

ORIGINAL

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9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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10 JOHN DOE I, Individually and on
11 behalf of Proposed Class Members;
12 JOHN DOE II, Individually and on
13 behalf of Proposed Class Members;
14 JOHN DOE III, Individually and on
15 behalf of Proposed Class Members;
and GLOBAL EXCHANGE

16 Plaintiffs,

17 v.

18
19 NESTLÉ, S. A, NESTLÉ U.S.A.,
20 NESTLÉ Ivory Coast, ARCHER
21 DANIELS MIDLAND CO.,
22 CARGILL INCORPORATED
23 COMPANY, CARGILL COCOA,
24 CARGILL WEST AFRICA, S.A, and
CORPORATE DOES 1-10

25 Defendants.
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CASE NO.: CV 05-5133 (SVW) JTL

FIRST AMENDED CLASS
ACTION COMPLAINT FOR
INJUNCTIVE RELIEF AND
DAMAGES

JURY TRIAL DEMANDED

1 to work. Further, the Former Child Slave Plaintiffs bring their claims in the United
2 States as the U.S. has provided a forum for such human rights lawsuits with the
3 passage of the ATS and TVPA.

4 3. The Former Child Slave Plaintiffs bring this action using pseudonyms
5 due to fear of retaliation against themselves and their families by those persons
6 who trafficked them into Cote d'Ivoire; the owners of farms on which they were
7 enslaved; and by the local buyers, who are employees and/or agents of the
8 Defendants. Plaintiffs' case not only threatens to expose criminalized elements
9 within the cocoa sector but also to dismantle the source of its significant profits,
10 cheap labor procured through forced child trafficking. For this reason, Plaintiffs'
11 lives are in great danger as evidence by the violence already wielded against other
12 critics and investigators of corruption and child labor within the cocoa sector.
13 French-Canadian reporter Guy André Kieffer, who was investigating the criminal
14 elements within the cocoa sector disappeared and is presumed dead. Other
15 journalists investigating cocoa and child labor have also received death threats.

16 4. Plaintiff Global Exchange, along with the Former Child Slave
17 Plaintiffs, bring this action against Defendants for the damages which they and
18 their members have suffered as a result of Defendants' unlawful and unfair
19 business practices prohibited under California Business & Professions Code §§
20 17200, *et. seq.*

21
22 **II. JURISDICTION AND VENUE**

23 5. Pursuant to 28 U.S.C. § 1331, this Court has federal question
24 jurisdiction over this dispute pursuant to the ATS, 28 U.S.C. § 1350, and the
25 TVPA, 28 U.S.C. § 1350, *note*, for the alleged violations of international human
26 rights law. The ATS provides federal jurisdiction for "any civil action by an alien
27 for a tort only, committed in violation of the law of nations or a treaty of the
28 United States." The TVPA provides federal jurisdiction for acts of torture

1 committed under the color of foreign authority.

2 6. This Court has Supplemental Jurisdiction over Plaintiffs' state law
3 claims based on 28 U.S.C. §1332.

4 7. Venue and Personal Jurisdiction over each Defendant is proper in
5 this judicial district, and in the United States as a whole for the foreign
6 Defendants, because, as more fully detailed below, Defendants either own, lease,
7 export to, or otherwise conduct business activities, including the sale of cocoa and
8 cocoa derivative products, to chocolate retailers in the United States and/or in
9 California such that they maintain a general course of business activity within the
10 United States, including California, either directly through their own activities or
11 by virtue of their parent entities acting as their alter ego and/or agent.

12
13 **III. PARTIES**

14 **A. Former Child Slave Plaintiffs**

15 8. Plaintiff John Doe I is an adult citizen of Mali currently residing in
16 the city of Sikasso. He brings this action on behalf of himself and all other former
17 child slaves trafficked into Cote d' Ivoire from Mali for purposes of working on a
18 farm and/or farmer cooperative that provided cocoa beans to any one and/or more
19 of the Defendants named herein.

20 9. Plaintiff John Doe II is an adult citizen of Mali currently residing in
21 the city of Sikasso. He brings this action on behalf of himself and all other former
22 child slaves of Malian origin forced to work on a farm and/or farmer cooperative
23 that provided cocoa beans to any one and/or more of the Defendants named herein.

24 10. Plaintiff John Doe III is an adult citizen of Mali currently residing in
25 the city of Sikasso. He brings this action on behalf of himself and all other former
26 child slaves of Malian origin forced to work on a farm and/or farmer cooperative
27 that provided cocoa beans to any one and/or more of the Defendants named herein.

28

1 **B. Former Child Slave Plaintiffs Class Action Allegations**

2 11. The Former Child Slave Plaintiffs bring this action individually, and
3 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of the
4 following class:

5 All individuals during the period 1996 through the present who reside or did
6 reside in the country of Mali, West Africa, and who were trafficked from
7 Mali to any cocoa producing region of Cote d'Ivoire and forced to perform
8 labor as children under the age of 18 on any farm and/or farmer cooperative
9 within any cocoa producing region of Cote d'Ivoire, including but not
10 limited to the geographical regions of Bouake, Bouaflé, Man, Daloa, and
11 San Pédro, for the purpose of harvesting and/or cultivating cocoa beans that
12 were supplied, either directly or indirectly, to any of the named Defendants
13 herein.

14 12. The class is so numerous that joinder of all members is impractical.
15 The Former Child Slave Plaintiffs believe that there are thousands of class
16 members.

17 13. There are questions of law and fact common to the class. Key
18 common questions include, but are not limited to, the following:

- 19 a) Whether Plaintiffs and Proposed Class Members were unlawfully
20 trafficked for purposes of forced child labor, in violation of
21 International Labor Conventions 138 and 182, so as to work on cocoa
22 farms, which supplied cocoa beans to the named Defendants herein?
23 b) Whether Defendants caused and/or aided and abetted the forced
24 labor and torture imposed on Plaintiffs by either providing logistical
25 support to the supplier farms and/or failing to provide sufficient
26 logistical support and/or take adequate action to prevent and stop
27 such forced child labor in violation of international law, federal law
28 and California state law?

1 14. The Former Child Slave Plaintiffs' claims are typical of the claims of
2 the class. They seek redress for the same conduct that has affected all class
3 members and press legal claims which are the same for all class members.

4 15. The Former Child Slave Plaintiffs named herein will fairly and
5 adequately represent the class. These Plaintiffs do not have conflicts of interest
6 with members of the class and have retained counsel who are experienced in
7 complex litigation, including class actions and international litigation, who will
8 vigorously prosecute this action.

9 16. A class action is the superior method for adjudication of this
10 controversy. In the absence of a class action, courts will be unnecessarily
11 burdened with multiple, duplicative individual actions, particularly in the case of
12 Mali where class claims are not recognized. Moreover, if a class is not certified,
13 many meritorious claims will go un-redressed as the individual class members are
14 not able to prosecute complex litigation against large defendant corporations.

15

16 **C. Global Exchange**

17 17. Plaintiff Global Exchange is a San Francisco based human rights
18 organization dedicated to promoting environmental, political and social justice
19 globally. Global Exchange's mission includes: 1) educating the U.S. public about
20 critical global issues; 2) promoting respect for the rights outlined in the Universal
21 Declaration of Human Rights; 3) encouraging both the U.S. government and
22 private institutions, including corporations, to support policies that promote
23 democratic and sustainable development; 4) linking people in the U.S. with people
24 in the global South who are working for political, social and environmental
25 justice. Its membership includes American consumers of, among other things,
26 chocolate, and other cocoa-based products. Plaintiff Global Exchange brings this
27 action on behalf of itself and its members injured by Defendants' unfair business
28 practices.

1 **D. Chocolate Importer Defendants**

2 18. Defendant Nestlé, SA, is the world's largest food and beverage
3 company involved primarily in the manufacture and sale of beverages, milk
4 products, chocolate, confectionery and biscuits. Based in Switzerland, it employs
5 around 253,000 people and has factories or operations in almost every country in
6 the world. Its stock is traded in the United States in the form of American
7 Depository Receipts (ADR), which is a negotiable security representing ownership
8 of publicly traded shares in a non-US corporation. Nestlé's ADRs are held through
9 Citibank, N.A., a major U.S. banking institution, and together with its ADR
10 receipts and the sale of Nestlé brand products in the forum constitute significant
11 contacts with the United States, including the forum.

12 19. Nestlé, USA is a wholly-owned subsidiary of Nestlé, SA.
13 Headquartered in California, it is one of the largest food and beverage companies
14 in the U.S. with 21,000 employees nationwide, 42 manufacturing facilities, 6
15 distribution centers, and 58 sales offices across the country, including California.
16 It is one of the largest purchasers, manufacturers, and retail sellers of cocoa
17 products in North America .

18 20. Defendant Nestlé Cote d'Ivoire, SA (or Nestle Ivory Coast) is a
19 subsidiary of Nestlé, SA. Its purpose within the Nestlé enterprise is to process
20 cocoa beans for export globally, including North America and California
21 specifically.

22 21. Defendant Archer-Daniels-Midland Company (ADM) is a publicly
23 held Delaware corporation with its principal place of business in Decatur,
24 Illinois. It is engaged in the business of procuring, transporting, storing,
25 processing and merchandising agricultural commodities and products. This
26 includes specifically the processing of cocoa beans from Cote d' Ivoire and the
27 production of cocoa liquor, cocoa butter, cocoa powder, chocolate and various
28 cocoa compounds for the food processing industry primarily in the United States

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

5 22. 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
10 in Minneapolis, it is a family business that is tightly controlled and centrally
11 managed.

12 23. Cargill Cocoa is a subsidiary of Cargill, Inc. incorporated in
13 Pennsylvania. It is a major cocoa bean originator and processor. It offers a wide
14 range of high-quality cocoa powder, butter and liquor products under the Gerkens
15 and Wilbur brands to leading manufacturers of food, chocolate and confectionery
16 products worldwide, including processors and manufacturers of cocoa and cocoa
17 products in California. Products are sold through an international network of
18 offices, agents and distributors. Its facilities include a production facility in Cote
19 d’Ivoire for the production of cocoa liquor, butter and powder and origination of
20 cocoa beans.

21 24. Cargill West Africa, SA is a subsidiary of Cargill, Inc. and a member
22 of the Cargill Group headed by Cargill, Inc. Formed in 1986, its purpose within
23 the Cargill Group is to process and/or export cocoa beans supplied to it by farms
24 and/or farmer cooperatives in Cote d’Ivoire. Upon information and belief, Cargill
25 West Africa, SA exports cocoa to the United States, including California, either
26 directly or indirectly through other Cargill Group affiliates.

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1 **E. Unknown Corporate Defendants**

2 25. Plaintiffs are currently unaware of the true names and capacities of
3 Defendants sued herein as Corporate DOES 1-10, and therefore sue these
4 Defendants by using fictitious names. Plaintiffs will amend this complaint to
5 allege their true names and capacities when ascertained. Upon information and
6 belief each fictitiously named Defendant is responsible in some manner for the
7 occurrences herein alleged and that the injuries to Plaintiffs herein alleged were
8 proximately caused in relation to the conduct of the named Defendants, as well as
9 Corporate Does 1-10.

10
11 **IV. AGENCY**

12 26. Plaintiffs contend that each of the subsidiaries identified herein is and
13 was, at all relevant times, the agent of the parent companies identified herein.
14 Specifically, the parent entities control the subsidiaries' operations, particularly
15 with respect to the sourcing, purchasing, manufacturing, distribution, and/or
16 retailing of cocoa and cocoa derived products from the Cote d' Ivoire.

17 27. Plaintiffs further contend that each of the parent entities identified
18 herein control and/or have the ability to control their subsidiaries' actions with
19 respect to labor practices on the farms and/or farmer cooperatives from which
20 cocoa products are sourced.

21 28. Plaintiffs are informed and believe that at all material times each of
22 the parent defendants and their relevant subsidiaries were the agent or otherwise
23 working in concert with each other and that each such subsidiary was acting
24 within the course and scope of such agency or concerted activity. To the extent
25 that said conduct was perpetrated by certain subsidiary defendants, the parent
26 defendant corporations confirmed and ratified the same.

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V. ALTER EGO

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

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

VI. AIDING AND ABETTING

31. Cote d'Ivoire is a country struggling to recover from years of civil conflict. Active hostilities ended in January 2003, leaving the country divided into three zones of control: the government-controlled south, the rebel-held north and the Zone of Confidence, which was formally patrolled by international troops. Although several peace agreements have been signed, and the Zone of Confidence dismantled, acts of violence continue. Cote d'Ivoire's cocoa-producing regions, which lie mostly with the government controlled southern zone, are at the heart of the Ivorian conflict. In this conflict, the cocoa hierarchy has been described by the International Crisis Group as an "Enron-type structure" of front companies with secret bank accounts used to transfer funds with multiple layers of insulation between the criminal acts and their eventual beneficiaries.

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

10 33. Defendants are able to obtain this ongoing, cheap supply of cocoa by
11 maintaining exclusive supplier/buyer relationships with local farms and/or farmer
12 cooperatives in Cote d'Ivoire. Through these exclusive supplier/buyer
13 relationships, maintained in the form of memorandums of understanding,
14 agreements, and/or contracts, both written and oral, Defendants are able to dictate
15 the terms by which such farms produce and supply cocoa to them, including
16 specifically the labor conditions under which the beans are produced.

17 34. Defendants control such conditions by providing local farmers and/or
18 farmer cooperatives with *inter alia* ongoing financial support, including advance
19 payments and personal spending money to maintain the farmers' and/or the
20 cooperatives' loyalty as exclusive suppliers; farming supplies, including
21 fertilizers, tools and equipment; training and capacity building in particular
22 growing and fermentation techniques and general farm maintenance, including
23 appropriate labor practices, to grow the quality and quantity of cocoa beans they
24 desire. The training and quality control visits occur several times per year and
25 require frequent and ongoing visits to the farms either by Defendants directly or
26 via their contracted agents.

27 35. Specifically, Defendant Nestlé is directly involved in the purchasing
28 and processing of cocoa beans from Cote d' Ivoire. Among its exclusive

1 supplier/buyer relationships were agreements with suppliers Keita Ganda and
2 Keita Baba from plantations in Daloa; Lassine Kone from plantations in Sitafa.

3 36. Nestlé's 2006 "Principles of Purchasing" states "purchasing should,
4 wherever possible, be part of the Supply Chain . . . and that Strategic Buyers
5 perform strategic activities such as market research or analysis [and] supplier
6 profiling and selection." Under the section "Raw Materials", Nestlé states it
7 "provides assistance in crop production." Under the section, "Traceability," Nestlé
8 states "[t]raceability includes tracking inside our company supply chain, i.e. from
9 the reception of raw and packaging materials, production of finished products to
10 delivery to customers." Indeed, Nestlé states that "[t]raceability of incoming
11 materials is of the utmost importance to Nestlé. In dealing with suppliers,
12 Purchasing must insist on knowing the origin of incoming materials and require
13 suppliers to communicate the origin of their materials." Nestlé's Principles of
14 Purchasing also states that it "actively participate[s] as the first link in an
15 integrated supply chain"; that it "develop[s] supplier relationships"; and that it
16 "continually monitor[s] the performance, reliability and viability of suppliers"

17 37. Nestlé's 2005 Webpage on Suppliers Management also discusses the
18 importance of the Nestlé Supply Chain for production operations. "The Nestlé
19 Quality System covers all steps in the food supply chain, from the farm to the
20 consumer of the final products. Quality assurance activities are not confined to
21 production centers and head offices. They include working together with
22 producers and suppliers of raw . . . materials ."

23 38. Nestlé's Commitment to Africa Brochure further states that "[w]hile
24 we do not own any farmland, we use our influence to help suppliers meet better
25 standards in agriculture. . . . Working directly in our supply chain, we provide
26 technical assistance to farmers." Nestlé goes on to state that the "[s]upport
27 provided to farmers ranges from technical assistance on income generation to new
28 strategies to deal with crop infestation, to specific interventions designed to

1 address issues of child labour.” “Specific programmes directed at farmers in West
2 Africa include field schools to help farmers with supply chain issues, as well as a
3 grassroots 'training of trainers' programme to help eliminate the worst forms of
4 child labour.”

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

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

24 41. The ADM Cocoa Brochure, states that “[t]hrough its support of the
25 World Cocoa Foundation, the European Cocoa Association, the US Chocolate
26 Manufacturers Association and other programs, ADM is actively involved in long-
27 term efforts to ensure that cocoa is grown responsibly and sustainably. Such
28 efforts include research into environmentally sound crop management practices,

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

6 42. Like Nestlé and ADM, Defendant Cargill has a direct presence in
7 Cote d'Ivoire cocoa farms. Carol Off notes that Cargill is possibly the largest
8 privately owned corporation in the world and that its influence over the food we
9 eat, in terms of where it comes from and how its produced, is staggering. Among
10 its exclusive supplier/buyer relationships are Dôté Colibaly, Soro Fonipoho, Sarl
11 Seki, Lenikpo Yéo (alias “the Big One”) from which 19 Malian child slaves were
12 rescued, Keita Ganda, and Keita Hippie, who produce the bulk of the cocoa in the
13 Bouaflé region.

14 43. Cargill’s Cote d’Ivoire Country Webpage states that in 2000/01,
15 Cargill opened two up-country buying stations in Daloa and Gagnoa in the
16 western cocoa belt, and that Cargill's Micao cocoa processing plant has obtained
17 ISO 9002 certification, which is a system of quality standards for food processing
18 from sourcing through processing that inherently requires detailed visits and
19 monitoring of farms.

20 44. As part of Defendants’ ongoing and continued presence on the cocoa
21 farms, Defendants had first hand knowledge of the widespread use of child labor
22 on said farms, in addition to the numerous, well-documented reports of child labor
23 by both international and U.S. organizations.

24 45. The U.S. State Department, the International Labor Organization
25 (ILO), and UNICEF, among others, have confirmed since the late 1990s the
26 existence of child slavery with documented reports and statistics. Notable non-
27 governmental organizations have also independently confirmed that many, if not
28 most, of the children working on Ivorian cocoa plantations are being forced to

1 work as slaves without any remuneration.

2 46. In 1997, UNICEF reported that children from the neighboring
3 countries of Mali and Burkina Faso are being trafficked to Cote d'Ivoire to harvest
4 cocoa beans. *See Carol Ballamy, The State of the World's Children 1997: Focus*
5 *on Child Labour*, Oxford University Press for UNICEF (1996). The ILO estimates
6 there are 378,000 children working in Cote d'Ivoire in various sectors of the
7 economy. International Programme on the Elimination of Child Labour, ILO,
8 *Combating Trafficking in Children for Labour Exploitation in West and Central*
9 *Africa* (2001). The U.S. State Department has also estimated that there are at least
10 15,000 child laborers working on cocoa, coffee, and cotton farms. Bureau of
11 Democracy, Human Rights and Labor, U.S. Dep't of State, *Country Reports on*
12 *Human Rights Practices, 2004: Cote d'Ivoire*.

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

24 48. Defendants, because of their economic leverage in the region and
25 exclusive supplier/buyer agreements each had the ability to control and/or limit the
26 use of forced child labor by the supplier farms and/or farmer cooperatives from
27 which they purchased their cocoa beans, and indeed maintained specific policies
28 against the use of such forced labor practices.

1 49. Defendant Nestlé’s Standards of Business Conduct states that
2 “Nestlé is against all forms of exploitation of children. Nestlé does not provide
3 employment to children before they have reached the age to have completed their
4 compulsory education . . . and expects its suppliers to apply the same standards.
5 Nestlé abides by national laws in all countries in which it has operations and
6 complies with the International Labour Organisation (ILO) Convention 138 on
7 Minimum Age for Employment and the ILO Convention 182 on the Worst Forms
8 of Child Labour.” Nestle also requires all of its subcontractors and Outsourcing
9 Contractors to adhere to Nestlé’s Corporate Business Principles, and chooses its
10 Suppliers based on, *inter alia*, their “minimum corporate social responsibility
11 standards”.

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

26 51. Like Nestlé and ADM, Defendant Cargill’s Position Paper on cocoa
27 industry labor explicitly states that “[a]busive treatment towards children in
28 agriculture or in any other industry is not acceptable.” Cargill’s International Code

1 of Conduct also states that Cargill will “comply with the letter and spirit of all
2 applicable . . . laws designed to accomplish equal and fair opportunities in
3 employment.”

4 52. Despite Defendants’ knowledge of the widespread use of forced child
5 labor on the cocoa farms from which they source and their specific policies
6 prohibiting child labor, Defendants not only continued to provide cocoa farms
7 money, supplies, and training to grow cocoa beans for their exclusive use knowing
8 that their assistance would necessarily facilitate child labor, but they actively
9 lobbied against all legal enforcement mechanisms that would have curbed forced
10 child labor.

11 53. In 2001, following news reports that child slavery was a key
12 ingredient of American chocolate, U.S. Congressman Eliot Engel introduced a bill
13 that would have forced U.S. chocolate importers and manufacturers to adhere to a
14 certification and labeling system that their chocolate was “slave free”. The bill
15 passed the House of Representatives with a vote of 291 to 115 in favor of the
16 measure.

17 54. The U.S. chocolate industry immediately moved to eradicate the bill
18 urging the legislatures, concerned non-governmental organizations, and the public
19 at large that there was no need for concrete, enforceable legislation against child
20 slavery because they would instead implement a private, voluntary mechanism to
21 ensure child labor free chocolate.

22 55. Their multi-million dollar lobbying effort paid off by resulting in the
23 Harkin-Engle Protocol, an entirely voluntary agreement whereby the chocolate
24 industry would essentially police itself and in effect guarantee the continued use of
25 the cheapest labor available to produce its product -- that of child slaves.

26 56. By providing the logistical and financial assistance described herein
27 across a period of years, Defendants knew that the farmers they were assisting
28 were using and continued to use forced child labor, but nevertheless continued to

1 provide such assistance. But for Defendants' knowing and substantial assistance
2 and their efforts to derail enforceable legal mechanisms via the Harkin-Engle
3 Protocol, the farmers would not have been able to operate their cocoa plantations
4 using forced child labor.

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

7 **A. Former Child Slave Plaintiffs**

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

24 58. Plaintiff John Doe II was forced to work as a child slave on a cocoa
25 plantation for approximately 2 ½ years between the period of 1998-2000. During
26 this time, he was between the age of 12-14 years old, below the legal working age
27 in Cote d'Ivoire. The plantation was located in the Region de Man, Cote d'Ivoire.
28 During the 2 ½ years, he was forced to work harvesting and cultivating cocoa

1 beans for up to twelve (12) hours a day and sometimes as many as fourteen (14)
2 hours, six days a week. This work included cutting, gathering, and drying the
3 cocoa beans for processing. Upon information and belief, the cocoa cultivated on
4 this plantation is supplied to any one and/or more of the Defendants herein. Once
5 on the plantation, his movements were strictly controlled and he was not permitted
6 to leave under the threat that he would be severely beaten and his feet cut open, as
7 he had witnessed with the other children who attempted escape. At night, he, along
8 with the other children working on the farm, were forced to sleep on the floor of a
9 locked room until morning when they were again gathered for work. Plaintiff John
10 Doe II was not paid, provided with only the bare minium of food, and beaten with
11 a whip when the guards felt he was not performing adequately. Plaintiff John Doe
12 II brings this action on behalf of himself and all other similarly situated former
13 child slaves in Mali.

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

1 **B. Global Exchange**

2 60. Global Exchange is a San Francisco based human rights organization
3 dedicated to promoting environmental, political and social justice globally. Global
4 Exchange's members, who are American consumers of cocoa-based products,
5 have suffered specific and concrete injuries due to Defendants' use of slave child
6 labor on farms from which their cocoa is sourced. In addition, Global Exchange
7 has fair trade stores (both physical and on the internet) selling fair trade chocolate,
8 and have been forced to pay a premium for this chocolate due to the unfair
9 competition of slave produced chocolate.

10 61. Global Exchange's members have expressed a clear desire to
11 purchase products that are not made under exploitative conditions but are
12 incapable of determining whether products contain slave labor produced cocoa or
13 non-slave labor produced cocoa. The members' interests are being harmed by
14 having to purchase products containing illegally imported, slave labor produced
15 cocoa against their clearly expressed wishes.

16 62. Global Exchange has also been forced to spend significant resources
17 in providing fairly traded chocolate, educating members of the public, and
18 monitoring Defendants' corporate obligation not to use child labor.

19
20 **VIII. DEFENDANTS' VIOLATIONS OF LAW**

21 63. The causes of action maintained herein arise under and violate the
22 following laws, agreements, conventions, resolutions and treaties:

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

24 (b) Torture Victim Protection Act, 28 U.S.C. § 1350, *note*;

25 (c) Protocol Amending the Slavery Convention, done Dec. 7, 1953, 7
26 U.S.T. 479 (entered into force Dec. 7, 1953);

27 (d) Slavery Convention, concluded Sept. 1926, 46 Stat. 2183, T.S. No. 788.
28 60 I.N.T.S 253 (entered into force Mar. 9, 1927);

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- (e) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;
- (f) International Labour Organisation Convention No. 29 Concerning Forced or Compulsory Labor (1930), 39 U.N.T.S. 55 (entered into force May 1, 1932);
- (g) International Labour Organisation Convention No. 105 Concerning the Abolition of Forced Labour Convention;
- (h) International Labour Organisation (ILO) Convention 138 on Minimum Age for Employment (1973) 1015 U.N.T.S. 297 (entered into force June 19, 1976);
- (i) ILO Convention 182 on the Worst Forms of Child Labour (1999) 38 I.L.M. 1207(entered into force November 19, 2000);
- (j) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- (k) Universal Decl. of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- (l) International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
- (m) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984);
- (n) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- (o) Customary international law;
- (p) Federal Common and Statutory Law;
- (q) California state law, including the Code of Business & Professional Conduct, §§17200, *et. seq.*

IX. CLAIMS FOR RELIEF

**COUNT I
FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS
AGAINST ALL DEFENDANTS
THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

64. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1-63 of this Complaint as if fully set forth herein.

1 65. The Former Child Slave Plaintiffs were placed in fear for their lives,
2 were deprived of their freedom, separated from their families and forced to suffer
3 severe physical and mental abuse.

4 66. Defendants' use of forced labor under these conditions of torture
5 violate the law of nations, customary international law, and worldwide industry
6 standards and practices, including, but not limited to those identified in paragraph
7 63.

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

19 68. Defendants' conduct in violation of customary international law
20 either directly caused these injuries, or Defendants are liable for these injuries
21 because they provided knowing, substantial assistance to the direct perpetrators, or
22 because the direct perpetrators were agents, and/or employees of Defendants or of
23 companies that are the alter egos of Defendants.

24 69. The conduct of Defendants was malicious, fraudulent and/or
25 oppressive and done with a willful and conscious disregard for the Former Child
26 Slave Plaintiffs' rights and for the deleterious consequences of Defendants'
27 actions. As a result, the Former Child Slave Plaintiffs have sustained significant
28 injuries and these Plaintiffs will continue to experience pain and suffering and

1 extreme and severe mental anguish and emotional distress. The Former Child
2 Slave Plaintiffs are thereby entitled to compensatory and punitive damages in
3 amounts to be proven at trial.

4
5 **COUNT II**
6 **CRUEL, INHUMAN, OR DEGRADING TREATMENT**
7 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
8 **AGAINST ALL DEFENDANTS**
9 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

10 70. The Former Child Slave Plaintiffs incorporate by reference
11 paragraphs 1-69 of this Complaint as if fully set forth herein.

12 71. The acts described herein had the intent and the effect of grossly
13 humiliating and debasing the Former Child Slave Plaintiffs, forcing them to act
14 against their will and conscience, inciting fear and anguish, and breaking their
15 physical and/or moral resistance.

16 72. Defendants' actions forced the Former Child Slave Plaintiffs against
17 their will and under fear of harm, to labor for Defendants' economic benefit and in
18 doing so the Former Child Slave Plaintiffs were placed in great fear for their lives
19 and forced to suffer severe physical and psychological abuse and agony.

20 73. In acting through the implicit sanction of the state, Defendants acted
21 under color of law and/or in conspiracy or on behalf of those acting under color of
22 official authority, and the injuries inflicted on the Former Child Slave Plaintiffs as
23 a result of the cruel, inhuman and degrading treatment were inflicted deliberately
24 and intentionally through the omission of responsible state officials and/or their
25 agents to act in preventing and/or limiting the trafficking or otherwise the use of
26 child slaves. Upon information and belief, there are also several farms which are
27 owned by government officials, whether directly or indirectly, or are otherwise
28 protected by government officials either through the provision of security services
or through payments made to such officials that allow farms and/or farmer
cooperatives to continue the use of child labor.

1 knowing, substantial assistance to the direct perpetrators, or because the direct
2 perpetrators were agents, and/or employees of Defendants or of companies that are
3 the alter egos of Defendants.

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

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

13
14 **COUNT IV**
15 **BREACH OF CONTRACT UNDER CORPORATE CODE OF CONDUCT**
16 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
17 **AGAINST ALL DEFENDANTS**

18 81. The Former Child Slave Plaintiffs incorporate by reference
19 paragraphs 1 to 80 of this Complaint as if set forth herein.

20 82. As stated in paragraphs 49-51 of this Complaint, each of the
21 Defendants maintain strict business practices, as incorporated into their code of
22 conduct and/or code of ethical business practices, which prohibit the use of forced
23 child labor and that requires compliance with all local and international laws on
24 the issue of child labor.

25 83. Upon information and belief, such ethical business practices
26 regarding forced child labor are incorporated into exclusive buyer contracts,
27 agreements, and/or memorandum of understandings (MOUs) that Defendants
28 maintain with their supplier farms and/or farmer cooperatives, whether directly or
indirectly through specified buyers, agents, or middlemen, and that such

1 provisions were intended to specifically benefit children who would be subject to
2 forced labor.

3 84. In failing to leverage their economic power and operative control
4 over supplier farms and/or buyers to adequately monitor the working conditions
5 on said farms, take adequate steps to ensure compliance by supplier farms, and/or
6 to terminate their business relationship with farms found to be in non-compliance
7 with obligations prohibiting forced child labor, Defendants breached their
8 contractual obligations under their code of conduct or code of ethical business
9 practice to the direct detriment of Plaintiffs and similarly situated Proposed Class
10 Members. Plaintiffs are accordingly entitled to compensatory damages for
11 Defendants' breach in amounts to be ascertained at trial.

12
13 **COUNT V**
14 **NEGLIGENCE AND RECKLESSNESS**
15 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
16 **AGAINST ALL DEFENDANTS**

17 85. The Former Child Slave Plaintiffs incorporate by reference
18 paragraphs 1 to 84 of this Complaint as if set forth herein.

19 86. Defendants owed a duty to the Former Child Slave Plaintiffs to
20 exercise due care in conducting its international ventures. Defendants breached
21 their duty of care by engaging in business activities which failed to adequately
22 monitor and prevent the use of forced child labor on the farms from which they
23 source cocoa beans.

24 87. Defendants knew or should have known, through due diligence, that
25 the use of forced child labor was prevalent in the West Africa region and likely to
26 be used by the farmers from which they sourced cocoa beans. Documented reports
27 of child labor in the region were publicly available as early 1994. Accordingly,
28 Defendants knew or should have known that specific and concrete actions would
be necessary to ensure compliance with local law and with international human

1 rights conventions that prohibit the use of forced child labor.

2 88. As a direct and proximate result of Defendants' breaches of duties,
3 the Former Child Slave Plaintiffs have suffered injuries to their persons as
4 described herein. Such Plaintiffs are thereby entitled to compensatory and punitive
5 damages in amounts to be ascertained at trial.

6
7 **COUNT VI**
8 **UNJUST ENRICHMENT**
9 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
10 **AGAINST ALL DEFENDANTS**

11 89. The Former Child Slave Plaintiffs incorporate by reference
12 paragraphs 1 to 88 of this Complaint as if set forth herein.

13 90. As a result of the forced labor practices utilized by farms and/or
14 farmer cooperatives from which Defendants sourced cocoa beans, Defendants
15 received benefits by being able to purchase cocoa beans from such farms at
16 significantly lower prices as the farms' total labor costs were greatly diminished
17 by reliance on forced child labor.

18 91. Defendants' conduct thereby constitutes unjust enrichment and
19 Defendants are under a duty of restitution to the Former Child Slave Plaintiffs for
20 the benefits received therefrom and these Plaintiffs are entitled to compensatory
21 and punitive damages in amounts to be ascertained at trial.

22 **COUNT VII**
23 **VIOLATION OF CALIFORNIA BUSINESS**
24 **AND PROFESSIONS CODE § 17200, et. seq.**
25 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

26 92. Both the Former Child Slave Plaintiffs and Global Exchange
27 incorporate by reference paragraphs 1-91 of this Complaint as if set forth herein.

28 93. Together all Plaintiffs bring a cause of action pursuant to California's

1 Business and Professions Code § 17204. The conduct of the Defendants named
2 herein has and continues to be detrimental to the general public, and Plaintiffs are
3 seeking to enforce important rights affecting the public interest within the meaning
4 of the Code of Civil Procedure § 1021.5.

5 94. The fraudulent and deceptive practices of Defendants alleged herein
6 constitute ongoing and continuous unfair business practices within the meaning of
7 California's Business and Professions Code § 17200. Such practices include, but
8 are not limited to, the knowing use of forced labor in the cultivating and
9 harvesting of cocoa beans by child slaves in Cote d'Ivoire, and the making of
10 material misrepresentations and omissions, whether directly or indirectly, through
11 various trade associations including, but not limited to, the National Confectionary
12 Association, the Chocolate Manufacturers Associations, and the World Cocoa
13 Foundation.

14 95. These material misrepresentations and omissions include, but are not
15 limited to: statements made to either deny the use of child slaves and/or to create
16 the false impression that the problem of child slaves is being adequately
17 addressed, either directly by Defendants and/or through their various trade
18 associations, including that an independent, credible system of monitoring,
19 certification, and verification would be in place by July 1, 2005.

20 96. The conduct as alleged herein constitutes a violation of California
21 laws relating to labor practices, criminal statutes, as well as obligations under
22 customary international law. The use of such unfair, illegal, and forced child labor
23 creates an unfair business advantage over competitors within California and the
24 United States, and members of the public have been in the past and will likely be
25 in the future damaged by these practices, as such persons were falsely made to
26 believe that the chocolate produced by Defendants was either not made with child
27 labor and/or that the use of child labor was being adequately addressed.

28 97. Plaintiff Global Exchange was forced to expend significant resources

1 in educating their members and the general public about the use of child labor by
2 Defendants, by promoting and selling “fairly traded” chocolate, and effectively
3 monitoring the corporate commitments made by Defendants, whether directly or
4 indirectly. As a result of Defendants’ failure to adequately address the issue of
5 child labor, utilize fair trade cooperatives, and compensate the Former Child
6 Slaves, Plaintiff Global Exchange has lost significant resources. In addition,
7 Global Exchange has fair trade stores (both physical and on the internet) selling
8 fair trade chocolate, and it has been forced to pay a premium for this chocolate due
9 to the unfair competition of slave produced chocolate.

10 98. Plaintiffs therefore collectively seek injunctive relief, disgorgement
11 of all profits resulting from these unfair business practices, restitution and other
12 appropriate relief on behalf of themselves and members of the general public as
13 provided in Business and Professions Code
14 § 17203.

15 **X. LIABILITY**

16 99. Both the Former Child Slave Plaintiffs and Global Exchange
17 incorporate by reference paragraphs 1-98 of this Complaint as if set forth herein.

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

25 101. To the extent that Defendants can be said to have acted indirectly,
26 Defendants are vicariously liable for the actions of their agents, employees, co-
27 venturers and/or partners, including specifically any farm and/or farmer
28 cooperative which held any agreement, contract, and/or memorandum of

1 understanding, written or oral, to supply cocoa beans to such Defendants.

2 102. To the extent that any such agent, employee, co-venturers and/or
3 partner used and/or facilitated the use of child slave labor and/or made material
4 misrepresentations and omissions, such entity was acting within the course and
5 scope of such agency, enterprise, or venture and Defendants confirmed and
6 ratified such conduct.

7 103. Defendants are further liable for the acts of any and all corporations
8 and/or entities found to be their alter ego. Defendants' control over these entities'
9 operations, particularly with respect to the sourcing, purchasing, manufacturing,
10 distribution, and/or retailing of cocoa and cocoa derived products, renders them
11 mere conduits for the receipt or transfer of funds and/or products with respect to
12 cocoa products derived from the Cote d' Ivoire. Such inherent and pervasive
13 failure to maintain separate identities constitutes improper conduct and disrespects
14 the privilege of using the corporate form to conduct business.

15
16 **XI. DEMAND FOR JURY TRIAL**

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

18
19 **XII. PRAYER FOR RELIEF**

20 105. WHEREFORE, Plaintiffs respectfully request the Court to:

21 (a) enter judgment in favor of the Former Child Slave Plaintiffs on all
22 counts of the Complaint;

23 (b) award the Former Child Slave Plaintiffs compensatory and punitive
24 damages;

25 (c) grant the Former Child Slave Plaintiffs equitable relief including, but not
26 limited to, an injunction prohibiting further damage to their persons, and their
27 rights under the laws of California and customary international law;

28 (d) award all Plaintiffs injunctive relief, disgorgement of all profits

1 resulting from these unfair business practices alleged herein such that restitution is
2 made to the general public and Global Exchange;

3 (e) award Plaintiffs the costs of suit including reasonable attorneys' fees;
4 and

5 (f) award Plaintiffs such other and further relief as the Court deems just
6 under the circumstances.

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11 Dated: July 10, 2009

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13 CONRAD & SCHERER, LLP
14 *Attorneys for All Plaintiffs*
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