed many of them, including in Arauca, to threats and attacks by army-
22 backed paramilitaries.”

23 110. The Amnesty International report also “documented a number of cases in which
24 soldiers from Arauca’s XVIII Brigade - which receives funding from the United States and
25

1 reportedly from Occidental Petroleum to protect the pipeline - have been implicated in serious
2 human rights violations, either directly or in collusion with paramilitary forces.”

3 111. Given the long and well-publicized history of the CNA’s human rights violations
4 (especially those of the 18th Brigade) and Occidental’s close relationship with it, Occidental must
5 have known of the CNA’s human rights abuses.
6

7 112. In his testimony before the U.S. House of Representatives in 2000, Occidental
8 executive Lawrence Meriage acknowledged that the “human rights practices by the Colombian
9 army” were a “problem.”

10 113. Despite this human rights “problem,” Occidental continued to provide the CNA
11 with financial and other material assistance in order to further Occidental’s financial gains from
12 the Colombian operation.
13

14 **E. Plaintiffs’ Decedents Had a Long History of Social Protest, Including Against Occidental**
15 **and the CNA**

16 114. Many of the victims of CNA abuse, including Plaintiffs’ decedents, were vocal
17 opponents of oil and other resource-extractive industries.
18

19 115. The conflict between the social organizations linked to Plaintiffs’ decedents and
20 Occidental was especially prominent in the case of the U’Wa indigenous people.

21 116. In the late 1990s, Occidental was granted exploration permits by the Colombian
22 government for tracts bordering the lands of the U’Wa.
23

24 117. For a decade, the U’Wa and their allies opposed drilling in the entire block
25 because, among other reasons, the site included sacred ancestral land of the U’Wa.

26 118. Several of Plaintiffs’ decedents and the organizations they belonged to joined in
27 active opposition to Occidental’s plan to drill on U’Wa land.

28 119. In 2000, CUT-Arauca, of which decedent Goyeneche Goyeneche was a managing

1 member, and ADUC, of which decedent Martinez was president, signed onto a letter criticizing
2 Occidental and the CNA for an operation against the U'Wa. The letter denounced and
3 condemned Occidental and the CNA for their "acts of barbarity."

4
5 120. Also in 2000, Colombian security forces detained decedent Goyeneche
6 Goyeneche and his brother Emiro Goyeneche Goyeneche as part of a mass arrest targeting
7 supporters of the U'Wa.

8 121. In 2001, the CUT-Arauca and ADUC signed onto another public letter urging
9 Occidental to give up its plans to drill in the U'Wa territory. The CUT-Arauca was quoted in
10 El Tiempo, a major Colombian newspaper, urging the government to cease using the CNA to
11 force a solution to what was a political problem.

12
13 122. In May 2002, Occidental announced that it was giving up on its plans to drill in
14 the U'Wa territory.

15 123. The anti-Occidental activities of the social organizations in Arauca extended
16 beyond the U'Wa case.

17 124. The Arauca branch of ANTHOC, of which decedent Prieto Chamucero was
18 President, criticized the CNA and Occidental in the years leading up to the 2004 executions.

19 125. In late 2002, decedent Prieto Chamucero and other ANTHOC leaders were
20 harassed by the CNA after Prieto Chamucero denounced a pipeline-related raid by the CNA.
21

22 126. In November 2002, Prieto Chamucero's home was illegally searched by the CNA,
23 reportedly without a warrant.

24 127. Also in November 2002, the headquarters of ANTHOC-Arauca were also
25 reportedly searched without a warrant by Colombian security forces and a number of ANTHOC
26 members (including decedent Prieto Chamucero's son, Plaintiff Nelson Prieto Ramirez) were
27 among those detained in a mass arrest in Saravena.
28

1 128. Even after the killing of its president (decedent Prieto Chamucero) in 2004,
2 ANTHOC has continued to oppose Occidental, including in a public letter opposing the
3 extension of the Association contract between Occidental and Ecopetrol.

4 129. Given the significant history of social protest against Occidental by the Plaintiffs'
5 decedents and the organizations they belonged to, Occidental had ample motive to approve of or
6 ratify the CNA's August 2004 murders of the decedents.
7

8 **V. CNA'S EXECUTION OF PLAINTIFFS' DECEDENTS AND OCCIDENTAL'S**
9 **ROLE IN THEIR DEATHS**

10 130. The 18th Brigade's campaign of intimidation and killings of social protestors and
11 Occidental's complicity in this campaign came to a head in August 2004.

12 131. In the afternoon of August 4, 2004, decedent Prieto Chamucero arrived at his
13 home in Caño Seco, located in the area of Saravena in Arauca.

14 132. Prieto Chamucero arrived at his home with Maria Raquel Castro Perez ("Castro
15 Perez") and shortly afterwards decedents Martinez and Goyeneche Goyeneche also arrived.
16

17 133. Prieto Chamucero, Castro Perez, Martinez, and Goyeneche Goyeneche all stayed
18 the night at Prieto Chamucero's house.

19 134. Early the next morning, members of the 18th Brigade arrived at Prieto
20 Chamucero's house.
21

22 135. Martinez, Goyeneche Goyeneche and Prieto Chamucero came out of the house
23 with their hands in the air.

24 136. Members of the 18th Brigade then executed them.

25 137. Each decedent was shot many times, mostly in the back.

26 138. After the executions, the soldiers altered the crime scene, including by moving the
27 decedents' bodies.
28

1 139. Members of the 18th Brigade then took the two women who were in the house at
2 the time of the executions, Maria Constanza Jaimes Fernandez (“Jaimes Fernandez”) and Castro
3 Perez, away from the house and eventually to the field where a helicopter would arrive.

4 140. Members of the 18th Brigade also took the decedents’ bodies to the field where
5 the helicopter would arrive.

6 141. Members of the 18th Brigade brought another unionist, Samuel Morales, the
7 President of the CUT-Arauca, to the field where the helicopter would arrive.

8 142. The helicopter arrived to the field and transported the decedents’ bodies as well
9 Jaimes Fernandez, Castro Perez, and Samuel Morales to a CNA base.

10 143. After assassinating the three union leaders, the 18th Brigade called their base to
11 report the killings. In their report, they falsely claimed that the three union leaders attacked the
12 military unit and therefore the unit was forced to open fire.

13 144. Upon information and belief, Occidental directly provided the CNA with (or
14 provided the CNA with the funds for) the helicopter used to move the decedents’ bodies, the
15 communications equipment used on the day of the attack, and other material support used by the
16 18th Brigade on the day of the attack.

17 145. Aside from the 2004 Security Agreement, additional evidence supports the
18 conclusion that Occidental provided material support for the 18th Brigade’s actions on August 5,
19 2004.

20 146. 18th Brigade commanders relied on Occidental for helicopter assistance in the
21 Caño Limón-Coveñas corridor.

22 147. A 2003 U.S. News & World Report article stated: “Logistical challenges are
23 constant, since the 18th Brigade has no airlift capability of its own. Occidental Petroleum lets
24 the Colombians use its Bell and Russian-made HIP helicopters to ferry troops, supplies, and
25
26
27
28

1 casualties.”

2 148. A former helicopter pilot provided a sworn statement to Colombian authorities
3 stating that the same company’s helicopters that provided services to Occidental and Ecopetrol in
4 Arauca were used to move dead bodies for the CNA.

5 149. High-level Colombian officials perpetuated the lie that Plaintiffs’ decedents were
6 killed by the CNA because they were ELN guerillas attacking the soldiers.

7 150. Then-Defense Minister Jorge Uribe, who signed the 2004 Security Agreement
8 with the Association, asserted that “the three leaders were delinquents, and lost their lives in
9 combat.”

10 151. The Director of the Military Penal Justice, General Jairo Duvan Pineda Nino,
11 asserted that the “dead men are very important within ELN politics.”

12 152. There has never been any credible evidence that any of Plaintiffs’ decedents were
13 members of the ELN. It was a common practice of the military, as well as businesses, to falsely
14 label effective union leaders as members of a guerilla group so that they would be targeted for
15 assassination by military or paramilitary groups.

16 153. Occidental, through its participation in the 2004 Security Agreement, especially
17 through monetary support, aid in kind, and its role on the Coordination Committee, supported the
18 operations of the 18th Brigade and thus contributed to the decedents’ deaths.

19 154. The deceased union leaders had been voices for an Araucan community that had
20 been repressed by the Colombian state and caught in the crossfire of the civil war between the
21 leftist guerillas and the CNA. The decedents constantly and effectively denounced the grave
22 human rights violations being committed in their region. They paid for their activism with their
23 lives.
24
25
26
27

28 **VI. CAUSES OF ACTION**

1 **First Cause of Action**

2 **The Alien Tort Claims Act, 28 U.S.C. § 1350 -- War Crimes**

3 **All Plaintiffs Against Defendant**

4 155. Plaintiffs incorporate by reference paragraphs 1 through 154 of this Complaint as
5 if set forth herein.
6

7 **The CNA's Extrajudicial Killings of Plaintiffs' Decedents Were War Crimes**

8 156. Article 3 of the Geneva Convention, which applies to "an armed conflict not of an
9 international character," applies to the civil war in Colombia. Thus, noncombatants to the
10 Colombian civil war, including Plaintiffs' decedents, are covered, and the war crimes committed
11 by any party to the conflict, including the CNA, are actionable under the ATS.
12

13 157. Colombia has been devastated by a decades-long and still-ongoing civil war. For
14 example, the annual U.S. State Department Human Rights Report on Colombia for 2010 noted
15 that the "46-year internal armed conflict continued between the government and terrorist
16 organizations, particularly the [FARC] and the [ELN]."
17

18 158. The CNA has directly engaged the FARC and ELN in an extremely brutal and
19 violent struggle that has left thousands of innocent civilians dead, displaced, and terrorized.
20

21 159. The violent acts against the decedents occurred in the "course of hostilities."
22

23 160. By definition, war crimes include the executions of innocent civilians who are in
24 the area of a civil conflict, regardless of whether the perpetrators intended to target the specific
25 individuals who were killed.
26

27 161. Colombia claimed that the decedents were killed because they were ELN leaders
28 engaged in hostilities against the military.

162. Although the claims that the decedents held positions in the ELN leadership are
false, statements by Colombian officials demonstrate that hostilities were ongoing in Arauca.

1 163. Plaintiffs' decedents were merely innocent civilians executed in the course of
2 ongoing hostilities between the CNA and leftist rebels.

3 164. The decedents are among many innocent civilian intentionally killed as part of the
4 "false positive" phenomenon, in which the CNA knowingly brought the hostilities to the civilian
5 population.
6

7 **Occidental Aided and Abetted the CNA's War Crimes**

8 165. Plaintiffs have established in ¶¶ 156-64, *supra*, that the CNA violated
9 international law by engaging in war crimes.

10 166. Plaintiffs allege that Occidental's financial support of the CNA in the 2004
11 Security Agreement amounted to substantial support to the CNA in carrying out the decedents'
12 extrajudicial killings.
13

14 167. Occidental is responsible for providing significant funds to mobilize and
15 otherwise support the CNA troops that murdered the decedents.

16 168. Occidental had pledged nearly \$3 million only months before the killings of the
17 Plaintiffs' decedents, including funds for helicopter transportation for the 18th Brigade, the food
18 and supplies that allowed the Brigade to remain near Occidental's facilities in Arauca, and the
19 communications equipment that allowed the Brigade to coordinate operations in Arauca.
20

21 169. Though the United States Congress also pledged military support in the form of
22 helicopters for Arauca, those helicopters did not arrive until 2005, after the events described in
23 this case.

24 170. The 18th Brigade's outside support thus came overwhelmingly from Occidental
25 and Ecopetrol at the time of the events described herein.

26 171. Occidental's financial support and other acts therefore had a substantial effect
27 upon the success of CNA's war crimes.
28

1 172. When Occidental entered into the renewed 2004 Security Agreement to support
2 the CNA, there was no question that Occidental was providing funding to the CNA to continue
3 its brutal practices and that additional war crimes would be committed by the CNA enabled by
4 Occidental's funding.

5 173. Occidental intended that, with its funds, the CNA would expand its war effort
6 against the FARC and ELN and would focus its campaign in the areas of Arauca near the Caño
7 Limón oilfield and Caño Limón-Coveñas pipeline where the FARC and the ELN had attacked so
8 many times before. Given CNA's well publicized record of past war crimes committed in the
9 name of providing security to Occidental, the company certainly had knowledge that the CNA
10 would continue to commit war crimes, including extrajudicial killings of innocent civilians, like
11 Plaintiffs' decedents, who lived in and around the towns Occidental needed the CNA to attack
12 and pacify.

13 174. The CNA's violent repression directed at social leaders, including extrajudicial
14 killings, was well known in Colombia and the United States.

15 175. Plaintiffs' allegations herein demonstrate Occidental was aware that its actions
16 would aid the CNA in committing crimes of the type referenced herein and intended this result.

17 **Occidental Conspired With the CNA to Commit War Crimes**

18 176. Based on ¶¶ 165-75, *supra*, which are incorporated herein by reference, the
19 members and leadership of the 18th Brigade agreed to use illegal means, including extrajudicial
20 killings, to accomplish the Brigade's mission.

21 177. Based on ¶¶ 165-75, *supra*, which are incorporated herein by reference,
22 Occidental's participation in and commitments under the 2004 Security Agreement combined
23 with Occidental's prior knowledge of the CNA's violent methods shows that Occidental agreed
24 that unjustified violence, including extrajudicial killings, would be a part of the execution of the
25
26
27
28

1 2004 Security Agreement.

2 178. By its acts and omissions in relation to the 2004 Security Agreement, Occidental
3 agreed to support the CNA's violent methods, thereby joining the conspiracy and demonstrating
4 its intent to help achieve the conspiracy's goal of ridding Arauca of undesirable elements by
5 whatever means necessary.
6

7 179. Based on ¶¶130-43, 176-78, *supra*, which are incorporated herein by reference,
8 the CNA committed wrongful acts in furtherance of the conspiracy by murdering Plaintiffs'
9 decedents.

10 **The CNA Acted as Occidental's Agent When it Committed War Crimes**

11 180. Based on ¶¶48-51, 56-77, *supra*, which are incorporated herein by reference,
12 Occidental entered into a specific agreement with the CNA that Occidental would provide
13 substantial support to the CNA for equipment and supplies in return for the CNA's commitment
14 to pursue the FARC and ELN, and destroy their ability to carry out attacks on Occidental's
15 assets, and otherwise protect Occidental's assets.
16

17 181. The relationship between the CNA and Occidental is not only evidenced by the
18 2004 Security Agreement, but also independently evidenced by prior such agreements and the
19 prior course of conduct between the CNA and Occidental.
20

21 182. Based on ¶¶48-51, 56-77, *supra*, which are incorporated herein by reference,
22 Occidental entered into a contractual arrangement binding the 18th Brigade to provide it with
23 security, provided millions of dollars in funding for the 18th Brigade, and sat on the security
24 arrangement's Coordination Committee.

25 183. Beyond the terms of the 2004 Security Agreement, Occidental's control over the
26 CNA is evidenced by the parties' course of conduct.

27 184. As described in the GAO Report, Occidental's practice was to notify the
28

1 Colombian military when there was a guerilla attack on the pipeline, and the military would
2 respond by aerially confirming the attack and then securing the ground so that Occidental could
3 make repairs. The CNA thus operated on Occidental's behalf and Occidental controlled the CNA
4 in the Caño Limón region.

5
6 185. Based on ¶¶ 114-54 *supra*, which are incorporated herein by reference, all of
7 Plaintiffs' decedents were killed by the 18th Brigade in furtherance of its security operations on
8 behalf of Occidental in Arauca.

9 186. The Plaintiffs' decedents were executed between May 19, 2004, when Occidental
10 made its renewed agreement with the CNA, and December 31, 2004, when the 2004 Security
11 Agreement was set to expire.

12 187. Accordingly, the executions of Plaintiffs' decedents were within the scope of the
13 CNA's relationship with Occidental.

14 188. In the alternative, Occidental is liable for ratifying the murders.

15 189. Upon information and belief, Occidental did not cease payments or try to
16 terminate the 2004 Security Agreement after the killings by the CNA; did not require the CNA to
17 return any of the transportation assets, communications equipment, or other material support
18 provided under the 2004 Security Agreement; and did not publicly denounce the decedents'
19 killings.
20

21
22 190. To the contrary, Occidental continued to utilize the CNA's security services after
23 the murders.

24 191. The GAO Report states: "Today, Occidental is able to increase its exploration
25 within Arauca, by working with the Colombian Army and police."

26 192. By its inaction and silence in the time leading up to and after the decedents'
27 murders, Occidental thus ratified the murders.
28

1 **Occidental has Joint Venture Liability for the War Crimes Committed by Ecopetrol, its**
2 **Fellow Member of the Association of Cravo Norte, and Ecopetrol's Agent, the CNA**

3 193. Based on ¶¶4-9, 27-30, *supra*, which are incorporated herein by reference, the
4 Association was a joint venture because, in forming the Association, Occidental and Ecopetrol
5 agreed to jointly exploit the Caño Limón oilfield.

6 194. Occidental's joint venture agreement with Ecopetrol was in force in August 2004,
7 when Plaintiffs' decedents were executed.

8 195. Occidental and Ecopetrol shared in the profits and losses of the Association's
9 activities in Caño Limón.

10 196. Occidental and Ecopetrol shared in profits according to their respective
11 "participation" rates and in losses by way of, for instance, their agreement to share abandonment
12 costs.
13

14 197. Occidental and Ecopetrol had joint control over the activities of the Association.

15 198. For example, Association members worked together (along with the CNA) in the
16 area of security.
17

18 199. Occidental was thus a joint venture partner with Ecopetrol through the
19 Association.

20 200. Occidental is therefore liable for Ecopetrol's activities in furtherance of that joint
21 venture.

22 201. Ecopetrol directly contracted with the CNA for security for the Association and
23 provided significant funding for the CNA, all of which contributed to Plaintiffs' decedents'
24 deaths.
25

26 202. Therefore, even if Occidental's own collaboration with the CNA is insufficient to
27 hold Occidental liable, Occidental remains liable for Ecopetrol's collaboration with the CNA
28 under a joint venture theory.

1 **Second Cause of Action**

2 **The Alien Tort Claims Act, 28 U.S.C. § 1350 – Extrajudicial Killings**

3 **All Plaintiffs Against Defendant**

4 203. Plaintiffs incorporate by reference paragraphs 1 through 202 of this Complaint as
5 if set forth herein.
6

7 **The CNA Was Acting Under Color of the Authority**
8 **of the Colombian Government**

9 204. As previously alleged in ¶¶ 11-12, 56-59, 150, *supra*, which are incorporated
10 herein by reference, the Colombian government had a direct role in negotiating the 2004 Security
11 Agreement.
12

13 205. The CNA is part of the Colombian government.

14 206. Plaintiffs’ decedents were killed by the members of the CNA.

15 207. The killings of the Plaintiffs’ decedents were thus committed under the color of
16 law of the Colombian government.

17 **The Executions of Plaintiffs’ Decedents Were Extrajudicial Killings**

18 208. All of Plaintiffs’ decedents were executed by the CNA, which was acting under
19 color of authority of the Colombian government.
20

21 209. None of the decedents had been provided with any form of judicial process prior
22 to their executions.

23 210. All of these executions were thus extrajudicial killings under the law of nations.

24 **Occidental Aided and Abetted the CNA’s Extrajudicial Killings**

25 211. As previously alleged in ¶¶ 165-75, *supra*, which are incorporated herein by
26 reference, Occidental aided and abetted the CNA’s war crimes.
27

28 212. The primary war crime that Occidental aided and abetted was the killings of

1 innocent civilians (i.e., Plaintiffs' decedents). In aiding and abetting these war crimes, Occidental
2 also aided and abetted the killings themselves, which as alleged above, were extrajudicial
3 killings because they were committed by the CNA under color of the authority of the
4 Government of Colombia.

5
6 **Occidental Conspired With the CNA to Commit Extrajudicial Killings**

7 213. As previously alleged in ¶¶ 176-79, *supra*, which are incorporated herein by
8 reference, Occidental conspired with the CNA to commit war crimes.

9 214. The primary war crime that Occidental conspired with the CNA to commit was
10 the killings of innocent civilians (i.e., Plaintiffs' decedents). In conspiring to commit these war
11 crimes, Occidental also conspired to commit the killings of decedents themselves, which as
12 alleged above, were extrajudicial killings because they were committed by the CNA under color
13 of the authority of the Government of Colombia.
14

15 **The CNA Was Acting as Occidental's Agent in Committing**
16 **Extrajudicial Killings**

17 215. As previously alleged in ¶¶ 180-92, *supra*, which are incorporated herein by
18 reference, the CNA acted as Occidental's agent in committing war crimes.

19 216. The primary war crime that the CNA committed while acting as Occidental's
20 agent was the killings of innocent civilians (i.e., Plaintiffs' decedents). In committing these war
21 crimes acting as Occidental's agent, the CNA also committed the killings themselves, which as
22 alleged above, were extrajudicial killings because they were committed by the CNA under color
23 of the authority of the Government of Colombia.
24

25 **Occidental has Joint Venture Liability for the Extrajudicial Killings Committed by the**
26 **CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

27 217. As previously alleged in ¶¶ 193-202, *supra*, which are incorporated herein by
28 reference, the Association is a joint venture and Occidental is therefore liable for the torts

1 committed by Ecopetrol (or its agents) in furtherance of that joint venture. Specifically,
2 Ecopetrol directly contracted with the CNA for security for the Association and provided
3 significant funding for the CNA, all of which contributed to Plaintiffs' decedents' deaths.
4

5 **Third Cause of Action**

6 **The Alien Tort Claims Act, 28 U.S.C. § 1350 – Crimes Against Humanity**

7 **All Plaintiffs Against Defendant**

8 218. Plaintiffs incorporate by reference paragraphs 1 through 217 of this Complaint as
9 if set forth herein.

10 **The Executions of Plaintiffs' Decedents Were Crimes Against Humanity**

11 219. Based on ¶¶ 134-37, *supra*, which are incorporated herein by reference, the
12 murders of the Plaintiffs' decedents, carried out execution-style, constitute an enumerated crime
13 against humanity under the Rome Statute.
14

15 220. Based on ¶¶ 90-99, *supra*, which are incorporated herein by reference, hundreds
16 (if not thousands) of civilians were killed or attacked in Colombia by the CNA in the years
17 leading up to the 2004 executions.

18 221. One report states that the Colombian government unlawfully killed 995 persons
19 during the 5 years beginning in July 2002. Other reports place that figure higher.
20

21 222. Murders of union leaders and “false positives” were two sub-categories of the
22 widespread and systematic extrajudicial killings by the Colombian government in and around
23 2004.

24 223. Alston states that “[i]mportant targets of unlawful killings by both Colombian
25 State forces and [illegal armed groups] have historically included . . . trade unionists.”

26 224. Alston added that “of 877 trade unionists killed between 1984 and 2008, only 106
27 cases have reached the sentencing stage, while the vast majority (621) remain at the initial
28

1 investigative stage.”

2 225. Although the perpetrators of union-related violence are often unknown, the
3 Colombian Commission of Jurists has established that 41 cases of extrajudicial executions of
4 trade unionists are directly attributable to Colombian security forces.

5 226. Regarding “false positives,” Alston reports that he “receive[d] detailed and
6 credible reports of such killings from across the country, committed in numerous departments
7 and by a large number of different military units.”

8 227. Alston continued by stating: “It is clear from my investigations that members of
9 Colombia’s security forces have committed a significant number of unlawful killings and that the
10 *falsos positivos* pattern has been repeated around the country. There have been too many killings
11 of a similar nature to characterize them as isolated incidents carried out by individual rogue
12 soldiers or units, or ‘bad apples’.”

13 228. A BBC article concerning “false positives” concluded that the numbers involved
14 “suggest[ed] not isolated incidents but a systematic practice within the military.”

15 229. Reliable sources claim that well over 1,000 people have been “false positive”
16 victims in Colombia.

17 230. Accordingly, Plaintiffs’ decedents’ murders were thus part of a widespread and
18 systematic attack.

19 231. The CNA’s method of operation was to target their violence upon the civilian
20 residents of towns where the guerrillas had a foothold and where social protestors held sway.
21 This method was, at least in part, a result of the perverse incentives for killing guerrillas that
22 directly led to the “false positive” phenomenon. A *de facto* governmental policy emerged from
23 the CNA’s unpunished extrajudicial killings that anybody could be executed who could be made
24 to look like a guerrilla.
25
26
27
28

1 232. Plaintiffs’ decedents were therefore executed pursuant to Colombian
2 governmental policies and practices.

3 233. Many of the victims of the CNA’s violence in Arauca—including Plaintiffs’
4 decedents—were civilians. Indeed, scores of union leaders and “false positive” victims are
5 among the civilians targeted by the CNA.
6

7 234. Based on ¶¶143, 149-51, *supra*, which are incorporated herein by reference, the
8 Colombian government knew of the attack on Plaintiffs’ decedents.

9 235. The Colombian government learned of, and approved of, the attack shortly after it
10 occurred.

11 236. Statements by high-ranking Colombian officials (see Paragraphs 149-51)
12 conclusively establish the government’s knowledge and approval of the attack.
13

14 **Occidental Aided and Abetted the CNA’s Crimes Against Humanity**

15 237. As previously alleged in ¶¶165-75, *supra*, which are incorporated herein by
16 reference, Occidental aided and abetted the CNA’s war crimes.

17 238. The essential nature of the war crimes that Occidental aided and abetted were the
18 murders of the Plaintiffs’ decedents and the systematic extermination of innocent civilian social
19 leaders by the CNA, including Plaintiffs’ decedents. In aiding and abetting these war crimes,
20 Occidental also aided and abetted the crimes against humanity inherent in these widespread and
21 systematic killings of innocent civilians.
22

23 **Occidental Conspired With the CNA to Commit Crimes Against Humanity**

24 239. As previously alleged in ¶¶176-79, *supra*, which are incorporated herein by
25 reference, Occidental conspired with the CNA to commit war crimes.

26 240. The essential nature of the war crimes that Occidental conspired with the CNA to
27 commit was the massive killings of innocent civilians, including Plaintiffs’ decedents. In
28

1 conspiring to commit these war crimes, Occidental also conspired to commit the crimes against
2 humanity inherent in these widespread and systematic killings of innocent civilians.

3 **The CNA Was Acting as Occidental's Agent in Committing**
4 **Crimes Against Humanity**

5 241. As previously alleged in ¶¶ 180-92, *supra*, which are incorporated herein by
6 reference, the CNA acted as Occidental's agent in committing war crimes.

7 242. The essential nature of the war crimes that the CNA committed while acting as
8 Occidental's agent was the massive killings of innocent civilians, including Plaintiffs' decedents.
9 In committing these war crimes while acting as Occidental's agent, the CNA also committed the
10 crimes against humanity inherent in these widespread and systematic killings of innocent
11 civilians.
12

13 **Occidental has Joint Venture Liability for the Crimes Against Humanity Committed by the**
14 **CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

15 243. As previously alleged in ¶¶ 193-202 above, the Association is a joint venture and
16 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance
17 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
18 the Association and provided significant funding for the CNA, all of which contributed to
19 Plaintiffs' decedents' deaths.
20

21 **Fourth Cause of Action**

22 **Wrongful Death Under California Law**

23 **All Plaintiffs Against Defendant**

24 244. Plaintiffs incorporate by reference paragraphs 1 through 243 of this Complaint as
25 if set forth herein.

26 245. Plaintiffs' decedents' murders, as extrajudicial killings, were wrongful acts
27 committed by the CNA for which, as alleged below in ¶¶ 262-265, Occidental is secondarily
28

1 liable.

2 246. Occidental is also directly liable for Plaintiffs' decedents' murders because of
3 Occidental's negligence.

4 247. At all times, Occidental had a duty of reasonable care to prevent harm to Plaintiffs
5 and their decedents as persons residing or working in the areas that Occidental knew or could
6 have reasonably foreseen that the CNA would target for violent activities in carrying out the
7 services that Occidental engaged the CNA to provide.

8 248. Occidental's duty took several forms.

9 249. Occidental had a duty to investigate any entity providing it with security services,
10 including the CNA, before paying that entity for security services, to ensure that the entity did
11 not have a history of human rights violations.
12

13 250. Occidental had a duty not to hire, contract, retain, or otherwise procure security
14 services from any entity, including the CNA, where Occidental's investigation revealed (or
15 would have revealed, if conducted) a history of human rights violations.
16

17 251. Occidental had a duty to supervise any entity providing it with security services,
18 including the CNA, in a manner that ensured that human rights violations were not being
19 committed.
20

21 252. Occidental had a duty to ensure that any entity providing it with security services
22 was not unfit, incompetent, or otherwise unreasonably dangerous.

23 253. Occidental had a duty to terminate its agreement for security services with any
24 entity, including the CNA, that committed human rights violations while providing security
25 services to Occidental.

26 254. Occidental breached its duties to Plaintiffs' decedents by failing to conduct an
27 adequate investigation of the CNA (or by retaining the CNA for security services despite
28

1 conducting an investigation); retaining the CNA to provide security services despite its well-
2 known history of human rights violations in Arauca; failing to supervise the CNA in such a
3 manner that human rights violations would not be committed; failing to ensure that its security
4 provider (the CNA) was not unfit, incompetent, or otherwise unreasonably dangerous; and
5 failing to terminate its agreement with the CNA once additional human rights violations arose.
6

7 255. It was reasonably foreseeable to Occidental that using the CNA for security could
8 cause harm, including death, to Plaintiffs' decedents and other residents of Arauca.

9 256. Occidental knew or should have known of the CNA's involvement in massacres
10 of civilians and the disappearances, extra-judicial killings, arbitrary detentions, and beatings of
11 social protestors, and the CNA's intention to continue such activities, especially if provided with
12 the necessary financial and other material support.
13

14 257. As a direct and proximate result of Occidental's conduct in evaluating, selecting,
15 hiring, retaining, and/or supervising the CNA, Plaintiffs' decedents were murdered by the CNA.

16 258. As a result of the wrongful deaths, Plaintiffs suffered damages, including but not
17 limited to the loss of the decedents' financial support, services, training and advice, and the
18 pecuniary value of the decedents' society and companionship.

19 259. In the alternative, Occidental is directly liable for ratifying the decedents'
20 murders.
21

22 260. Rather than terminating the 2004 Security Agreement after the killings by the
23 CNA, Occidental continued to utilize the CNA's security services.

24 261. Both Occidental's own conduct and the CNA's conduct for which Occidental is
25 legally responsible constitute wrongful death, and Plaintiffs bring this wrongful death claim
26 under California law or, in the alternative, under the laws of Colombia.
27

28 **Occidental Aided and Abetted the Wrongful Deaths of the Decedents**

1 262. As previously alleged in ¶¶211-12, *supra*, which are incorporated herein by
2 reference, Occidental aided and abetted in the extrajudicial killings of the decedents, and
3 therefore aided and abetted in their wrongful deaths.

4 **Occidental Conspired With the CNA to Cause the Wrongful Deaths of the Decedents**

5 263. As previously alleged in ¶¶213-14, *supra*, which are incorporated herein by
6 reference, Occidental conspired with the CNA to commit extrajudicial killings, and therefore
7 conspired to cause the wrongful deaths of the decedents.

8 **The CNA Was Acting as Occidental’s Agent in Causing the Wrongful Deaths of the**
9 **Decedents**

10 264. As previously alleged in ¶¶215-16, *supra*, which are incorporated herein by
11 reference, the CNA acted as Occidental’s agent in committing the extrajudicial killings, and
12 therefore acted as Occidental’s agent in causing the wrongful deaths of the decedents.

13 **Occidental has Joint Venture Liability for the Wrongful Deaths Caused by the CNA in its**
14 **Role as an Agent of Joint Venture Member Ecopetrol**

15 265. As previously alleged in ¶ 217 above, the Association is a joint venture and
16 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance
17 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
18 the Association and provided significant funding for the CNA, all of which contributed to
19 Plaintiffs’ decedents’ deaths.
20

21 **Fifth Cause of Action**

22 **Intentional Infliction of Emotional Distress Under California Law (Survival Action)**

23 **All Plaintiffs Against Defendant**

24 266. Plaintiffs incorporate by reference paragraphs 1 through 265 of this Complaint as
25 if set forth herein.

26 267. The allegations described and alleged herein constitute extreme and outrageous
27
28

1 conduct against Plaintiffs' decedents and said conduct is without privilege.

2 268. Prior to Plaintiffs' decedents' executions, the decedents endured the horror of
3 knowing that they would be subjected to the brutal tactics of the CNA. Plaintiffs' decedents
4 were placed in fear for their own lives and, depending on the order of their execution, forced to
5 witness the murder of their fellow activists.
6

7 269. The CNA intended to cause Plaintiffs' decedents to suffer severe emotional
8 distress or, alternatively, recklessly disregarded the probability of causing such distress. In the
9 alternative, Occidental engaged in the conduct described in this Complaint with reckless
10 disregard of the probability of causing these individuals to suffer severe emotional distress.
11

12 270. Plaintiffs' decedents suffered severe emotional distress and the outrageous
13 conduct by the CNA and/or Occidental was a direct and proximate cause of the emotional
14 distress they suffered prior to being executed.

15 271. Both Occidental's own conduct and the CNA's conduct for which Occidental is
16 legally responsible constitute the intentional infliction of emotional distress, and Plaintiffs bring
17 this intentional infliction of emotional distress claim under California law or, in the alternative,
18 under the laws of Colombia.
19

20 **Occidental Aided and Abetted the Intentional Infliction of Emotional Distress to Decedents**

21 272. As previously alleged in ¶¶211-12, *supra*, which are incorporated herein by
22 reference, Occidental aided and abetted in the extrajudicial killing of the decedents, and therefore
23 aided and abetted in the intentional infliction of emotional distress to the Plaintiffs' decedents.

24 **Occidental Conspired With the CNA to Cause the Intentional Infliction of Emotional**
25 **Distress to the Decedents**

26 273. As previously alleged in ¶¶213-14, *supra*, which are incorporated herein by
27 reference, Occidental conspired with the CNA to commit extrajudicial killings, and therefore
28 conspired to cause the intentional infliction of emotional distress to the Plaintiffs' decedents.

1 **The CNA Was Acting as Occidental’s Agent in Causing the Intentional Infliction of**
2 **Emotional Distress to the Decedents**

3 274. As previously alleged in ¶¶215-16, *supra*, which are incorporated herein by
4 reference, the CNA acted as Occidental’s agent in committing the extrajudicial killings, and
5 therefore acted as Occidental’s agent in causing the intentional infliction of emotional distress to
6 the Plaintiffs’ decedents.

7 **Occidental has Joint Venture Liability for the Intentional Infliction of Emotional Distress**
8 **Caused by the CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

9 275. As previously alleged in ¶ 217 above, the Association is a joint venture and
10 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance
11 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
12 the Association and provided significant funding for the CNA, all of which contributed to
13 Plaintiffs’ decedents’ deaths and the intentional infliction of emotional distress they suffered
14 immediately prior to their deaths.
15

16 **Sixth Cause of Action**

17 **Negligent Infliction of Emotional Distress Under California Law (Survival Action)**

18 **All Plaintiffs Against Defendant**

19 276. Plaintiffs incorporate by reference paragraphs 1 through 275 of this Complaint as
20 if set forth herein.
21

22 277. As set forth in ¶ 268 above, the extreme and outrageous conduct alleged herein
23 placed Plaintiffs’ decedents in fear for their own lives prior to their deaths.

24 278. Occidental knew or should have known that the conduct by the CNA and
25 Occidental’s failure to exercise due care toward each of Plaintiffs’ decedents would cause them
26 to suffer severe emotional distress.
27

28 279. At all relevant times, Occidental knew, or reasonably should have known, that the

1 conduct described and alleged herein would and did proximately result in physical and emotional
2 distress to Plaintiffs' decedents.

3 280. Despite that knowledge, power and duty to use reasonable care, Occidental
4 breached its duty to Plaintiffs' decedents, and thereby negligently failed to act so as to prevent or
5 stop the CNA's conduct or to otherwise protect Plaintiffs' decedents. While the murders were
6 perpetrated by the CNA, Occidental enabled the CNA to injure the Plaintiffs' decedents, and
7 then confirmed and ratified that conduct. Occidental's breach was with a wanton and reckless
8 disregard of the deleterious consequences to the Plaintiffs' decedents.

9
10 281. Plaintiffs' decedents suffered severe emotional distress and Occidental's negligent
11 conduct was a direct and proximate cause of the emotional distress they suffered prior to being
12 executed.

13
14 282. Both Occidental's own conduct and the CNA's conduct for which Occidental is
15 legally responsible constitute the negligent infliction of emotional distress, and Plaintiffs bring
16 this negligent infliction of emotional distress claim under California law or, in the alternative,
17 under the laws of Colombia.

18 **The CNA Was Acting as Occidental's Agent in Causing the Negligent Infliction of**
19 **Emotional Distress to the Decedents**

20 283. As previously alleged in ¶¶215-16, *supra*, which are incorporated herein by
21 reference, the CNA acted as Occidental's agent in committing the extrajudicial killings, and
22 therefore acted as Occidental's agent in causing the negligent infliction of emotional distress to
23 the Plaintiffs' decedents.

24
25 **Occidental has Joint Venture Liability for the Negligent Infliction of Emotional Distress**
26 **Caused by the CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

27 284. As previously alleged in ¶ 217 above, the Association is a joint venture and
28 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance

1 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
2 the Association and provided significant funding for the CNA, all of which contributed to
3 Plaintiffs' decedents' deaths and the negligent infliction of emotional distress they suffered
4 immediately prior to their deaths.

5
6 **Seventh Cause of Action**

7 **Battery Under California Law (Survival Action)**

8 **All Plaintiffs Against Defendant**

9 285. Plaintiffs incorporate by reference paragraphs 1 through 284 of this Complaint as
10 if set forth herein.

11 286. On the day of their executions, Plaintiffs' decedents were subjected to the brutal
12 tactics of the CNA, including harmful or offensive contact with the bodies of Plaintiffs'
13 decedents. Plaintiffs' decedents did not consent to the contact, which caused injury, damage, and
14 loss to the Plaintiffs' decedents.

15 287. The acts alleged herein constitute battery and Plaintiffs bring this battery claim
16 under California law or, in the alternative, under the laws of Colombia.

17
18 **Occidental Aided and Abetted the Battery of Plaintiffs' Decedents**

19 288. As previously alleged in ¶¶211-12, *supra*, which are incorporated herein by
20 reference, Occidental aided and abetted in the extrajudicial killing of the decedents, and therefore
21 aided and abetted in the battery of the Plaintiffs' decedents.

22
23 **Occidental Conspired With the CNA to Cause the Battery of Plaintiffs' Decedents**

24 289. As previously alleged in ¶¶213-14, *supra*, which are incorporated herein by
25 reference, Occidental conspired with the CNA to commit extrajudicial killings, and therefore
26 conspired to cause the battery of the Plaintiffs' decedents.

27
28 **The CNA Was Acting as Occidental's Agent in Causing the Battery of Plaintiffs' Decedents**

1 290. As previously alleged in ¶¶215-16, *supra*, which are incorporated herein by
2 reference, the CNA acted as Occidental’s agent in committing the extrajudicial killings, and
3 therefore acted as Occidental’s agent in causing the battery of the Plaintiffs’ decedents.
4

5 **Occidental has Joint Venture Liability for the Battery of Plaintiffs’ Decedents Caused by**
6 **the CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

7 291. As previously alleged in ¶ 217 above, the Association is a joint venture and
8 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance
9 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
10 the Association and provided significant funding for the CNA, all of which contributed to the
11 battery of Plaintiffs’ decedents.

12 **Eighth Cause of Action**

13 **Assault Under California Law (Survival Action)**

14 **All Plaintiffs Against Defendant**

15 292. Plaintiffs incorporate by reference paragraphs 1 through 291 of this Complaint as
16 if set forth herein.

17 293. On the day of their executions, Plaintiffs’ decedents were forced by the CNA to
18 leave the house where they had slept, which caused Plaintiffs’ decedents to be apprehensive that
19 the CNA would subject them to imminent batteries and/or intentional invasions of their rights to
20 be free from offensive and harmful contact, and, given the brutal tactics that the CNA was
21 known to employ and the fact that the CNA members were armed demonstrated that they had a
22 then-present ability to subject Plaintiffs’ decedents to immediate, intentional, offensive and
23 harmful touching. This caused injury, damage, and loss to the Plaintiffs’ decedents.
24

25 294. The acts alleged herein constitute assault and Plaintiffs bring this assault claim
26 under California law or, in the alternative, under the laws of Colombia.
27

28 **Occidental Aided and Abetted the Assault of Plaintiffs’ Decedents**

1 295. As previously alleged in ¶¶211-12, *supra*, which are incorporated herein by
2 reference, Occidental aided and abetted in the extrajudicial killing of the decedents, and therefore
3 aided and abetted in the assault of the Plaintiffs' decedents.

4 **Occidental Conspired With the CNA to Cause the Assault of Plaintiffs' Decedents**

5 296. As previously alleged in ¶¶213-14, *supra*, which are incorporated herein by
6 reference, Occidental conspired with the CNA to commit extrajudicial killings, and therefore
7 conspired to cause the assault of the Plaintiffs' decedents.

8 **The CNA Was Acting as Occidental's Agent in Causing the Assault of Plaintiffs' Decedents**

9 297. As previously alleged in ¶¶215-16, *supra*, which are incorporated herein by
10 reference, the CNA acted as Occidental's agent in committing the extrajudicial killings, and
11 therefore acted as Occidental's agent in causing the assault of the Plaintiffs' decedents.
12

13 **Occidental has Joint Venture Liability for the Assault of Plaintiffs' Decedents Caused by**
14 **the CNA in its Role as an Agent of Joint Venture Member Ecopetrol**

15 298. As previously alleged in ¶ 217 above, the Association is a joint venture and
16 Occidental is therefore liable for the torts committed by Ecopetrol (or its agents) in furtherance
17 of that joint venture. Specifically, Ecopetrol directly contracted with the CNA for security for
18 the Association and provided significant funding for the CNA, all of which contributed to the
19 assault of Plaintiffs' decedents.
20

21 **Ninth Cause of Action**

22 **Negligent Hiring and Supervision Under California Law**

23 **All Plaintiffs Against Defendant**

24 299. Plaintiffs incorporate by reference paragraphs 1 through 298 of this Complaint as
25 if set forth herein.
26

27 300. As previously alleged in ¶¶246-61, *supra*, which are incorporated herein by
28 reference, Occidental owed Plaintiffs and their decedents a duty to use reasonable care and

1 Occidental's breach of that duty by negligently selecting, hiring, supervising, and retaining the
2 CNA forces was the proximate and legal cause of the injuries to Plaintiffs and their decedents.

3 301. Occidental's conduct constitutes negligent hiring and supervision, and Plaintiffs
4 bring this negligent hiring and supervision claim under California law or, in the alternative,
5 under the laws of Colombia.
6

7 **Tenth Cause of Action**

8 **Negligence Under California Law**

9 **All Plaintiffs Against Defendant**

10 302. Plaintiffs incorporate by reference paragraphs 1 through 301 of this Complaint as
11 if set forth herein.

12 303. As previously alleged in ¶¶246-61, *supra*, which are incorporated herein by
13 reference, Occidental owed Plaintiffs and their decedents a duty to use reasonable care and
14 Occidental's breach of that duty was the proximate and legal cause of the injuries to Plaintiffs
15 and their decedents.
16

17 304. Occidental's conduct constitutes negligence, and Plaintiffs bring this negligence
18 claim under California law or, in the alternative, under the laws of Colombia.
19

20 **VII. DEMAND FOR JURY TRIAL**

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

22 **VIII. PRAYER FOR RELIEF**

23 306. WHEREFORE, Plaintiffs respectfully request the Court to:

- 24 (a) enter judgment in favor of Plaintiffs on all counts of the Complaint;
25 (b) declare that Occidental violated the human rights of Plaintiffs and their
26 decedents and the laws of the United States and California, as set forth
27 herein;
28

- 1 (c) award Plaintiffs compensatory damages in an amount exceeding \$75,000
2 (exclusive of interest and costs);
3 (d) award Plaintiffs punitive damages;
4 (e) grant Plaintiffs equitable relief, permanently enjoining Occidental from
5 further engaging in human rights abuses against Plaintiffs and other
6 members of their communities in and around the Occidental facilities in
7 Colombia;
8 (f) award Plaintiffs the costs of suit including reasonable attorneys' fees; and
9 (g) award Plaintiffs such other and further relief as the Court deems just under
10 the circumstances.
11
12
13

14 Respectfully submitted this 10th day of October, 2011.

15
16 By: _____

17 DAVID GRUNWALD
18 ATTORNEY AT LAW

19 TERRENCE P. COLLINGSWORTH
20 CONRAD & SCHERER, LLP

21 *ATTORNEYS FOR PLAINTIFFS*
22
23
24
25
26
27
28