

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOSÉ ARMANDO PALACIOS, SARA)	
RAMOS MONTOYA, RONY VLADIMIR)	
PALACIOS RAMOS, JOSÉ ALBERTO)	
VICENTE CHÁVEZ, HERMINDA)	
AMPARO SANTIAGO QUICH,)	
MILDRED INDALECIA VICENTE)	
SANTIAGO, MARTHA ORALIA)	
ARANGO MATIAS,)	
MARGARITA RAMOS QUICH)	
)	
Plaintiffs,)	Case No. _____
)	
v.)	
)	
THE COCA-COLA COMPANY)	
and DOES 1 through 10 inclusive,)	
)	
Defendants)	
)	

I. NATURE OF ACTION

1. This case involves a campaign of violence—including rape, murder, and attempted murder—against trade unionists and their families by Coca-Cola bottling and processing plants in Guatemala under the control and supervision of the management of Defendant the Coca-Cola Company (hereinafter “Coke”).

2. This case is brought under New York state common law, including tort law, and (in the alternative) under the laws of Guatemala. The case seeks remedial relief for the Plaintiffs, and injunctive relief to prevent the Defendants herein from utilizing murder, torture and other forms of brutality to intimidate and coerce their workers to prevent them from exercising their fundamental rights to join a union and bargain collectively.

3. Plaintiffs and other victims of human rights abuses lack access to an independent and functioning legal system within Guatemala, a country with a corrupt judiciary which has been undermined by the intimidation and murder of witnesses, prosecutors, lawyers and judges. As the U.S. State Department has reported, while human rights workers and trade unionists regularly receive threats, the government response is seen as ineffective.

4. Indeed, according to the U.S. State Department, attacks on trade unionists are fairly commonplace and murders of labor leaders generally were not well investigated and went unprosecuted. The U.S. State Department also notes that there has been, in recent times, a significant increase in the number of killings of trade union activists and their family members. This is demonstrated graphically in this case as Plaintiff Palacios and his family were granted asylum in the U.S. following the violent attacks directed at them.

5. Even if there were remedies available to Plaintiffs in Guatemala, such remedies are inadequate and would not afford the complete relief available to Plaintiffs by this Complaint. Coke, because it does business in Guatemala, is well aware of these conditions, and knows that Plaintiffs do not have the option of seeking justice in Guatemala for human rights violations that target trade unionists.

6. This case must be permitted to go to trial in the U.S., rather than Guatemala, because by operation of law, once this case was filed in this Court, no court in Guatemala has jurisdiction. This is based on the 1997 Law for the Defense of Procedural Rights of Nationals and Residents.

7. Plaintiffs designate the County of New York in the State of New York as the appropriate venue for this action under C.P.L.R. section 503. The defendant corporation has its principal place of business within the State at 711 Fifth Avenue in New York City and is, thus, a resident of the State and County within the meaning of C.P.L.R. section 503(c). Further, Coke has countless outlets for the sale of its products in the County of New York. In addition, Coke made and implemented decisions in New York concerning its Workplace Rights Policy, as well as the specific problems relating to addressing the public concerns following the events in Guatemala alleged herein. Coke has also spent a considerable amount of time in New York convincing shareholders, potential investors, anti-Coke campaign activists, and consumers that its Workplace Rights Policy would prevent or remedy anti-union violence of the sort that occurred in Guatemala at Coke's bottling plant.

II. PARTIES

Plaintiffs

8. Plaintiff José Armando Palacios was a union leader in the 1980s and 1990s, but was forced to quit the union as a condition for becoming an in-house security guard. In early 2004 he rejoined the union, along with two other security guards joined Sindicato de Trabajadores de la Industria del Café y Bebidas Coca-Cola ("SITINCA") at INCASA, the instant coffee and Coca-Cola processing plant in Guatemala City, Guatemala. Mr. Palacios was subjected to violence, including in the form of multiple attempts on his life, in response to his lawful union and employment-related activities. Mr. Palacios brings this lawsuit on his own behalf as well as on behalf of his minor daughter, Roslyn Yamilet

Palacios Ramos, who was subjected to violent threats as part of a campaign of violence directed at her father.

9. Plaintiff Sara Ramos Montoya is the wife of José Armando Palacios and was subjected to violence, including a home invasion in which a weapon was pointed at her and she was threatened with death, as part of a campaign of violence directed at her husband. Sara Ramos Montoya brings this lawsuit on her own behalf as well as on behalf of her minor daughter, Rosyln Yamilet Palacios Ramos, who was subjected to violent threats as part of a campaign of violence directed at her father.

10. Plaintiff Rony Vladimir Palacios Ramos is the son of José Armando Palacios and was subjected to violence, including a home invasion in which a weapon was pointed at him and he was threatened with death, as part of a campaign of violence directed at his father.

11. Plaintiff José Alberto Vicente Chávez was a SITINCA union leader at the INCASA Coke bottling plant in Retalhuleu, Guatemala. Mr. Vicente was subjected to violence, including violent threats, in response to his lawful union and employment-related activities. Mr. Vicente brings this lawsuit on his own behalf; on behalf of his son, Dennys Alberto Vicente Santiago, who was murdered as part of a campaign of violence directed at his father.

12. Plaintiff Mildred Indalecia Vicente Santiago is Mr. Vicente's daughter. She was gang-raped as part of a campaign of violence directed at her father.

13. Plaintiff Herminda Amparo Santiago Quich is the wife of José Alberto Vicente Chávez. Mrs. Santiago brings this lawsuit on behalf of her son, Dennys Alberto

Vicente Santiago, who was murdered as part of a campaign of violence directed at his father.

14. Plaintiff Martha Oralia Arango Matias was the wife of Dennys Alberto Vicente Santiago. Mrs. Arango brings this lawsuit on her own behalf for the loss of her husband; on behalf of her minor daughter, Dana Denis Vicente Arango, for the loss of her father; and on her murdered husband's behalf.

15. Plaintiff Margarita Ramos Quich is the mother of Edwin Estuardi Escobar Ramos, who was the nephew of Mr. Vicente. Ms. Ramos brings this lawsuit on behalf of her son, who was murdered as part of a campaign of violence directed at his uncle.

Defendants

16. Defendant Coke, a for-profit corporation incorporated in Delaware, is the world's largest manufacturer, distributor, and marketer of soft drinks. Its headquarters is located at One Coca-Cola Plaza, Atlanta, Georgia 30313. Coke has offices, production and marketing facilities, and bottling plants throughout the United States and the world, including major business operations in New York.

17. Plaintiffs are currently unaware of the true names and capacities of defendants DOES 1 through 10, inclusive, and therefore sue these defendants by fictitious names. These DOES may be subsidiary Coca-Cola companies, other agents, alter egos, or co-venturers of Coca-Cola in Guatemala, and may be companies or individuals. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. All material allegations against all defendants are herein alleged against any Doe defendants.

III. BACKGROUND FACTS ON COKE'S OPERATIONAL CONTROL OF BOTTLERS AND PROCESSORS IN GUATEMALA

18. Defendant Coke has a global network that provides Coca-Cola and other products to the world under the strict quality control, branding and public relations requirements of Coke. The parent company, Coke, maintains legal and practical control over its global business, including its operations in Guatemala, in two ways. First by virtue of the "Bottler's Agreement" it maintains with each bottler it has created, and second, through complex interlocking relationships involving shareholder agreements, agency relationships, joint ownership and joint management with its bottlers around the world.

19. While there may be some aspects of the bottlers' operations that are dealt with by local management, Coke retains authority over major issues that affect product quality, marketing, and other issues that could have a major impact on the Coke brand image. Compliance with international human rights and labor standards at all of the Coke bottling plants is one of the areas that Coke has specifically asserted that it controls and/or directs from its operations in the United States.

20. Due to extreme human rights violations, including the murder and torture of trade union leaders at Coke bottling plants in Colombia, Guatemala, and Turkey, to name a few, Coke was losing market share as consumer campaigns organized by United Students Against Sweatshops and StopKiller Coke gained momentum in the U.S. and Europe. In approximately 2005, Coke asserted its general control over its bottlers by creating a specific position within Coke to coordinate and direct global labor and human

rights policies at its bottling plants around the world. Coke created a senior management position called the Director of Global Labor Relations. Since 2005, through the office of the Director of Global Labor Relations, Coke has issued policies that it asserts to its shareholders, potential investors and the public at large require every bottler to adhere to Coke's "Workplace Rights" standards. Through this action, and through other documents and other expressions of company policy, Coke asserts that it is firmly in charge of human rights compliance within the entire Coke empire, including Coke's bottling plants.

21. However, when it comes to human rights and labor rights problems arising in its bottling plants, Coke has historically acted to intentionally deceive its shareholders, potential investors, and the consuming public. While assuring these groups that Coke can and does exercise sufficient control over its bottlers to require compliance of the bottlers with Coke's human and labor rights policies, when a concrete violation occurs in a bottling plant, Coke's initial position is that it does not have any responsibility at all for any violations of law or of Coke's human and labor rights policies. This contradiction is conclusive evidence of deception and fraud in that Coke seeks to gain financial advantage by convincing shareholders, potential investors, and the consuming public that it is a virtuous company that will not permit its bottlers to engage in human and labor rights violations, while it tacitly assists, encourages, and covers up such violations.

22. The best example of Coke's fraud and deception is its record and actions on the issue of the rights to associate and bargain collectively. While Coke's newly-minted Workplace Rights Policy highlights the rights to associate and bargain collectively as fundamentally important, and asserts that violation of these rights by its bottlers will not be tolerated, the rate of union membership at its bottling plants

worldwide has plummeted as Coke itself advises, assists, condones, and provides legal cover for its bottlers to terminate union workers, subcontract union positions to nonunion companies, and in some cases, to use violence and threats of violence to discourage bottling plant workers from joining unions. Further, Coke has co-opted the International Union of Food Workers (IUF) to accept the decimation of some unions. Coke uses its vast public relations machinery to distort the truth, cover up legal violations, and generally distract the consuming public from its abysmal record on human and labor rights compliance in its global operations.

23. The factual question of whether Coke has sufficient control over its bottlers to require them to comply with its Workplace Rights Policy, and what specific legal duties are created by Coke's assertion of control over human and labor rights issues at its bottling plants, will be a major issue to be resolved by Plaintiffs' Complaint. The situation in Guatemala demonstrates conclusively, however, that regardless of any assertions it now makes in the context of this litigation, Coke has, and has always had, sufficient control over its bottlers to require compliance with human and labor rights standards. The situation in Guatemala also serves as a template for Coke's deceptive practices and fraudulent intent.

24. In 1975, the Fleming family of Texas, the ostensible owners of the main Coke bottling plant in Guatemala City, Embotelladora Guatemalteca, were unhappy with the union, STEGAC, that had formed in the Coke bottling plant, and used threats of violence and other forms of coercion and intimidation to discourage workers from supporting the union. When that tactic failed, the owners hired armed assassins and had eight leaders and activists of the union executed or disappeared. This decimated the

union, eventually forcing it to occupy the bottler, and led to an international boycott against Coca Cola, which resulted in Coca Cola finding new owners for the plant after a year-long occupation by the union.

25. Coke's initial reaction to the executions was to deny that it had any control or responsibility for the actions of a bottling plant operating in Guatemala. Coke continued to do business with and take profits from a bottler that had ordered the execution of the leaders of the union in the bottling plant. Coke's position that it had no responsibility for the bottlers' actions was so untenable that unions around the world, including those that represented Coke workers in the U.S., organized a major boycott.

26. When it was clear to Coke that it was losing money and was suffering long term damage to its brand image by tolerating and accepting the benefits of the murder of the union leaders at the Guatemala bottling plant, Coke used the control it always had and removed the Fleming family as the ostensible owner of the Coke bottling plant and installed Corporacion Porras, a Guatemalan company, which took over Embotelladora Guatemalteca on March 1, 1985 and changed its name to Embotelladora Central, S.A. (EMBOCEN). EMBOCEN was acquired by PANAMCO on March 26, 1998, and was absorbed by Coca Cola FEMSA in December 2002. Coca Cola turned the bottler over to Corporacion Porras after the union, STEGAC (Embotelladora Guatemalteca Workers' Trade Union), occupied the bottler for approximately one year in protest against the violent reprisals directed by John Trotter, the man the Flemings had installed as president of the franchise. Once Porras took over, STEGAC changed its name to STECSA (Embotelladora Central Workers' Trade Union).

27. As is discussed more fully below, the acts of violence suffered by the Plaintiffs in this case occurred at the direction of the current ostensible owners of Industria de Café S.A. (“INCASA”), which owns a coffee- and Coca-Cola-processing plant in Guatemala City, and a Coca-Cola bottling plant in Retalhuleu, in western Guatemala. The majority of permanent workers both at INCASA’s Guatemala City plant and at its Retalhuleu bottler are members of SITINCA, the INCASA Workers’ Trade Union. Like the STECSA union, SITINCA is affiliated to the IUF. As the Plaintiffs allege herein, Coke has at least as much control over the bottling plant in Retalhuleu and the Coca-Cola processing plant in Guatemala City as it did over Embotelladora Guatemalteca.

28. Coke is or was previously a part-owner of INCASA. At a minimum, INCASA is the agent of Coke, and Coke later ratified the violence directed at Plaintiffs and attempted to cover up the facts. Further, the contractual relationships between Coke and INCASA, as well as the joint action of Coke with INCASA, create a joint venture or make Coke a joint tortfeasor with INCASA. Finally, Coke’s participation in attempting to cover up and limit the violence that occurred, while continuing to allow INCASA to profit from sales of Coca-Cola products in Guatemala, establishes that Coke aided and abetted INCASA’s use of violence against the Plaintiffs herein.

IV. COKE’S SPECIFIC VIOLATIONS AGAINST PLAINTIFFS

29. Coke controls all aspects of its global business from the United States. One of its major objectives of the last several years is to use whatever means are available within the local context of its global operations to avoid the formation of trade

unions in its bottling plants and among its transport workers. For example, in Guatemala in the late 1970's and in Colombia in the 1990's, Coke's local managers arranged for the murders of key leaders of trade unions that were attempting to organize the Coke bottling plants. In those countries, it was possible to murder trade union leaders with impunity. Coke and its Colombian bottlers have been the subject of litigation over the murder and torture of trade union leaders in Colombia. Recently, despite Coke's past intervention to stop the violence against trade union leaders in Guatemala, threats of death and other violence have been renewed against trade union leaders at one of Coke's Guatemalan bottling plants, and a coffee-processing plant that produced Coca Cola syrup at the time of the violent acts alleged herein. There has also been recent violence and retaliation against trade union leaders at Coke bottlers in Turkey and Coke suppliers in Indonesia.

30. At the time of the events alleged herein with respect to the Palacios Plaintiffs, Coke knew or was substantially certain that it and its bottlers were doing business in an environment in Guatemala where their unionized workers were at great risk of being tortured and/or killed by groups responsible for violence against trade unionists in Guatemala. By the time of the violence against the family of José Alberto Vicente Chávez, Coke had specific notice of the renewed danger to trade union leaders at INCASA due to the events and Coke's specific intervention in the Palacios case.

José Armando Palacios and his family

31. Plaintiff José Armando Palacios worked for INCASA's processing plant in Guatemala City, Guatemala for 27 years. He became a member of SITINCA when he

began working for INCASA. The INCASA plant where he worked was a Coke supplier and provided syrup for McDonalds and Pollo Campero.

32. Mr. Palacios served formally as a union leader until 1991, at which time he resigned to become an in-house security guard. While he continued to help SITINCA while working as a security guard, INCASA management forced him to resign from the union when he took the position as a security guard.

33. Mr. Palacios re-joined SITINCA in January 2004, and at his urging, two other in-house security guards also joined the union. Mr. Palacios received a death threat from INCASA Personnel Manager Eduardo García (“García”) the same day he re-joined the union. Garcia mentioned having family in the military and stated that he could make Mr. Palacios “disappear.”

34. Garcia later ordered that Mr. Palacios and the other two union-affiliated security guards be stripped of their weapons, even though Mr. Palacios was a security guard working in a dangerous part of Guatemala and was the object of violent threats.

35. On April 26, 2004, Garcia sent a letter to INCASA security guards, including Mr. Palacios, instructing them not to speak to police or journalists if “something were to occur on the grounds” of the plant, warning that doing so would “complicate” matters.

36. At approximately 1:30 in the morning on June 18, 2004, two men shot at Mr. Palacios several times from the plant’s parking lot. Mr. Palacios was not hit. The private security company Vigilancia y Seguridad Empresarial de Guatemala (“VISEGUA”), contracted to provide security in addition to INCASA’s in-house security guards, reported the incident to García.

37. If not already on notice, from this point on Coke knew or should have known that INCASA management was using violence in an attempt to silence union leaders, including union leaders other than Mr. Palacios.

38. Over the next ten months, Mr. Palacios received additional threats and was subjected to more acts of intimidation. Fearing reprisals at work, Mr. Palacios was reluctant to report these incidents to the police.

39. Mr. Palacios did, however, report one such incident to INCASA management. On November 21, 2004, at the INCASA plant, someone verbally threatened Mr. Palacios. Mr. Palacios subsequently filed a report to INCASA management.

40. On April 16, 2005, two men forced their way into Mr. Palacios' house when he was not at home. They tied up Mr. Palacios' son, Plaintiff Rony Vladimir Palacios Ramos, pointed guns at Vladimir Rony Palacios and Mr. Palacios' wife, Plaintiff Sara Ramos Montoya, and threatened to kill them and Mr. Palacios if he continued causing problems through his union activities. Mr. Palacios' daughter, Roslyn Yamilet Palacios Ramos, was also present during the home invasion and was similarly threatened.

41. On May 6, 2005, after a campaign of violence lasting more than a year, INCASA fired Mr. Palacios without cause. Mr. Palacios refused to accept severance and demanded reinstatement.

42. As a measure of the seriousness of the death threats and attempts on Mr. Palacios's life, in June 2005, U.S. Labor Education in the Americas Project ("USLEAP"), a U.S. based non-profit organization, and the Washington Office on Latin America ("WOLA"), included Mr. Palacios's case in a petition filed before the Office of the U.S.

Trade Representative, requesting that Guatemala's benefits under the Generalized System of Preferences be suspended for the failure to protect the rights of workers to join and participate in unions.

43. During the next several months, further acts of intimidation were directed at Mr. Palacios, including strangers twice appearing at his house and urging him to accept severance or "face the consequences."

44. On October 30, 2005, an armed man appeared at Mr. Palacios' house, brandishing a gun, and threatened the woman watching Mr. Palacios' house while he was away from the city visiting relatives. The man said that he would return to look for Mr. Palacios or his family.

45. This ongoing campaign of violence forced Mr. Palacios and his family to flee Guatemala City and take refuge at a relative's house in eastern Guatemala.

46. Around this same time, demonstrating its control and direct stake in the outcome of the situation, Coke became actively involved in discussions about security for Mr. Palacios and his family. For instance, in an email dated December 3, 2005, Ron Oswald ("Oswald"), General Secretary of International Union of Food Workers, indicated that Coke was willing to provide substantial resources to insure Palacios' security. Relying on this offer, Mr. Palacios sought help to draft a security proposal and on December 17, 2005 sent it to, among others, Oswald. Neither Oswald nor Coke responded to the proposal.

47. In any event, it soon became clear that Coke was willing to provide security assistance, but only if Mr. Palacios accepted his discharge from INCASA and waived any rights to reinstatement. Mr. Palacios steadfastly rejected the condition that

he relinquish his right to reinstatement as well as other important rights in return for security.

48. In or around January 2006, Stan Gacek (“Gacek”), through his private consulting firm (Virtus Advisory, LLC), became involved in the matter concerning Mr. Palacios. Shortly before the events described herein, Gacek formed Virtus at the behest of Coke’s Director of Global Labor Relations, Edward Potter, so that Gacek, a former official of the AFL-CIO, could perform consulting work under contract with Coke. At all relevant times, while performing work for Coke in Guatemala, Gacek was a member of the board of directors of USLEAP.

49. On or around January 26, 2006, Mr. Palacios rejected yet another offer by INCASA to pay severance in return for waiving his rights to reinstatement. Mr. Palacios refused, to which INCASA officials reacted angrily.

50. Around the same time, on January 26, 2006, Gacek confirmed that Coke was willing to provide money for Mr. Palacios’ security, though he strongly implied that it was subject to Mr. Palacios’ agreement to waive his rights to reinstatement. After Gacek incorrectly implied that Mr. Palacios had agreed to waive his rights to reinstatement in return for a security scheme financed by Coke, Mr. Palacios, on January 27, 2006, called Gacek to correct this misstatement, making it clear that he was not willing to waive his rights for reinstatement.

51. On January 28, 2006, the day after he again refused to waive his rights to reinstatement in exchange for Coke’s provision of security, another attempt was made on Mr. Palacios’ life. In front of Mr. Palacios’ home and in close proximity to Mr. Palacios, a man who Mr. Palacios believed had come to kill him mistakenly killed another man

who closely resembled Mr. Palacios and had just arrived in a vehicle of similar color to Mr. Palacios's vehicle. Mr. Palacios was so close to the murder that blood was splattered on his clothing.

52. After this incident, Mr. Palacios decided to flee to the United States and, in practical effect, waive his right to reinstatement. While still in hiding in Guatemala City immediately prior to his departure to the U.S., Palacios negotiated a severance package from INCASA. In other words, he formally renounced his right to reinstatement in early February 2006.

53. Through Oswald, Gacek, and other persons purportedly in the labor-rights field, Coke wielded significant influence over efforts to provide Mr. Palacios with security. For instance, while Gacek was under a consulting contract with Coke, he was also a USLEAP board member, and able to influence USLEAP staff. Specifically, Stephen Coats ("Coats"), the Executive Director of USLEAP, was in close contact with Gacek (and also Oswald) regarding Mr. Palacios' security. Coats was instrumental in arranging a meeting between Gacek and Mr. Palacios in New York City and convincing Mr. Palacios to turn over documentation to Gacek at that meeting (which is described more fully below). In addition, Coats attempted to steer Mr. Palacios away from legal counsel experienced with litigation against Coke on behalf of international trade unionists. Thus, although USLEAP had initially been an advocate for Mr. Palacios, its support waned and it eventually turned against Mr. Palacios as Coke and/or its agents exerted more control over it.

54. In early February 2006, Mr. Palacios was approached by Rodrigo Romero ("Romero"), a Costa Rican lawyer representing Coke. Mr. Palacios described what had

happened to him, and then asked Romero for assistance in securing protection for himself and his family. But Romero said he had a better idea: that Mr. Palacios should name a price, after which “We can arrange a meeting between you and a check.” Romero pressured Mr. Palacios to sign a blank piece of paper, which he claimed would be a settlement with Coke, in exchange for financial compensation. Mr. Palacios refused to sign.

55. Romero promised Mr. Palacios that if he moved to a different, and more expensive, hotel to conduct settlement discussions, Romero would pay for the hotel. After Mr. Palacios moved to the expensive hotel, however, Romero failed to pay.

56. Upon hearing that Mr. Palacios intended to flee to the United States, Oswald expressed reluctance in continuing to help Mr. Palacios because Mr. Palacios might seek legal redress from Coke in U.S. courts.

57. Mr. Palacios fled to the U.S. on February 6, 2006. On February 9, 2006, Gacek met with Mr. Palacios in New York, requested documentation from Mr. Palacios concerning his case, and stated that he would try to convince Coke to “do the right thing.” Mr. Palacios provided the requested documentation but Gacek never reported back.

58. Mr. Palacios’ wife and daughter, Sara Ramos Montoya and Rosyln Yamilet Palacios Ramos, applied for U.S. visas in May 2006. Their applications were denied. They remained in hiding until August 30, 2008, when they left for the U.S., shortly after receiving permission to travel there. Mr. Palacios was thus separated from his wife and daughter for two and one-half years. Mr. Palacios’ son, Rony Vladimir Palacios Ramos, entered the U.S. in June 2006.

59. While in hiding, Mr. Palacios' family was still at risk. For example, strangers continued to ask the people house-sitting Mr. Palacios' house where Mr. Palacios and his family could be found. Because of the past violence, and that Coke, Gacek, Oswald and Coats had all, in Mr. Palacios' mind, tied his security to his willingness to waive his rights and disappear quietly, Mr. Palacios could not take any legal action, including securing effective counsel and filing this complaint, until his family was safely out of Guatemala.

José Alberto Vicente Chávez and his family

60. After forcing Mr. Palacios and his family to flee to the United States, INCASA's violence against union leaders continued, and Coke failed to take any steps to stop the violence. As far as Coke was concerned, once the Palacios situation had been quietly resolved, at least for the moment, it was back to business as usual at INCASA. Following the ordeal suffered by Mr. Palacios and his family was the even more brutal one experienced by José Alberto Vicente Chávez and his family.

61. As a prominent and successful union leader since the 1990s, Mr. Vicente was regularly subjected to acts of intimidation and unfair punishment by INCASA management. INCASA's attempts to silence Mr. Vicente, however, dramatically escalated in 2008.

62. In early 2008, Mr. Vicente was threatened by INCASA management during collective bargaining negotiations. Mr. Vicente was prominently involved in the negotiations, which ended only about a week before the attack described below occurred. Mr. Vicente was also actively involved, during the week leading up to the attack, in

attempting to secure INCASA's compliance with the newly-signed collective bargaining agreement.

63. Between February 21 and February 26, 2008, Mr. Vicente had several confrontations with INCASA management, including Francisco Piura ("Piura"), Otto Yolt, and Alex Batres ("Batres").

64. In the early morning hours of March 1, 2008, Mr. Vicente was returning by bus to Retalhuleu from Guatemala City. He had been summoned to a meeting in Guatemala City after sending a complaint to the IUF regarding INCASA's violation of the collective bargaining agreement. His family went to the bus station to wait for him. Shortly before Mr. Vicente arrived, his family was attacked by four armed men.

65. The assailants murdered Dennys Alberto Vicente Santiago, Mr. Vicente's son, by shooting him in the head. They also murdered Edwin Estuardi Escobar Ramos, Mr. Vicente's nephew. To finalize the acts of terror, they gang-raped Mildred Indalecia Vicente Santiago, Mr. Vicente's 16-year old daughter.

66. Mr. Vicente and surviving family members went into hiding after the attack. While in hiding, Mr. Vicente has continued to receive death threats and armed men have appeared at his home (where he is no longer staying) looking for him.

67. Actions by officials in the Guatemalan justice system have undermined the investigation into the principal planners of the attack on Mr. Vicente's family. For example, Guatemalan security forces killed one of the assailants, ensuring that he could not speak of the attack, and sending a strong message to the other assailants. In addition, even though other assailants were tried and convicted, the court refused to grant Mr. Vicente's request that the court also investigate the intellectual authors of the attack.

68. Even given the deficiencies in the Guatemalan government's investigation, Coke's ultimate responsibility for the attack on Mr. Vicente's family is clear. Most fundamentally, the fact that Coke's objective in the Palacios case was to get Palacios to agree to waive his right to reinstatement, thus allowing INCASA to get rid of a key union activist, and that Coke was willing to hold up Mr. Palacios' security and put his life at risk until he agreed to go away quietly, sent a direct message to INCASA that it could continue its union eradication plans without fear of reprisal from Coke.

69. There is no question that INCASA had directed the violence against Mr. Vicente's family. The assailants can be tied directly to INCASA. Specifically, one of the assailants was Marco Antonio Geronimo Varillas ("Geronimo"). Geronimo had two cousins and an uncle working at the bottling plant where Mr. Vicente worked. Geronimo's cousins and uncle were members of *Solidarismo*, the anti-union workers' organization controlled by INCASA management. Also, Piura, the INCASA supervisor involved in the pre-attack confrontations with Mr. Vicente, lives in the same neighborhood as the assailants.

70. Several months after the attack, Batres suspended Mr. Vicente for a week. After a confrontation between Batres and Mr. Vicente following the announcement of the suspension, Batres made a statement leaving no doubt that he had knowledge about the murder of Dennys Vicente, Mr. Vicente's son.

71. As it did in the first wave of violence against union leaders in Guatemala, Coke viewed the extreme violence used by INCASA against Mr. Vicente's family as a threat to Coke's business interests. Coke then began to negotiate a buy-out of INCASA's bottling operations through Coca-Cola-FEMSA. Those talks are ongoing.

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

A. INCASA Is Coke's Agent

72. Coke made a careful and conscious business decision to avoid being the direct owner of its foreign bottling plants. Instead, Coke set up a system of bottling plants that acted as Coke's agents, without which Coke would not have been able to operate internationally unless it had itself owned and operated the bottling plants. Coke's relationship with its foreign bottlers is based on contracts, policies, and established practices that give Coke sufficient control over its bottlers to direct their major operations, including the implementation of international policies on labor and human rights standards. INCASA is the quintessential bottler that operates as Coke's agent in Guatemala.

73. Coke, which generates the vast majority of its operating income outside the United States, controls its highly organized network of bottling facilities acting as its agents throughout the world in order to ensure uniform quality and efficient distribution of Coke products. Any bottler that is awarded a contract to bottle and distribute Coke is required to conform absolutely to Coke's requirements as to product quality, presentation and production. According to the 10-K Report filed by Coke on December 31, 2003 , and other public sources, the specific details of Coke's control over any particular bottler are governed by a "Bottler's Agreement." These Bottler's Agreements provide Defendant Coke with the flexibility to assert the necessary degree of control and supervision over a particular bottler, depending upon the circumstances.

74. Indeed, over the last few years, Coke has moved toward greater concentration and control over its vast bottling network. With regard to the domestic bottlers, Coke adopted in a plan in 1986 to consolidate its power over the bottlers. “The Plan was known as the ‘49 percent solution.’ It called for Coke to spend \$3 billion to buy the bottlers that were for sale. Then Coke would reconfigure them as a revolutionary kind of bottler, in which Coke would be the largest single stake-holder, wielding power that would ensure the bottler followed Coke’s plans.” Constance Hays, The Real Thing, Truth and Power at the Coca Cola Company, p. 42 (2004). In addition, Coke’s executives populate the board of directors of the bottlers, which also gives greater control to Coke. Part and parcel of this new arrangement with the bottlers was a new contract, in which at any time there could be price increases for concentrate. *Id*

75. Further, as illustrated by the previously discussed situation in Guatemala in the early 1980’s, Coke specifically has control over whether a bottler such as INCASA can continue to do business in Coke’s name if the bottler engages in violence against trade union leaders. Based on its Bottler Agreement, Coke forced an independently owned franchisee in Guatemala to sell its bottling business to a third party following the murder of several union leaders at the bottling plant. Coke’s action was the result of a massive public campaign against the company, but its action, however motivated, shows specifically that Coke has the control to prevent and/or remedy violence against workers and trade union leaders in its foreign bottling plants, including the plants at issue in this case.

76. Since the creation of the position of Director of Global Relations, Coke has removed any doubt that it has specific and direct control over human and labor rights

standards at its foreign bottling plants, including INCASA. For example, Coke has expressly claimed to consumers, shareholders, and potential investors at its annual meetings each year since 2005, in response to various shareholder resolutions, that it has control over all of its bottlers and that it exercises this control. Specifically, as it admits, Coke can inspect these bottlers for whether they abide by international human rights conventions and local laws, and can force them to abide by such conventions/laws upon penalty of stripping them of their bottling franchise. Despite its various public pronouncements regarding its firm resolve to require its bottlers to comply with international and local law, as well as Coke's own policies, Coke has taken no action to punish the local managers or anyone else following the undisputed acts of violence taken against the Plaintiffs. For purposes of an agency relationship, the right to control is sufficient; the control need not have been exercised.

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

78. There are numerous other public and binding indications where Coke has asserted to the public that it retains control over its bottlers and suppliers with respect to issues of compliance with international standards of worker rights, including the right to form a union. In a March 15, 2005, agreement with the IUF, Coke, through its Director of Global Labor Relations, represented that in its global system, “Coca-Cola acknowledges

that Coca-Cola workers are allowed to exercise rights to union membership and collective bargaining without pressure or interference. Such rights are exercised without fear of retaliation, repression, or any other form of discrimination.”

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

80. Due to an effective campaign by the United Students Against Sweatshops (“USAS”) and StopKillerCoke, college students around the country have been demanding that their university administrators terminate or not renew contracts with Coke that allow Coke to supply Coca-Cola products to the universities. Numerous universities have cancelled or declined to renew exclusive supply contracts with Coke as a result of Coke’s failure to take appropriate action in response to the murder and torture of trade union leaders in Colombia and Turkey.

81. Much of the campaign has been focused on the anti-union violence in Colombia, which resembles closely the more recent violence in Guatemala. To address the growing animosity towards the company and to respond to the hostility towards

Coke's initial position that it has nothing to do with the Coke bottling plants in Colombia, Coke has mounted a massive public relations response and has sent numerous Coke executives and consultants to college campuses around the country. Rather than assert the untenable position that Coke has nothing to do with its bottling plants, these Coke executives have consistently and firmly represented to students and university administrators around the country that Coke does not violate human rights and is taking effective action to ensure that human rights violations do not occur in its bottling plants around the world. The Coke managers have further stated, repeatedly, to the university audiences that Coke will not tolerate human rights violations in any aspect of Coke's operations, including its bottling plants. These admissions are conclusive on the issue of whether Coke has responsibility, control and liability for human rights violations occurring in its bottling plants.

82. In this case, Coke's responsibility and liability for the events in Guatemala as described herein are particularly strong. Coke was directly involved in assisting its agent, INCASA, to achieve its goal of terminating Mr. Palacios for his union activities. Indeed, Coke was bargaining over the security of Mr. Palacios and his family as a way to get him to waive his right to employment and reinstatement. Mr. Palacios was nearly executed on January 28, 2006, the day after he declined again Coke's offer to give him security if he would waive his right to reinstatement. Coke shared the goal of its agent, INCASA, to get rid of Mr. Palacios, and weaken the union.

83. Coke continued its effort to cover up and ratify INCASA's effort to execute Mr. Palacios for his union activities by sending Gacek to meet with him in New York on February 9, 2006, three days after he arrived in the U.S. At that meeting, Gacek

told Mr. Palacios that he would try to get Coke to “do the right thing” and help Mr. Palacios get his family to safety in the U.S. and provide them with initial support to get them started until they could find employment in the U.S. as refugees of INCASA’s attempt on his life. As Mr. Palacios never again heard from Gacek, he assumed that Coke was unwilling to do the right thing.

84. Mr. Palacios’ wife and daughter had difficulties getting a visa to enter the U.S. and remained in Guatemala until August 30, 2008. From 2006 until his family was moved out of danger, Mr. Palacios was in negotiations with Coke’s lawyers, including outside counsel at Quinn Emanuel. Mr. Palacios was offered again and again that Coke could help get his wife and daughter a visa so they could join him in the U.S. if he agreed to never discuss with anyone that INCASA had terminated him for his union activities and tried on multiple occasions to have him executed when he refused to curtail his union activities. Coke even provided him with draft or sample letters from Coke to the State Department pertaining to his application for political asylum, and/or his family’s application for Humanitarian Parole.

85. Mr. Palacios continued in his discussions with Coke and its lawyers at Quinn Emanuel until his wife and daughter reached the U.S. on August 30, 2008. With his family finally safe, he was free from Coke’s effort to hold the safety of his family hostage.

86. The clear willingness of INCASA to engage in violence to silence unions at its facilities was significantly encouraged by Coke’s efforts to protect INCASA and cover up the facts about the Palacios incident. This directly encouraged INCASA to continue its anti-union violence, which it did by then focusing on Mr. Vicente and his

family. Rather than use its leverage and control over its agent, INCASA, Coke's conduct directly encouraged INCASA to rid its facilities of effective union leaders.

87. Coke, according to its written policies and public admissions, has monitored and controlled all aspects of INCASA's compliance with the Coke Bottler's Agreement, including Coke's requirements for product quality, presentation, marketing, and bottling. Coke's control through the specific Bottler's Agreement has extended to the smallest details of INCASA's production. Coke must also approve the types of containers used in bottling, and controls the design and decoration of the bottles, boxes cartons, stamps, and other materials used in production. The Bottler's Agreement grants Coke the right to inspect the products, facilities and other aspects of production of INCASA.

88. Coke, through the Bottler's Agreement, imposes standards concerning employee qualifications and appearance and standards for the appearance and condition of transport trucks. Further, Defendant Coke also provides direction on issues of environmental preservation and compliance with its Code governing the treatment of employees. Coke also monitors the labor relations practices of its subsidiaries and bottlers, including INCASA, and requires that subsidiaries and bottlers refrain from activities that will damage Coke's brand-name in the market place. Specifically, Coke monitors its bottlers for compliance with human rights conventions and domestic law, and may strip them of their bottling franchise should Coke determine that they are not abiding by such conventions/laws to Coke's satisfaction.

89. Coke ultimately has complete control over INCASA because a major part of INCASA's business is to bottle and distribute Coke products. If there was ever any

failure to follow the directives and submit to the control of Coke, INCASA would have lost its bottling concession.

90. All of the tortious actions described herein were committed by individual perpetrators acting within the course and scope of the agency relationship between Coke and INCASA, with the advance knowledge, acquiescence or subsequent ratification of Coke. Coke is therefore vicariously liable for all of the tortuous actions committed by its agents done in connection with and in furtherance of its business interests and activities in Guatemala as described herein.

B. Coke is in a joint venture with or is a joint tortfeasor with INCASA.

91. Plaintiffs incorporate by reference paragraphs 1-83, *supra*, as if they were fully set out herein. Coke, through its Bottler's Agreement, and through its regular intervention in the activities of INCASA, exercises a particularly high level of control and supervision over INCASA.

92. In addition to the structural relationship between Coke and INCASA, Coke has in practice been actively involved in the internal operations of INCASA, particularly with respect to labor and human rights issues. Further, with respect to the tortuous acts described herein, Coke was actively involved in assisting INCASA in its effort to terminate Plaintiff Palacios for his union activities and in seeking to prevent public disclosure of INCASA's unlawful activities.

93. Coke's structural relationship and its actions with respect to this case establish that Coke is in a joint venture with INCASA and is therefore jointly and

severally liable for all tortious acts committed by INCASA alleged herein, or acted with a joint and shared purpose with INCASA with respect to the events alleged herein.

94. If Coke is not in a joint venture with INCASA, it acted jointly with INCASA with respect to the acts alleged herein and is accordingly jointly and severally liable for all injuries suffered by Plaintiffs as a result of INCASA's wrongful conduct.

C. Coke aided and abetted INCASA's wrongful acts.

95. Plaintiffs incorporate by reference paragraphs 1-87, *supra*, as if they were fully set out herein. Coke intervened in the events alleged herein, and began assisting INCASA to terminate Plaintiff Palacios, to deny him reinstatement, and then cover up INCASA's unlawful activities by using Palacios' security as leverage.

96. Coke further assisted INCASA by making clear that INCASA could terminate union leaders, attempt to execute them, or use other violence and threats against them, without fear of losing business from Coke. Plaintiff Vicente and his family were injured precisely because Coke's actions with respect to Plaintiff Palacios made clear that INCASA was free to use violence against union leaders without fear of reprisal from Coke, and that Coke would even assist in ensuring that terminated union workers would be denied reinstatement.

97. Coke's actions with respect to the wrongful acts alleged herein constitute knowing and substantial assistance to INCASA. Coke thus is liable for its role in aiding and abetting the wrongful acts alleged herein.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Wrongful Death

On Behalf of Plaintiffs José Alberto Vicente Chávez, Herminda Amparo Santiago Quich, Martha Oralía Arango Matias, Mildred Indalecia Vicente Santiago and Margarita Ramos Quich

98. Plaintiffs incorporate by reference paragraphs 1-97, *supra*, as if they were fully set out herein.

99. Coke and/or its employees, co-venturers, and/or agents committed or acted in concert to commit acts, either intentionally or negligently, which resulted in the violent and wrongful death of Dennys Alberto Vicente Santiago. Coke and/or its employees, co-venturers, and/or agents would have been liable to Dennys Vicente had his death not ensued. Plaintiffs José Alberto Vicente Chávez, Herminda Amparo Santiago Quich, Martha Oralía Arango Matias, and Plaintiff Mildred Indalecia Vicente Santiago have suffered loss of consortium, loss of support and other pecuniary losses, and grave mental anguish and suffering as a result of the wrongful death of Dennys Vicente. In addition, because Plaintiff Arango is the representative of the Estate of Dennys Vicente and because Plaintiff Arango and her daughter are heirs of Dennys Vicente, Plaintiff Arango sues (for herself and on behalf of her daughter) for the losses and suffering inflicted upon Dennys Vicente by Coke's wrongful actions in causing his death.

100. Coke and/or its employees, co-venturers, and/or agents committed or acted in concert to commit acts, either intentionally or negligently, which resulted in the violent and wrongful death of Edwin Estuardi Escobar Ramos. Coke and/or its employees, co-venturers, and/or agents would have been liable to Edwin Escobar had his death not ensued. Plaintiff Margarita Ramos Quich has suffered loss of consortium, loss of support

and other pecuniary losses, and grave mental anguish and suffering as a result of the wrongful death of Mr. Escobar. In addition, because Ms. Ramos is the representative of the Estate of Mr. Escobar and because Ms. Ramos is an heir of Mr. Escobar, Ms. Ramos sues for the losses and suffering inflicted upon Mr. Escobar by Coke's wrongful actions in causing his death.

101. The acts described herein constitute wrongful death, actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

SECOND CAUSE OF ACTION

Intentional Infliction of Emotional Distress On Behalf of All Plaintiffs

102. Plaintiffs incorporate by reference Paragraphs 1 through 101 of this Complaint as though set forth herein.

103. The acts described herein constitute extreme and outrageous conduct against Plaintiffs and/or the individuals on whose behalf Plaintiffs sue and were without privilege.

104. Coke and/or its employees, co-venturers, and/or agents committed or acted in concert to commit acts that were intended to cause Plaintiffs and/or the individuals on whose behalf Plaintiffs sue to suffer severe emotional distress. In the alternative, Coke and/or its employees, co-venturers, and/or agents engaged in conduct with reckless

disregard of the probability of causing the aforesaid individuals to suffer severe emotional distress that resulted in them in fact suffering severe emotional distress.

105. Plaintiffs and/or the individuals on whose behalf Plaintiffs sue suffered severe emotional distress caused by the extreme and outrageous conduct of Coke and/or its employees, co-venturers, or agents.

106. The outrageous conduct of Coke and/or its employees, co-venturers, and/or agents constitutes intentional infliction of emotional distress and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

THIRD CAUSE OF ACTION
Negligent Infliction of Emotional Distress
On Behalf of All Plaintiffs

107. Plaintiffs incorporate by reference Paragraphs 1 through 106 of this Complaint as though set forth herein.

108. At all relevant times, Coke and/or its employees, co-venturers, and/or agents owed Plaintiffs a duty to act with reasonable care, and at all relevant times, harm and/or injury to Plaintiffs was reasonably foreseeable if such duty of care was breached.

109. At all relevant times, Coke and/or its employees, co-venturers, and/or agents had the power, ability, authority and duty to stop engaging in the conduct described herein and to intervene to prevent or prohibit such conduct.

110. At all relevant times, Coke and/or its employees, co-venturers, and/or agents knew, or reasonably should have known, that the conduct described herein would and did proximately result in physical and emotional distress to Plaintiffs.

111. Despite said knowledge, power, and duty, Coke and/or its employees, co-venturers, and/or agents 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.

112. As a direct and proximate result of the wrongful acts of Coke and/or its employees, co-venturers, and/or agents, Plaintiffs suffered and will continue to suffer significant physical injury, pain and suffering and extreme and severe mental anguish and emotional distress. In addition, as a direct and proximate result of the wrongful acts of Coke and/or its employees, co-venturers, and/or agents, Plaintiffs' physical safety was unreasonably endangered and Plaintiffs' were caused to fear for their own safety.

113. The conduct of Coke and/or its employees, co-venturers, and/or agents constitutes negligent infliction of emotional distress and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

FOURTH CAUSE OF ACTION
Negligence
On Behalf of All Plaintiffs

114. Plaintiffs incorporate by reference Paragraphs 1 through 113 of this Complaint as though set forth herein.

115. At all relevant times, Coke owed the Plaintiffs a duty to act with reasonable care. Coke knew or should have known that, given INCASA's course of conduct in relation to union leaders, injury to the Plaintiffs was reasonably foreseeable.

116. Coke failed to use ordinary or reasonable care in order to avoid injury to the Plaintiffs by INCASA and/or its employees, co-venturers, or agents, and thus they breached their duty to the Plaintiffs.

117. Coke's negligence was a cause of injury, damage, loss and harm to Plaintiffs. In the alternative, Coke's reckless actions, taken with deliberate and conscious disregard for Plaintiffs' safety, were a cause of injury, damage, loss and harm to Plaintiffs. As a result of these acts, Plaintiffs suffered harm including, but not limited to, physical harm, pain and suffering, and/or severe emotional distress.

118. Coke's conduct constitutes negligence and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. If Coke is not directly liable for its own negligence, then Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

FIFTH CAUSE OF ACTION
Negligent Hiring and Supervision
On Behalf of All Plaintiffs

119. Plaintiffs incorporate by reference Paragraphs 1 through 118 of this Complaint as though set forth herein.

120. As a regular part of its operations, Coke selected and continued its business relationship with INCASA, which was known to Coke to have employed local managers willing to use violence to suppress labor rights.

121. Coke failed to exercise reasonable care in selecting INCASA to perform its bottling operations or to produce Coca-Cola products in Guatemala. Coke knew or reasonably should have known that allowing INCASA to be responsible for the local managers would violate Plaintiffs' rights and that, as a direct and proximate result of those violations, the Plaintiffs would suffer injuries as alleged herein. In the alternative, at all times after January 2004 (when Mr. Palacios received a death threat from García), Coke knew or reasonably should have known that INCASA's managers would violate Plaintiffs' rights and that, as a direct and proximate result of those violations, the Plaintiffs would suffer injuries as alleged herein.

122. Coke had the authority to supervise, prohibit, control, and/or regulate its bottling plants, including the ones identified herein, so as to prevent these acts and omissions from occurring.

123. Coke knew or reasonably should have known that unless it intervened to protect Plaintiffs and properly supervise, prohibit, control and/or regulate the conduct described herein, the bottling plant managers and/or their employees, co-venturers, or agents would perceive their acts and omissions as being ratified and condoned by Coke. This is reinforced by Coke's pervasive failure to require any of the Guatemalan bottling plants to comply with the Code of Conduct, local laws, and well-established international standards, including ILO Conventions.

124. As a direct and proximate result of defendant Coke's negligence, Plaintiffs have suffered injury, damage, loss and harm.

125. Coke's negligent conduct is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. If Coke is not directly liable for its own negligence, then Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

SIXTH CAUSE OF ACTION
Negligent Undertaking
On Behalf of José Armando Palacios, Sara Ramos Montoya, and Rony Vladimir Palacios Ramos

126. Plaintiffs incorporate by reference Paragraphs 1 through 125 of this Complaint as though set forth herein.

127. After learning that Plaintiffs were in danger and then offering security through its employees or agents, Coke owed the Plaintiffs a duty not to unreasonably withhold that security and/or a duty to ensure that Plaintiffs were not subjected to further, preventable attacks. Coke knew or should have known that, if it refused to provide security, injury to the Plaintiffs was reasonably foreseeable.

128. In unreasonably withholding security and failing to prevent further attacks, Coke breached its duty to the Plaintiffs.

129. Coke's negligent undertaking was a cause of injury, damage, loss and harm to Plaintiffs. As a result of these acts, Plaintiffs suffered harm including, but not limited to, physical harm, pain and suffering, and/or severe emotional distress.

130. Coke's conduct constitutes negligent undertaking and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. If Coke is not directly liable for its own negligence, then Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

SEVENTH CAUSE OF ACTION
Battery
On Behalf of All Plaintiffs

131. Plaintiffs incorporate by reference Paragraphs 1 through 130 of this Complaint as though set forth herein.

132. Coke and/or its employees, co-venturers, and/or agents committed or acted in concert to commit acts that were intended to result in harmful or offensive contact with the bodies of Plaintiffs and/or the individuals on whose behalf Plaintiffs sue.

133. Plaintiffs and/or the individuals on whose behalf Plaintiffs sue did not consent to the contact, which caused injury, damage, loss and harm to them.

134. The conduct of Coke and/or its employees, co-venturers, and/or agents constitutes battery and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Further, Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

EIGHTH CAUSE OF ACTION
Assault
On Behalf of All Plaintiffs

135. Plaintiffs incorporate by reference Paragraphs 1 through 134 of this Complaint as though set forth herein.

136. Coke and/or its employees, co-venturers, and/or agents committed or acted in concert to commit acts that were intended to cause Plaintiffs and/or the individuals on whose behalf Plaintiffs sue to be apprehensive that they would be imminently subjected to harmful contact.

137. Said conduct demonstrated that Coke and/or its employees, co-venturers, and/or agents had a present ability to subject Plaintiffs and/or the individuals on whose behalf Plaintiffs sue to immediate, intentional, offensive, and harmful contact. Plaintiffs and/or the individuals on whose behalf Plaintiffs sue did not consent to such conduct, which caused injury, damage, loss and harm to them.

138. The conduct of Coke and/or its employees, co-venturers, and/or agents constitutes assault and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Further, Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

NINTH CAUSE OF ACTION
Trespass
On Behalf of José Armando Palacios, Sara Ramos Montoya, and Rony Vladimir Palacios Ramos

139. Plaintiffs incorporate by reference Paragraphs 1 through 138 of this Complaint as though set forth herein.

140. Coke's employees, co-venturers, and/or agents intentionally entered Plaintiffs' home without justification or consent and wrongfully used the home to assault, batter, unlawfully imprison, and otherwise threaten Plaintiffs, which caused injury, damage, loss and harm to them.

141. The conduct of Coke's employees, co-venturers, and/or agents constitutes trespass and is actionable under the laws of the State of New York and (in the alternative) the laws of Guatemala. Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

TENTH CAUSE OF ACTION
False Imprisonment
On Behalf of Sara Ramos Montoya, and Rony Vladimir Palacios Ramos

142. Plaintiffs incorporate by reference Paragraphs 1 through 141 of this Complaint as though set forth herein.

143. Coke's employees, co-venturers, and/or agents, unlawfully and without privilege, exercised force, or used the express or implied threat of force, to intentionally restrain, detain or confine Plaintiffs. Plaintiffs were aware of the restraint, detention or confinement, which compelled Plaintiffs to stay or go somewhere against their will for some appreciable time.

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

145. The acts described herein constitute false imprisonment, actionable under the laws of New York and (in the alternative) the laws of Guatemala. Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

ELEVENTH CAUSE OF ACTION
Unjust Enrichment
On Behalf of All Plaintiffs

146. Plaintiffs incorporate by reference Paragraphs 1 through 145 of this Complaint as though set forth herein.

147. Coke profited from and continues to profit from its products in the United States, Canada and Europe based on knowing misrepresentations it makes to consumers, both that it respects human rights, including the fundamental rights of workers to associate, form or join trade unions, and bargain collectively, and that it is taking effective steps to ensure that all workers in the Coke system are able to realize these rights, including workers in Coke's offshore bottling facilities. As a result of Coke's misrepresentations to consumers, particularly university students and administrators, Coke is able to willfully deny the rights of its bottling plant workers, including the Plaintiff union members, in violation of international law, Guatemalan law, and the stated policies and practices of Coke itself. Coke makes these misrepresentations knowing that the consumers will continue to purchase Coke products as long as they do not know the

true facts about Coke's various actions that result in the use of violence against workers in bottling plants, including Plaintiff union members, who seek to exercise their fundamental rights to form or join trade unions. If Coke had not engaged in the systematic misrepresentations regarding its respect for fundamental worker rights, and its policies and practices asserted to protect these rights, Plaintiffs would not have been subjected to the extreme violence alleged herein.

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

149. Because of the violence directed at Plaintiffs, Plaintiffs have suffered harm and the SITINCA union has been less effective in organizing workers at Coke's Guatemalan bottling plants. Consequently, Coke has reaped additional profits from those bottling plants as a result of being able to stifle union activity, and has been enriched at Plaintiffs' expense.

150. It is against equity and good conscience to permit Coke to retain any benefits related to violence against Plaintiffs.

151. The conduct of Coke and/or its employees, co-venturers, and/or agents gives rise to a claim for unjust enrichment and is actionable under the laws of the State of

New York and (in the alternative) the laws of Guatemala. If Coke is not directly liable for unjust enrichment, then Coke is vicariously liable for the acts of its agent or co-venturer, INCASA, and for aiding and abetting the wrongful acts alleged herein.

TWELFTH CAUSE OF ACTION
Consumer Fraud/Fraudulent Misrepresentation/Injurious Falsehood
DECEPTIVE PRACTICES § 349 OF NEW YORK CONSUMER LAW
On Behalf of All Plaintiffs

152. Plaintiffs incorporate by reference ¶¶ 1 - 151 of this Complaint as if set forth herein.

153. Defendant Coke's fraudulent and deceptive practices as alleged herein constitute ongoing and continuous unfair business practices within the meaning of New York General Business Law § 349 (McKinney 2004). Such practices include, but are not limited to, knowingly misrepresenting to the consumers of New York, as well as the rest of the United States, Canada and Europe, that Coke requires its bottlers, and all other participants in the Coke global enterprise, to comply with internationally-recognized human rights standards, the laws of the countries where Coke operates, and the policies and directives of Coke, including its Code, which explicitly states that Coke will respect the rights of workers to associate, form or join unions, and bargain collectively.

154. Coke further misrepresents to the consumers of New York, as well as the rest of the United States, Canada and Europe, that it has implemented effective mechanisms to ensure that any bottlers or other participants in the Coke global enterprise in fact do comply with these laws and policies, and that Coke will not tolerate any violations. In making these affirmative misrepresentations, Coke seeks to mislead the consumers of New York, as well as the rest of the United States, Canada and Europe, and

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

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

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

require its offshore bottlers to comply with the Code, the other stated policies and practices Coke claims apply to protect workers at its foreign bottling plants, and all other applicable international and national laws. This has worked to the detriment of the Plaintiffs as they were denied their fundamental rights and were subjected to severe and violent retaliation for exercising the very rights that Coke has assured the consumers of New York that the Plaintiffs were entitled to exercise. Coke continues to profit directly from its unlawful practices at the expense of these Plaintiffs.

157. The Plaintiffs, in seeking to require Coke to cease and desist from further deceptive practices, are not only protecting their own interests, but are acting in the general public interest of the consumers of New York. If Plaintiffs are successful in their action, the consumers of New York will no longer be subjected to false and deceptive statements made by Coke in violation of New York General Business Law § 349 (McKinney 2004).

VII. DEMAND FOR JURY TRIAL

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

VIII. 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 Coke has violated the laws of the State of New York, as set forth herein;
- (c) award Plaintiffs compensatory and punitive damages;

- (d) grant Plaintiffs equitable relief, permanently enjoining Coke from further engaging in violent acts against Plaintiffs, their fellow members of the union, and their families
- (e) award Plaintiffs the statutory remedies available under the New York General Business Law § 349 (McKinney 2004);
- (f) award Plaintiffs the costs of suit including reasonable attorneys' fees, and
- (g) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

Filed this ____ day of February, 2010

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