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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JOHN DOE I, Individually and on)
14 behalf of Proposed Class Members;)
15 JOHN DOE II, Individually and on)
16 behalf of Proposed Class Members;)
17 JOHN DOE III, Individually and on)
18 behalf of Proposed Class Members;)
19 JOHN DOE IV, Individually and on)
20 behalf of Proposed Class Members;)
21 JOHN DOE V, Individually and on)
22 behalf of Proposed Class Members;)
23 and JOHN DOE VI, Individually)
24 and on behalf of Proposed Class)
25 Members,)

20 Plaintiffs,

21 v.

22 NESTLÉ, S.A., NESTLÉ U.S.A.,)
23 NESTLÉ Ivory Coast, ARCHER)
24 DANIELS MIDLAND CO.,)
25 CARGILL INCORPORATED)
26 COMPANY, CARGILL COCOA,)
27 CARGILL WEST AFRICA, S.A.)

26 Defendants.

Case No. CV 05-5133-SVW-MRW

**SECOND AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

1. **Forced labor (Alien Tort Statute, 28 U.S.C. § 1350)**
2. **Cruel, inhuman, or Degrading Treatment (Alien Tort Statute, 28 U.S.C. § 1350)**
3. **Torture (Alien Tort Statute, 28 U.S.C. § 1350)**

DEMAND FOR JURY TRIAL

1 **I. NATURE OF THE ACTION**

2 1. Plaintiffs John Doe I, John Doe II, John Doe III, John Doe IV, John
3 Doe V, and John Doe VI (referred to herein as the “Former Child Slave” Plaintiffs)
4 are all former child slaves of Malian origin who were trafficked and forced to work
5 harvesting and/or cultivating cocoa beans on farms in Côte d’Ivoire, which supply
6 cocoa beans to the Defendant companies named herein. The Former Child Slave
7 Plaintiffs bring this action on behalf of themselves and all other similarly situated
8 former child slaves of Malian origin against Defendants: Nestlé, S.A., Nestlé,
9 U.S.A., and Nestlé Côte d’Ivoire, S.A. (together as “Nestlé”); Cargill, Incorporated
10 (“Cargill, Inc.”), Cargill Cocoa, and Cargill West Africa, S.A. (together as
11 “Cargill”); and Archer Daniels Midland Company (“ADM”) (referred to
12 collectively as the “Chocolate Importers” or Defendants) for the forced labor and
13 torture they suffered as a result of the wrongful conduct either caused and/or aided
14 and abetted by these corporate entities. Specifically, the Former Child Slave
15 Plaintiffs assert claims for child slavery/forced labor, cruel, inhumane or degrading
16 treatment, and torture under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350.

17 2. The Former Child Slave Plaintiffs bring their ATS actions
18 in the United States because such claims cannot be maintained in their home
19 country of Mali as currently there is no law in Mali whereby such Plaintiffs can
20 seek civil damages for their injuries against the major exporters of cocoa operating
21 outside of Mali. Nor could claims be brought in Côte d’Ivoire as the judicial
22 system is notoriously corrupt and would likely be unresponsive to the claims of
23 foreign children against major cocoa corporations operating in and bringing
24 significant revenue to Côte d’Ivoire. It is also likely that both Plaintiffs and their
25 attorneys would be placed in danger following the civil unrest in Côte d’Ivoire and
26 the general hostility by cocoa producers in the region where Plaintiffs were forced
27 to work. Further, the Former Child Slave Plaintiffs bring their claims in the United

1 such that they maintain a general course of business activity within the United
2 States, including California, either directly through their own activities or by virtue
3 of their parent entities acting as their alter ego and/or agent.

4
5 **III. PARTIES**

6 **A. Former Child Slave Plaintiffs**

7 6. Plaintiff John Doe I is an adult citizen of Mali currently residing near
8 the city of Sikasso. He brings this action on behalf of himself and all other former
9 child slaves trafficked into Côte d’Ivoire from Mali for purposes of working and
10 then forced to work on a farm and/or farmer cooperative that provided cocoa beans
11 to any one and/or more of the Defendants named herein.

12 7. Plaintiff John Doe II is an adult citizen of Mali currently residing near
13 the city of Sikasso. He brings this action on behalf of himself and all other former
14 child slaves of Malian origin trafficked into Côte d’Ivoire from Mali for purposes
15 of working and then forced to work on a farm and/or farmer cooperative that
16 provided cocoa beans to any one and/or more of the Defendants named herein.

17 8. Plaintiff John Doe III is an adult citizen of Mali currently residing
18 near the city of Sikasso. He brings this action on behalf of himself and all other
19 former child slaves of Malian origin trafficked into Côte d’Ivoire from Mali for
20 purposes of working and then forced to work on a farm and/or farmer cooperative
21 that provided cocoa beans to any one and/or more of the Defendants named herein.

22 9. Plaintiff John Doe IV is an adult citizen of Mali currently residing
23 near the city of Sikasso. He brings this action on behalf of himself and all other
24 former child slaves trafficked into Côte d’Ivoire from Mali for purposes of
25 working and then forced to work on a farm and/or farmer cooperative that provided
26 cocoa beans to any one and/or more of the Defendants named herein.

1 the food processing industry primarily in the United States market, including
2 California. In addition to providing cocoa products to California manufacturers
3 and processors, ADM owns and operates several processing plants in California
4 which process rice, bakery mix and specialty ingredients.

5 23. Defendant Cargill, Incorporated Company (“Cargill, Inc.”) is one of
6 the largest privately held corporate providers of food and agricultural products and
7 services worldwide with over 100,000 employees in 59 countries. Its activities
8 include cultivating and processing grain, oilseeds and other agricultural
9 commodities, including cocoa for distribution to food producers. Headquartered in
10 Minneapolis, it is a family business that is tightly controlled and centrally
11 managed. On information and belief, in 1992, the business was restructured to
12 ensure that managers making decisions about buying and selling commodities had
13 ties to Cargill Headquarters in Minneapolis and would receive instructions from
14 there.

15 24. Cargill Cocoa is a subsidiary of Cargill, Inc. incorporated in
16 Pennsylvania. It is a major cocoa bean originator and processor. It offers a wide
17 range of high-quality cocoa powder, butter and liquor products under the Gerkens
18 and Wilbur brands to leading manufacturers of food, chocolate and confectionery
19 products worldwide, including processors and manufacturers of cocoa and cocoa
20 products in California. Products are sold through an international network of
21 offices, agents and distributors. Its facilities include a production facility in Côte
22 d’Ivoire for the production of cocoa liquor, butter and powder and origination of
23 cocoa beans. Cargill Cocoa & Chocolate North America is responsible for
24 partnerships with farmers in the Ivory Coast, including a program to train farmers
25 in crop protection.¹

26 ¹ 85 out of 101 farmer cooperatives in Cote d’Ivoire are involved in their crop
27 protection initiative “Yiri”.

1 respect to labor practices on the farms and/or farmer cooperatives from which
2 cocoa products are sourced.

3 29. Plaintiffs are informed and believe that at all material times each of
4 the parent defendants and their relevant subsidiaries were the agent or otherwise
5 working in concert with each other and that each such subsidiary was acting within
6 the course and scope of such agency or concerted activity. To the extent that said
7 conduct was perpetrated by certain subsidiary defendants, the parent defendant
8 corporations confirmed and ratified the same.

9 10 **V. ALTER EGO**

11 30. Plaintiffs contend that each of the subsidiaries identified herein is and
12 was, at all relevant times, the alter-ego of the parent companies identified herein.
13 Specifically, the parent entities control every aspect of the subsidiaries' operations,
14 particularly with respect to the sourcing, purchasing, manufacturing, distribution,
15 and/or retailing of cocoa and cocoa derived products, and have used them merely
16 as conduits for the receipt or transfer of funds and/or products with respect to
17 cocoa products derived from the Côte d'Ivoire.

18 31. Upon information and belief, the subsidiary and parent corporations
19 named herein have common ownership, common board of directors, are
20 inadequately capitalized for the risks at hand, and have failed to observe corporate
21 formalities with respect to their operations. The inherent and pervasive failure to
22 maintain separate identities constitutes improper conduct and disrespects the
23 privilege of using the corporate form to conduct business.

24 **VI. AIDING AND ABETTING**

25 32. Côte d'Ivoire is a country struggling to recover from years of civil
26 conflict. Active hostilities ended in January 2003, leaving the country divided into
27 three zones of control: the government-controlled south, the rebel-held north and
28

1 the Zone of Confidence, which was formally patrolled by international troops.
2 Although several peace agreements have been signed, and the Zone of Confidence
3 dismantled, acts of violence continue. Côte d'Ivoire's cocoa-producing regions,
4 which lie mostly with the government controlled southern zone, are at the heart of
5 the Ivorian conflict. In this conflict, the cocoa hierarchy has been described by the
6 International Crisis Group as an "Enron-type structure" of front companies with
7 secret bank accounts used to transfer funds with multiple layers of insulation
8 between the criminal acts and their eventual beneficiaries.

9 33. It is in this often lawless and clandestine backdrop that Cote d'Ivoire
10 has emerged as the largest exporter of cocoa in the world, providing 70% of the
11 world's supply. A majority of this cocoa is imported to the US by the named
12 Defendants herein. Indeed, journalist Carol Off explains in her 2006 book "*Bitter*
13 *Chocolate: Investigating the Dark Side of the World's Most Seductive Sweet*" that
14 the "dirty work" of buying and selling cocoa beans in this conflict ridden country
15 has become the domains of large multinationals such as Defendants Nestlé, ADM,
16 and Cargill and that since the 1990s, Côte d'Ivoire cocoa production has been
17 controlled by these companies with the unilateral goal of finding the cheapest
18 sources of cocoa.

19 34. Defendants ADM and Cargill are headquartered in and have their
20 main management operations in the U.S., and every major operational decision by
21 both companies is made in or approved in the U.S. At all times relevant to the
22 injuries to the Plaintiffs, Defendants ADM and Cargill had complete control over
23 their cocoa production operations in Côte d'Ivoire, and they regularly had
24 employees from their U.S. headquarters inspecting their operations in Côte
25 d'Ivoire and reporting back to the U.S. headquarters so that the U.S.-based
26 decision-makers had accurate facts on the ground. Defendants ADM and Cargill

1 had the ability and control in the U.S. to take any necessary steps to eradicate the
2 practice of using child slaves to harvest their cocoa in Côte d’Ivoire.

3 35. Defendant Nestlé established a major operation in the U.S., which is a
4 key market for Nestlé cocoa products. To promote, expand and protect this market,
5 Nestlé established Nestlé, USA as a wholly-owned subsidiary of Nestlé, SA. This
6 subsidiary is now one of the largest food and beverage companies in the U.S. with
7 21,000 employees nationwide, 42 manufacturing facilities, 6 distribution centers,
8 and 58 sales offices across the country. It is one of the largest purchasers,
9 manufacturers, and retail sellers of cocoa products in North America. Every major
10 operational decision regarding Nestlé’s U.S. market is made in or approved in the
11 U.S. At all times relevant to the injuries to the Plaintiffs, Nestlé had complete
12 control over its cocoa production operations in Côte D’Ivoire, and had the ability
13 and control in the U.S. to take any necessary steps to eradicate the practice of using
14 child slaves to harvest its cocoa in Côte D’Ivoire. Nestlé regularly had employees
15 from their Swiss and U.S. headquarters inspecting their operations in Côte D’Ivoire
16 and reporting back to these offices so that the U.S.-based decision-makers had
17 accurate facts on the ground.

18 36. The history and methodology of the exploitation of child slaves in
19 Côte D’Ivoire by the Defendants and other multinationals is virtually undisputed.
20 Defendants were able to obtain an ongoing, cheap supply of cocoa by maintaining
21 exclusive supplier/buyer relationships with local farms and/or farmer cooperatives
22 in Côte d’Ivoire. Through these exclusive supplier/buyer relationships, maintained
23 in the form of memorandums of understanding, agreements, and/or contracts, both
24 written and oral, Defendants are able to dictate the terms by which such farms
25 produce and supply cocoa to them, including specifically the labor conditions
26 under which the beans are produced.

1 37. Defendants control such conditions by providing local farmers and/or
2 farmer cooperatives with *inter alia* ongoing financial support, including advance
3 payments and personal spending money to maintain the farmers' and/or the
4 cooperatives' loyalty as exclusive suppliers; farming supplies, including fertilizers,
5 tools and equipment; training and capacity building in particular growing and
6 fermentation techniques and general farm maintenance, including appropriate labor
7 practices, to grow the quality and quantity of cocoa beans they desire. The training
8 and quality control visits occur several times per year and require frequent and
9 ongoing visits to the farms either by Defendants directly or via their contracted
10 agents.

11 38. Among other countries, Defendant Nestlé was directly involved in the
12 purchasing and processing of cocoa beans from Côte d'Ivoire. Among its exclusive
13 supplier/buyer relationships were agreements with suppliers Keita Ganda and Keita
14 Baba from plantations in Daloa; Lassine Kone from plantations in Sitafa. Among
15 other areas, Defendant Nestlé processed the cocoa near Odienne in Côte d'Ivoire.

16 39. Defendant Cargill has a direct presence in Côte d'Ivoire cocoa farms.
17 Carol Off notes that Cargill is possibly the largest privately owned corporation in
18 the world and that its influence over the food we eat, in terms of where it comes
19 from and how it is produced, is staggering. Among its exclusive supplier/buyer
20 relationships are Dôté Colibaly, Soro Fonipoho, Sarl Seki, Lenikpo Yéo (alias "the
21 Big One") from which 19 Malian child slaves were rescued, Keita Ganda, and
22 Keita Hippie, who produce the bulk of the cocoa in the Bouaflé region.

23 40. Cargill's Côte d'Ivoire Country Webpage states that in 2000/01,
24 Cargill opened two up-country buying stations in Daloa and Gagnoa in the western
25 cocoa belt, and that Cargill's Micao cocoa processing plant has obtained ISO 9002
26 certification, which is a system of quality standards for food processing from
27

1 sourcing through processing that inherently requires detailed visits and monitoring
2 of farms.

3 41. Defendant ADM was also directly involved in the purchasing and
4 processing of cocoa beans from Côte d'Ivoire. Among its exclusive suppliers is a
5 farmer cooperative known as SIFCA. In a 2001 article found in *Biscuit World*,
6 ADM explains that its acquisition of SIFCA in Côte d'Ivoire "gives ADM Cocoa
7 an unprecedented degree of control over its raw material supply, quality and
8 handling." In the same article, an ADM executive states that "ADM Cocoa can
9 deliver consistent top quality products by control of its raw materials," and that
10 "ADM is focused on having direct contact with farmers in order to advise and
11 support them to produce higher quality beans for which they will receive a
12 premium."

13 42. ADM's 2004 Cocoa Webpage openly states that ADM Cocoa has a
14 "strong presence in origin regions," and in a section entitled "Farmers as Partners,"
15 ADM further states that "[t]he success of the thousands of small, family-owned
16 farms on which cocoa is typically grown is vital to the cocoa industry. That is why
17 ADM is working hard to help provide certain farmer organizations with the
18 knowledge, tools, and support they need to grow quality cocoa responsibly and in a
19 sustainable manner . . . ADM is providing much needed assistance to organizations
20 representing thousands of farmers and farming communities. These efforts are
21 making an impact at the farm level."

22 43. The ADM Cocoa Brochure, states that "[t]hrough its support of the
23 World Cocoa Foundation, the European Cocoa Association, the US Chocolate
24 Manufacturers Association and other programs, ADM is actively involved in long-
25 term efforts to ensure that cocoa is grown responsibly and sustainably. Such efforts
26 include research into environmentally sound crop management practices, plant
27 breeding work to develop disease-resistant varieties and farmer field schools to

1 transfer the latest know-how into the hands of millions of cocoa farmers around the
2 world. Starting from the cocoa growers through to the world's top food and
3 beverage manufacturers, ADM Cocoa is committed to delivering the best in
4 product quality and service at every stage.”

5 44. As part of their ongoing and continued presence on the cocoa farms in
6 Côte d’Ivoire for purposes of quality control, pesticide eradication, cultivation
7 assistance, harvesting, and packing and shipping, among other activities and
8 assistance to the farmers, Defendants, through U.S.-based employees, had first-
9 hand knowledge of the widespread use of child labor harvesting cocoa on the farms
10 they were working with and purchasing from.

11 45. In its 10-K securities filings, ADM explicitly stated that research on
12 the cocoa industry and on development was based in Milwaukee, Wisconsin.

13 46. ADM processed the cocoa in facilities in Massachusetts, New Jersey,
14 and Wisconsin.

15 47. Defendants also had knowledge of the widespread use of child labor
16 harvesting cocoa on the farms they were working with and purchasing from based
17 on the numerous, well-documented reports of child labor by both international and
18 U.S. organizations.

19 48. The U.S. State Department, the International Labor Organization
20 (ILO), and UNICEF, among others, have confirmed since the late 1990s the
21 existence of child slavery with documented reports and statistics. Notable non-
22 governmental organizations have also independently confirmed that many, if not
23 most, of the children working on Ivorian cocoa plantations are being forced to
24 work as slaves without any remuneration.

25 49. In 1997, UNICEF reported that children from the neighboring
26 countries of Mali and Burkina Faso are being trafficked to Côte d’Ivoire to harvest
27 cocoa beans. *See* Carol Bellamy, *The State of the World's Children 1997: Focus*

1 *on Child Labour*, Oxford University Press for UNICEF (1996). The ILO estimates
2 there are 378,000 children working in Côte d'Ivoire in various sectors of the
3 economy. International Programme on the Elimination of Child Labour, ILO,
4 *Combating Trafficking in Children for Labour Exploitation in West and Central*
5 *Africa* (2001). The U.S. State Department has also estimated that there were at
6 least 15,000 child laborers working on cocoa, coffee, and cotton farms in 2004.
7 Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Country*
8 *Reports on Human Rights Practices, 2004: Cote d'Ivoire* (2004).

9 50. Despite the well-documented use of child labor on cocoa farms in
10 Côte d'Ivoire, Defendants not only purchased cocoa from farms and/or farmer
11 cooperatives which they knew or should have known relied on forced child labor in
12 the cultivating and harvesting of cocoa beans, but Defendants provided such farms
13 with money, supplies, and training to do so with little or no restrictions from the
14 government of Côte d'Ivoire. Upon information and belief, several of the cocoa
15 farms in Côte d'Ivoire from which Defendants source are owned by government
16 officials, whether directly or indirectly, or are otherwise protected by government
17 officials either through the provision of direct security services or through
18 payments made to such officials that allow farms and/or farmer cooperatives to
19 continue the use of child labor.

20 51. Defendants, because of their economic leverage in the region and
21 exclusive supplier/buyer agreements, each had the ability to control and/or limit
22 the use of forced child labor by the supplier farms and/or farmer cooperatives from
23 which they purchased their cocoa beans. The Defendants, based in the U.S., and
24 focused on protecting their U.S. market share following increased negative
25 campaigning in the U.S. against their use of child labor in harvesting cocoa in
26 West Africa, decided in the U.S. to do little or nothing to stop the exploitation and
27 abuse of child workers and instead merely issue promises and policy statements in

1 the U.S. to falsely assure the U.S. consumers that they were committed to putting
2 an end to child slavery in their cocoa production. The three Defendants each made
3 specific and false assertions in the U.S. to U.S. consumers to deny that they were
4 aiding and abetting child slavery, which allowed each of them to continue aiding
5 and abetting child slavery with no measurable loss of U.S. market share.

6 52. Defendant Nestlé published in the U.S. in English and targeting the
7 U.S. market its “Standards of Business Conduct,” which state that “Nestlé is
8 against all forms of exploitation of children. Nestlé does not provide employment
9 to children before they have reached the age to have completed their compulsory
10 education . . . and expects its suppliers to apply the same standards. Nestlé abides
11 by national laws in all countries in which it has operations and complies with the
12 International Labour Organisation (ILO) Convention 138 on Minimum Age for
13 Employment and the ILO Convention 182 on the Worst Forms of Child Labour.”
14 Nestlé also informed U.S. consumers in the U.S. that it requires all of its
15 subcontractors and Outsourcing Contractors to adhere to Nestlé’s Corporate
16 Business Principles, and chooses its Suppliers based on, *inter alia*, their “minimum
17 corporate social responsibility standards.”

18 53. Nestlé’s 2006 “Principles of Purchasing,” published in the U.S. in
19 English and targeting the U.S. market, states “purchasing should, wherever
20 possible, be part of the Supply Chain . . . and that Strategic Buyers perform
21 strategic activities such as market research or analysis [and] supplier profiling and
22 selection.” Under the section “Raw Materials,” Nestlé states it “provides
23 assistance in crop production.” Under the section, “Traceability,” Nestlé states
24 “[t]raceability includes tracking inside our company supply chain, i.e. from the
25 reception of raw and packaging materials, production of finished products to
26 delivery to customers.” Indeed, Nestlé states that “[t]raceability of incoming
27 materials is of the utmost importance to Nestlé. In dealing with suppliers,

1 Purchasing must insist on knowing the origin of incoming materials and require
2 suppliers to communicate the origin of their materials.” Nestlé’s Principles of
3 Purchasing also states that it “actively participate[s] as the first link in an integrated
4 supply chain;” that it “develop[s] supplier relationships;” and that it “continually
5 monitor[s] the performance, reliability and viability of suppliers.”

6 54. Nestlé’s 2005 Webpage on Suppliers Management also discusses the
7 importance of the Nestlé Supply Chain for production operations. “The Nestlé
8 Quality System covers all steps in the food supply chain, from the farm to the
9 consumer of the final products. Quality assurance activities are not confined to
10 production centers and head offices. They include working together with producers
11 and suppliers of raw . . . materials.”

12 55. Nestlé’s Commitment to Africa Brochure, published in the U.S. in
13 English and targeting the U.S. market, further states that “[w]hile we do not own
14 any farmland, we use our influence to help suppliers meet better standards in
15 agriculture. . . . Working directly in our supply chain, we provide technical
16 assistance to farmers.” Nestlé goes on to state that the “[s]upport provided to
17 farmers ranges from technical assistance on income generation to new strategies to
18 deal with crop infestation, to specific interventions designed to address issues of
19 child labour.” “Specific programmes directed at farmers in West Africa include
20 field schools to help farmers with supply chain issues, as well as a grassroots
21 ‘training of trainers’ programme to help eliminate the worst forms of child labour.”

22 56. Defendant Nestlé published in the U.S. in English and targeting the
23 U.S. market “*The Nestlé Commitment on Child Labour In Agricultural Supply*
24 *Chains*”

25 ([http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social](http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social_responsibility/nestle-commitment-child-labour.pdf)
26 [_responsibility/nestle-commitment-child-labour.pdf](http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social_responsibility/nestle-commitment-child-labour.pdf)) stating:

- 1 • “Nestlé is against all forms of exploitation of children, and is firmly
2 committed to actions to eradicate child labour from its agricultural supply
3 chains, in line with our commitments in the Nestlé Corporate Business
4 Principles.”
- 5 • “Nestlé is committed to work with all relevant stakeholders . . . to address
6 child labour.”
- 7 • “Nestlé sources agricultural crops from over 5 million farmers, and is
8 exposed to the potential for child labour and the worst forms of child labour
9 across a range of commodities and countries.”
- 10 • “The Commitment has . . . been prepared by Nestlé to specifically guide and
11 align its efforts to tackle child labour in its agricultural supply chains.”

12 57. Defendant Nestlé published in the U.S. in English and targeting the
13 U.S. market “*The Nestlé Supplier Code*,” which states:

- 14 • The Nestlé Supplier Code “defines the **non-negotiable minimum**
15 **standards** that we ask our suppliers and their sub-tier suppliers to respect
16 and adhere to when conducting business with Nestlé.”
- 17 • The supplier code “helps the continued implementation of our commitment
18 to international standards such as the OECD Guidelines for Multinational
19 Enterprises, the UN Guiding Principles on Business and Human Rights, the
20 Core Conventions of the International Labour Organization (ILO) and the 10
21 Principles of the United Nations Global Compact”
- 22 • “The Standards of the Code set forth expectations for the Supplier for whom
23 Nestlé does business, including their parent, subsidiary, or affiliate entities,
24 as well as all others with whom they do business including all employees
25 (including permanent, temporary, contract agency and migrant workers),
26 upstream suppliers and third parties.”

1 trees have aged and become less productive; soil nutrient levels have
2 decreased and pests and diseases affect both cocoa pod and overall tree
3 health. **How can we solve this together?² By working with farmers to**
4 **dramatically improve knowledge and adoption of good agricultural**
5 **practices – whether that is with the appropriate use of weeding and**
6 **pruning techniques or the development of safer harvesting practices. By**
7 **improving farmers’ incomes and providing better services for farmers,**
8 **their families and their communities. And by providing farmers with**
9 **the planting materials and other inputs they need to invest in their**
10 **farms and prepare for a successful future. It’s all part of the Cargill**
11 **Cocoa Promise, which we are rolling out in six origin countries**
12 **according to local needs.**

- 13 • “We are all too aware of the unique challenges faced in each region, and
14 although West Africa – and **in particular, Côte d’Ivoire . . .**” (p. 5)
- 15 • “Increasingly, reporting needs to incorporate clear proof of tangible change.
16 **That is why we are building on the measurement systems we have**
17 **already established, developing comprehensive indicators to assess the**
18 **impact of our actions and demonstrate the improvement generated by**
19 **programs on the ground. This allows us to track both inputs** (such
20 as the number of farmers trained and volumes certified) **and outputs** (such
21 as improved knowledge of pest and disease control management and solid
22 entrepreneurial skills). **The next step is to consistently measure the impact**
23 **of all of our activities on a broader scale, using impact assessment**
24 **frameworks and the skills of our existing in-house research and**
25 **consultancy team.** When combined with anecdotal material, this is the kind
26

27 ² Emphasis added.

1 of information that cocoa and chocolate manufacturers can use to engage
2 and activate consumer demand in a credible way. **It means consumers can**
3 **understand the current situation in origin countries, as well as the**
4 **difference that they can make by buying sustainable products** – creating
5 a much more compelling proposition.” (p. 10)

- 6 • Cargill claims they are “working to protect the rights of children.” (graphic
7 on p. 11)
- 8 • “Working to Promote and protect the rights of children:
 - 9 ○ . . . [W]e need to raise awareness of child labor issues and
10 **children’s rights in farming communities. The most effective way**
11 **for us to do this is through farmer training.** That is why we have
12 worked in partnership with the International Cocoa Initiative (ICI), a
13 leading organization addressing child labor issues in West African
14 cocoa-growing communities, to develop a specific training module.”
 - 15 ○ “In Côte d’Ivoire, 425 extension agents received four days of
16 intensive training from ICI on the issue of child labor and
17 sensitization, equipping them with the skills to effectively train
18 farmers. The project will reach more than 70,000 cocoa producers
19 before 2016.”
 - 20 ○ In partnership with the International Cocoa Initiative (ICI), 8,720
21 farmers were trained in 2013 to protect and improve the rights of
22 children as an integrated part of our farmer training approach. In total
23 70,000 will be trained.
 - 24 ○ According to Nick Weatherill, Executive Director, International
25 Cocoa Initiative (ICI): “Working with Cargill and ANADER³, we’ve
26

27 ³ Agence nationale d'appui au développement rural, (<http://www.anader.ci/#close>).

1 development and marketing resources” are located in Minneapolis, where it
2 maintains its corporate headquarters.

3 60. Defendant ADM’s Business Code of Conduct and Ethics, known as
4 “The ADM Way,” states with respect to Child Labor that “ADM will not condone
5 the employment or exploitation of legally underage workers or forced labor and
6 will not knowingly use suppliers who employ such workers or labor.” ADM
7 further states that its Code, including its Child Labor provision, is “a statement of
8 the values to be recognized in the conduct of ADM’s business by its employees,
9 officers, directors and other agents . . . It is [also] the responsibility of all . . . its
10 subsidiaries worldwide to comply with this Business Code of Conduct and Ethics .
11 . . [and that] the values explained in this [Code] are to be consistently applied
12 throughout the world in ADM’s business, not only when it’s convenient or
13 consistent with other business objectives, but in all situations.” ADM also asserts
14 that it “will deal fairly with its customers, suppliers and business partners [and
15 that] no ADM representative should take unfair advantage of anyone through . . .
16 misrepresentation of material facts or any other unfair dealing practice.”

17 61. Defendants’ assertions, published in the U.S. in English and targeting
18 the U.S. market, make clear that Defendants were able to make decisions in the
19 U.S. that would eradicate child labor and help the child laborers obtain education.
20 However, they failed to implement these decisions after assuring the U.S. market
21 that they would, allowing them to continue to benefit from child slavery without
22 any measurable impact on their bottom line.

23 62. Despite Defendants’ admitted knowledge of the widespread use of
24 forced child labor on the cocoa farms from which they source and their specific
25 policies prohibiting child labor, Defendants not only continued to provide cocoa
26 farms money, supplies, and training to grow cocoa beans for their exclusive use
27 knowing that their assistance would necessarily facilitate child labor, but they

1 actively lobbied against all legal enforcement mechanisms that would have curbed
2 forced child labor.

3 63. In 2001, following news reports that child slavery was a key
4 ingredient of American chocolate, U.S. Congressman Eliot Engel introduced a bill
5 that would have forced U.S. chocolate importers and manufacturers to adhere to a
6 certification and labeling system that their chocolate was “slave free.” The bill
7 passed the House of Representatives with a vote of 291 to 115 in favor of the
8 measure.

9 64. The U.S. chocolate industry, including Defendants, immediately
10 moved to eradicate the bill (rather than child slavery) urging the legislatures,
11 concerned non-governmental organizations, and the public at large that there was
12 no need for concrete, enforceable legislation against child slavery because they
13 would instead implement a private, voluntary mechanism to ensure child labor free
14 chocolate.

15 65. The U.S. chocolate industry, including Defendants, launched a multi-
16 million dollar lobbying effort, which paid off by resulting in the Harkin-Engel
17 Protocol, an entirely voluntary agreement whereby the chocolate industry would
18 essentially police itself and in effect guarantee the continued use of the cheapest
19 labor available to produce its product -- that of child slaves.

20 66. By providing the logistical and financial assistance described herein
21 across a period of years, Defendants knew that the farmers they were assisting
22 were using and continued to use forced child labor, but nevertheless continued to
23 provide such assistance. But for Defendants’ knowing and substantial assistance
24 and their efforts to derail enforceable legal mechanisms via the Harkin-Engel
25 Protocol, the farmers would not have been able to operate their cocoa plantations
26 using forced child labor.

1 continue to aid and abet child slavery while implementing a public relations
2 campaign in the U.S. to mislead the U.S. market about the ongoing use of child
3 slavery.

4 5 **VII. HARM TO THE INDIVIDUAL PLAINTIFFS**

6 **A. Former Child Slave Plaintiffs**

7 70. Plaintiff John Doe I was trafficked into Côte d'Ivoire at age fourteen
8 (14) to work on a large cocoa plantation located in Abobogou, near the town of
9 Bouafle in Côte d'Ivoire. He was forced to work on the plantation until the age of
10 nineteen (19), between the period of 1994 and 2000, when he finally escaped.
11 During the four year period, he was forced to work harvesting and cultivating
12 cocoa beans for up to twelve (12) hours a day and sometimes as many as fourteen
13 (14) hours, six days a week. This work included cutting, gathering, and drying the
14 cocoa beans for processing. Upon information and belief, the cocoa cultivated on
15 this plantation is supplied to any one and/or more of the Defendants herein. He was
16 not paid for his work and only given scraps of food to sustain him. He, along with
17 the other children on the plantation, was heavily guarded at all times and at night
18 kept in a locked room to prevent escape. When the guards felt he was not working
19 quickly enough, he was often beaten with tree branches. He was beaten so hard
20 that he suffered cuts on his hands and legs. Plaintiff John Doe I brings this action
21 on behalf of himself and all other similarly situated former child slaves in Mali.

22 71. Plaintiff John Doe II was trafficked into Côte d'Ivoire and forced to
23 work as a child slave on a cocoa plantation for approximately 2 ½ years between
24 the period of 1998-2000. During this time, he was between the age of 12-14 years
25 old, below the legal working age in Côte d'Ivoire. The plantation was located in
26 the Region de Man, Côte d'Ivoire. During the 2 ½ years, he was forced to work
27 harvesting and cultivating cocoa beans for up to twelve (12) hours a day and
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1 sometimes as many as fourteen (14) hours, six days a week. This work included
2 cutting, gathering, and drying the cocoa beans for processing. Upon information
3 and belief, the cocoa cultivated on this plantation is supplied to any one and/or
4 more of the Defendants herein. Once on the plantation, his movements were
5 strictly controlled and he was not permitted to leave under the threat that he would
6 be severely beaten and his feet cut open, as he had witnessed with the other
7 children who attempted escape. At night, he, along with the other children working
8 on the farm, were forced to sleep on the floor of a locked room until morning when
9 they were again gathered for work. Plaintiff John Doe II was not paid, provided
10 with only the bare minimum of food, and beaten with a whip when the guards felt
11 he was not performing adequately. Plaintiff John Doe II brings this action on
12 behalf of himself and all other similarly situated former child slaves in Mali.

13 72. Plaintiff John Doe III was was trafficked into Côte d'Ivoire and forced
14 into slavery at age 14 on a cocoa plantation located in the Bengalo Region de Man,
15 Côte d'Ivoire. He was forced to work on the plantation for approximately four (4)
16 years until he was 18 years old from 1996-2000. During this time, he worked
17 between twelve (12) and fourteen (14) hours, six days a week cutting, gathering,
18 and drying cocoa beans and was not paid for his work. Upon information and
19 belief, the cocoa cultivated on this plantation is supplied to any one and/or more of
20 the Defendants herein. John Doe III could not leave the plantation under fear that
21 he would be severely beaten and forced to drink urine, as had been done with other
22 the children who attempted escape. He was watched at gun point at all times and at
23 night was forced to sleep in a small locked room with no windows and several
24 other children on the floor. When he did not perform adequately, he was often
25 whipped by the overseer. Plaintiff John Doe III brings this action on behalf of
26 himself and all other similarly situated former child slaves in Mali.

1 73. Plaintiff John Doe IV was trafficked into Côte d'Ivoire when he was
2 around the age of twelve (12) to work on a cocoa plantation in Côte d'Ivoire. He
3 was recruited by a "locateur" who sold him into slavery. The plantation he was
4 sold to was located in Kassangoro. He was forced to work on the plantation for
5 approximately a year between 1998 and 1999, when he finally escaped. During
6 this time, he was forced to work harvesting and cultivating cocoa beans for twelve
7 (12) hours to fourteen (14) hours a day. This work included cutting, gathering, and
8 drying the cocoa beans for processing. Upon information and belief, the cocoa
9 cultivated on this plantation is supplied to one or more of the Defendants herein.
10 He was not paid for his work and only poor food to sustain him. He, along with the
11 other children on the plantation, was heavily guarded at all times and at night kept
12 in a locked room to prevent escape. He tried to escape several times before he
13 succeeded. Once time when he was caught the guards cut his feet at the bottoms
14 and rubbed pepper in the wounds. Another time, he was tied to a papaya tree and
15 was severely beaten. This damaged his left arm and left it permanently damaged.
16 He finally escaped with a few other children by digging a hole under the wall of
17 the hut where they slept with a dirt floor. He escaped to Baoule. The Malian Envoy
18 helped him and other children to get home to their homes and then went back to
19 rescue other Malian children working on the plantation. Plaintiff John Doe IV
20 brings this action on behalf of himself and all other similarly situated former child
21 slaves in Mali.

22 74. Plaintiff John Doe V was sold into slavery and trafficked into Côte
23 d'Ivoire when he was eleven years old by a "locator." He was forced to work as a
24 child slave on a cocoa plantation for less than a year in approximately 1998. The
25 plantation was located in Kassangoro. He was forced to work harvesting and
26 cultivating cocoa beans for long hours. This was all he did. The work included
27 cutting, gathering, and drying the cocoa beans for processing. Upon information
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1 and belief, the cocoa cultivated on this plantation is supplied to any one and/or
2 more of the Defendants herein. He was guarded by men with guns. One of the
3 guards was called “nyejugu” (sour face). He ran away once but was captured and
4 severely beaten. He was rescued by the Malian Envoy because another child had
5 escaped and told his family where he was. Plaintiff John Doe V brings this action
6 on behalf of himself and all other similarly situated former child slaves in Mali.

7 75. Plaintiff John Doe VI was trafficked into Côte d’Ivoire at age ten (10)
8 to work on a large cocoa plantation located in Koussou in Côte d’Ivoire. A man
9 took him from Mali to Côte d’Ivoire and sold him to a plantation for 20,000 CFA.
10 He was forced to work on the plantation for three (3) years between 1997 and
11 2001, when he finally escaped. During the three-year period, he was forced to
12 work harvesting and cultivating cocoa beans for very long days, sometimes as
13 many as fourteen (14) hours, six days a week. This work included cutting,
14 gathering, and drying the cocoa beans for processing. Upon information and
15 belief, the cocoa cultivated on this plantation is supplied to one or more of the
16 Defendants herein. He was not paid for his work and only given scraps of food to
17 sustain him. He, along with the other children on the plantation, was heavily
18 guarded at all times and at night kept in a locked room to prevent escape. John
19 Doe VI could not leave the plantation under fear that he would be severely
20 punished. He was with around 75 other Malian children. He saw that children who
21 tried to flee were caught and the bottom of their feet were cut and rubbed with salt.
22 He was beaten for working too slow when he was sick. He has many scars from
23 beatings and from cutting himself with a machete while working. He saw other
24 children who died on the plantation. Plaintiff John Doe VI brings this action on
25 behalf of himself and all other similarly situated former child slaves in Mali.

26 76. The members of the class have been forced to harvest cocoa in the
27 major cocoa regions of Côte d’Ivoire, including but not limited to the geographical
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1 regions of Bouake, Bouaflé, Man, Daloa, Odienne, Oume, Gagna, Soubre,
2 Duekoue and San Pédro. All Defendants have sourcing relationships within one or
3 more of those areas, and each Defendant has utilized substantial amounts of cocoa
4 harvested with child laborers, including members of the class.

6 **VIII. DEFENDANTS' VIOLATIONS OF LAW**

7 77. The causes of action maintained herein arise under and violate the
8 following laws, agreements, conventions, resolutions and treaties:

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

10 (b) Protocol Amending the Slavery Convention, done Dec. 7, 1953, 7
11 U.S.T. 479 (entered into force Dec. 7, 1953);

12 (c) Slavery Convention, concluded Sept. 1926, 46 Stat. 2183, T.S. No. 788. 60
13 I.N.T.S 253 (entered into force Mar. 9, 1927);

14 (d) Supplementary Convention on the Abolition of Slavery, the Slave
15 Trade, and Institutions and Practices Similar to Slavery;

16 (e) International Labour Organisation Convention No. 29 Concerning
17 Forced or Compulsory Labor (1930), 39 U.N.T.S. 55 (entered into force May 1,
18 1932);

19 (f) International Labour Organisation Convention No. 105 Concerning the
20 Abolition of Forced Labour Convention;

21 (g) International Labour Organisation (ILO) Convention 138 on Minimum
22 Age for Employment (1973) 1015 U.N.T.S. 297 (entered into force June 19, 1976);

23 (h) ILO Convention 182 on the Worst Forms of Child Labour (1999) 38
24 I.L.M. 1207(entered into force November 19, 2000);

25 (i) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);

26 (j) Universal Decl. of Human Rights, G.A. Res. 217A(iii), U.N. Doc.
27 A/810 (1948);

1 (k) International Covenant on Civil and Political Rights, G.A. Res.
2 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

3 (l) Convention Against Torture and Other Cruel, Inhuman or Degrading
4 Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at
5 197, U.N. Doc. A/39/51 (1984);

6 (m) Declaration on the Protection of All Persons From Being Subjected to
7 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
8 G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034
9 (1976);

10 (n) Customary international law;

11 (o) Federal Common and Statutory Law.

12 13 **IX. CLAIMS FOR RELIEF**

14 **COUNT I**

15 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS** 16 **AGAINST ALL DEFENDANTS**

17 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

18 78. The Former Child Slave Plaintiffs incorporate by reference paragraphs
19 1-77 of this Complaint as if fully set forth herein.

20 79. The Former Child Slave Plaintiffs were placed in fear for their lives,
21 were deprived of their freedom, separated from their families and forced to suffer
22 severe physical and mental abuse.

23 80. Defendants' use of forced labor under these conditions of torture
24 violate the law of nations, customary international law, and worldwide industry
25 standards and practices, including, but not limited to those identified in paragraph

26 81. To the extent necessary, Defendants' actions occurred under color of
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1 law and/or in conspiracy or on behalf of those acting under color of official
2 authority, such that the injuries inflicted on these Plaintiffs as a result of the forced
3 labor were inflicted deliberately and intentionally through the acts and/or omission
4 of responsible state officials and/or their agents to act in preventing and/or limiting
5 the trafficking or otherwise the use of child slaves. Upon information and belief,
6 there are also several farms which are owned by government officials, whether
7 directly or indirectly, or are otherwise protected by government officials either
8 through the provision of security services or through payments made to such
9 officials that allow farms and/or farmer cooperatives to continue the use of child
10 labor.

11 82. Defendants' conduct in violation of customary international law either
12 directly caused these injuries, or Defendants are liable for these injuries because
13 they provided knowing, substantial assistance to the direct perpetrators, or because
14 the direct perpetrators were agents, and/or employees of Defendants or of
15 companies that are the alter egos of Defendants.

16 83. The conduct of Defendants was malicious, fraudulent and/or
17 oppressive and done with a willful and conscious disregard for the Former Child
18 Slave Plaintiffs' rights and for the deleterious consequences of Defendants' actions.
19 As a result, the Former Child Slave Plaintiffs have sustained significant injuries
20 and these Plaintiffs will continue to experience pain and suffering and extreme and
21 severe mental anguish and emotional distress. The Former Child Slave Plaintiffs
22 are thereby entitled to compensatory and punitive damages in amounts to be
23 proven at trial.

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1 liable because they directly caused these injuries or they provided knowing,
2 substantial assistance to the direct perpetrators, or because the direct perpetrators
3 were agents, and/or employees of Defendants or of companies that are the alter
4 egos of Defendants.

5 89. Former Child Slave Plaintiffs are thereby entitled to compensatory
6 and punitive damages in amounts to be proven at trial.

7
8 **COUNT III**
9 **TORTURE BY ALL FORMER CHILD SLAVE PLAINTIFFS**
10 **AGAINST ALL DEFENDANTS**
11 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

12 90. The Former Child Slave Plaintiffs incorporate by reference paragraphs
13 1-89 of this Complaint as if fully set forth herein.

14 91. Defendants' actions were undertaken under the color of foreign
15 authority. Specifically, Defendants acted under color of law, and/or in conspiracy
16 or on behalf of those acting under color of official authority, by acting with the
17 implicit sanction of the state and/or through the intentional omission of responsible
18 state officials and/or their agents to act in preventing and/or limiting the trafficking
19 or otherwise the use of child slaves into Côte d'Ivoire. Upon information and
20 belief, there are also several farms which are owned by government officials,
21 whether directly or indirectly, or are otherwise protected by government officials,
22 either through the provision of security services or through payments made to such
23 officials that allow farms and/or farmer cooperatives to continue the use of child
24 labor.

25 92. Defendants' conduct either directly caused Plaintiffs' injuries, or they
26 are liable for Plaintiffs' injuries because they provided knowing, substantial
27 assistance to the direct perpetrators, or because the direct perpetrators were agents,

1 and/or employees of Defendants or of companies that are the alter egos of
2 Defendants.

3 93. The acts described herein were inflicted deliberately and intentionally
4 for purposes which included, among others, punishing the victim or intimidating
5 the victim or third persons, and constitute torture in violation of the law of nations
6 under the ATS.

7 94. Defendants' tortious acts described herein placed all members of the
8 Former Child Slave Plaintiffs in great fear for their lives and caused them to suffer
9 severe physical and mental pain and suffering. The Former Child Slave Plaintiffs
10 are thereby entitled to compensatory and punitive damages in amounts to be
11 proven at trial.

12 13 **X. LIABILITY**

14 95. The Plaintiffs incorporate by reference paragraphs 1-94 of this
15 Complaint as if set forth herein.

16 96. Defendants are directly liable for any actions that they aided and
17 abetted by knowingly providing financial support, supplies, training, and/or other
18 substantial assistance that contributed to the ability of their agents, employees
19 and/or partners to use and/or facilitate the use of child slave labor, including but
20 not limited to any farm and/or farmer cooperative that held any agreement,
21 contract, and/or memorandum of understanding, written or oral, to supply cocoa
22 beans.

23 97. To the extent that Defendants can be said to have acted indirectly,
24 Defendants are vicariously liable for the actions of their agents, employees, co-
25 venturers and/or partners, including specifically any farm and/or farmer
26 cooperative which held any agreement, contract, and/or memorandum of
27 understanding, written or oral, to supply cocoa beans to such Defendants.

1 (e) award Plaintiffs such other and further relief as the Court deems just
2 under the circumstances.

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5 Dated: July 14, 2016



6 Terry Collingsworth (DC Bar# 471830)

7 *Attorney for Plaintiffs*
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