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

14
15 JOHN DOE I, Individually and on behalf of
Proposed Class Members; JOHN DOE II,
16 Individually and on behalf of Proposed Class
17 Members; JOHN DOE III, Individually and on
18 behalf of Proposed Class Members; and
GLOBAL EXCHANGE

19
20 Plaintiffs,

21 v.

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

27 Defendants.
28

CASE NO.:

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE RELIEF AND
DAMAGES**

JURY TRIAL DEMANDED

1 **I. NATURE OF THE ACTION**

2 1. Plaintiffs John Doe I, John Doe II, and John Doe III (referred to herein as the
3 “Former Child Slave” Plaintiffs) are all former child slaves of Malian origin who were trafficked
4 and forced to work harvesting and/or cultivating cocoa beans on farms in Cote d’Ivoire, which
5 supply cocoa beans to the Defendant companies named herein. The Former Child Slave
6 Plaintiffs bring this action on behalf of themselves and all other similarly situated former child
7 slaves of Malian origin against Defendants: Nestlé, S.A., Nestlé, U.S.A., and Nestlé Cote
8 d’Ivoire, S.A. (together as “Nestlé”); Cargill, Incorporated (“Cargill, Inc.”), Cargill Cocoa, and
9 Cargill West Africa, S.A. (together as “Cargill”); and Archer Daniels Midland Company
10 (“ADM”) (referred to collectively as the “Chocolate Importers” or Defendants) for the forced
11 labor and torture they suffered as a result of the wrongful conduct either caused and/or aided and
12 abetted by these corporate entities. Specifically, the Former Child Slave Plaintiffs assert claims
13 under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, and the Torture Victim Protection Act
14 (“TVPA”), 28 U.S.C. § 1350, *note*. The Former Child Slaves also bring claims for forced labor
15 and involuntary servitude under the U.S. Constitution, Amendment 13, 18 U.S.C. §§ 1589, 1590,
16 1595 and under California’s Constitution Article 1, Section 6, as well as for breach of contract,
17 negligence, unjust enrichment and unfair business practices under California’s Business &
18 Professions Code §§ 17200, *et. seq.*

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

1 rights lawsuits with the passage of the ATS and TVPA.

2 3. The Former Child Slave Plaintiffs bring this action using pseudonyms due to fear
3 of retaliation against themselves and their families by those persons who trafficked them into
4 Cote d'Ivoire; the owners of farms on which they were enslaved; and by the local buyers, who
5 are employees and/or agents of the Defendants.

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

11 **II. JURISDICTION AND VENUE**

12 5. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over this
13 dispute pursuant to the ATS, 28 U.S.C. § 1350, and the TVPA, 28 U.S.C. § 1350, *note*, for the
14 alleged violations of international human rights law. The ATS provides federal jurisdiction for
15 "any civil action by an alien for a tort only, committed in violation of the law of nations or a
16 treaty of the United States." The TVPA provides federal jurisdiction for acts of torture
17 committed under the color of foreign authority.

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

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

1 **III. PARTIES**

2 **A. Former Child Slave Plaintiffs**

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

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

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

15
16 **B. Former Child Slave Plaintiffs Class Action Allegations**

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

19 All individuals during the period 1996 through the present who reside or did
20 reside in the country of Mali, West Africa, and who were trafficked from Mali
21 to any cocoa producing region of Cote d' Ivoire and forced to perform labor
22 as children in violation of International Labor Conventions 138 and 182 on any
23 farm and/or farmer cooperative within any cocoa producing region of Cote d' Ivoire,
24 including but not limited to the geographical regions of Bouake, Man, Daloa,
25 and San Pédro, for the purpose of harvesting and/or cultivating cocoa beans that
26 were supplied, either directly or indirectly, to any of the named Defendants herein.

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

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

3 a) Whether Plaintiffs and Proposed Class Members were unlawfully trafficked for
4 purposes of forced child labor, in violation of International Labor Conventions 138 and
5 182, so as to work on cocoa farms, which supplied cocoa beans to the named Defendants
6 herein?

7 b) Whether Defendants caused and/or aided and abetted the forced labor and
8 torture imposed on Plaintiffs by either providing logistical support to the supplier farms
9 and/or failing to provide sufficient logistical support and/or take adequate action to
10 prevent and stop such forced child labor in violation of international law, federal law and
11 California state law?

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

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

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

25
26 **C. Global Exchange**

27 17. Plaintiff Global Exchange is a San Francisco based human rights organization
28 dedicated to promoting environmental, political and social justice globally. Global Exchange's

1 mission includes: 1) educating the U.S. public about critical global issues; 2) promoting respect
2 for the rights outlined in the Universal Declaration of Human Rights; 3) encouraging both the
3 U.S. government and private institutions, including corporations, to support policies that promote
4 democratic and sustainable development; 4) linking people in the U.S. with people in the global
5 South who are working for political, social and environmental justice. Its membership includes
6 American consumers of, among other things, chocolate, and other cocoa-based products. Plaintiff
7 Global Exchange brings this action on behalf of itself and its members injured by Defendants'
8 unfair business practices.

9 10 **D. Chocolate Importer Defendants**

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

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

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

27 21. Defendant Archer-Daniels-Midland Company (ADM) is a publicly held Delaware
28 corporation with its principal place of business in Decatur, Illinois. It is engaged in the business

1 of procuring, transporting, storing, processing and merchandising agricultural commodities and
2 products. This includes specifically the processing of cocoa beans from Cote d' Ivoire and the
3 production of cocoa liquor, cocoa butter, cocoa powder, chocolate and various cocoa compounds
4 for the food processing industry primarily in the United States market, including California. In
5 addition to providing cocoa products to California manufacturers and processors, ADM owns
6 and operates several processing plants in California which process rice, bakery mix and specialty
7 ingredients.

8 22. Defendant Cargill, Incorporated Company ("Cargill, Inc.") is one of the largest
9 privately held corporate providers of food and agricultural products and services worldwide with
10 over 100,000 employees in 59 countries. Its activities include cultivating and processing grain,
11 oilseeds and other agricultural commodities, including cocoa for distribution to food producers.
12 Headquartered in Minneapolis, it is a family business that is tightly controlled and centrally
13 managed.

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

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

1 **F. Unknown Corporate Defendants**

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

9
10 **IV. AGENCY**

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

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

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

24
25 **V. ALTER EGO**

26 29. Plaintiffs contend that each of the subsidiaries identified herein is and was, at all
27 relevant times, the alter-ego of the parent companies identified herein. Specifically, the parent
28 entities control every aspect of the subsidiaries' operations, particularly with respect to the

1 sourcing, purchasing, manufacturing, distribution, and/or retailing of cocoa and cocoa derived
2 products, and have used them merely as conduits for the receipt or transfer of funds and/or
3 products with respect to cocoa products derived from the Cote d' Ivoire.

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

9
10 **VII. AIDING AND ABETTING**

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

17
18 **VI. VICARIOUS LIABILITY**

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

23 33. To the extent that any such agent, employee, co-venturers and/or partner used
24 and/or facilitated the use of child slave labor and/or made material misrepresentations and
25 omissions, such entity was acting within the course and scope of such agency, enterprise, or
26 venture and Defendants confirmed and ratified such conduct.

1 **VIII. BACKGROUND FACTS**

2 34. Cote d'Ivoire is 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.

4 35. The pervasive use of child labor on cocoa plantations in Cote d'Ivoire that supply
5 U.S. importers is well-documented. The U.S. State Department, the International Labor
6 Organization (ILO), and UNICEF, among others, have confirmed since the late 1990s the
7 existence of child slavery with documented reports and statistics. Notable non-governmental
8 organizations have also independently confirmed that many, if not most, of the children working
9 on Ivorian cocoa plantations are being forced to work as slaves without any remuneration.

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

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

28 38. Defendants, because of their economic leverage in the region and exclusive buyer

1 agreements and/or arrangements, whether written or oral, each had the ability to control and/or
2 limit the use of forced child labor by the supplier farms and/or farmer cooperatives from which
3 they purchased their cocoa beans, and indeed maintained specific policies against the use of such
4 forced labor practices.

5 39. Defendant Nestlé is directly involved in the purchasing and processing of cocoa
6 beans from Cote d' Ivoire. Its Principles of Purchasing states: that it “actively participate[s] as the
7 first link in an integrated supply chain”; that it “develop[s] supplier relationships”; and that it
8 “continually monitor[s] the performance, reliability and viability of suppliers”. It also requires
9 all of its subcontractors and Outsourcing Contractors to adhere to Nestlé’s Corporate Business
10 Principles, and chooses its Suppliers based on, *inter alia*, their “minimum corporate social
11 responsibility standards”.

12 40. Nestlé’s Standards of Business Conduct states that “Nestlé is against all forms of
13 exploitation of children. Nestlé does not provide employment to children before they have
14 reached the age to have completed their compulsory education . . . and expects its suppliers to
15 apply the same standards. Nestlé abides by national laws in all countries in which it has
16 operations and complies with the International Labour Organisation (ILO) Convention 138 on
17 Minimum Age for Employment and the ILO Convention 182 on the Worst Forms of Child
18 Labour.”

19 41. Defendant ADM is also directly involved in the purchasing and processing of
20 cocoa beans from Cote d' Ivoire. Its Business Code of Conduct and Ethics, known as “The ADM
21 Way,” states with respect to Child Labor that “ADM will not condone the employment or
22 exploitation of legally underage workers or forced labor and will not knowingly use suppliers
23 who employ such workers or labor.”

24 42. ADM further states that its Code, including its Child Labor provision, is “a
25 statement of the values to be recognized in the conduct of ADM’s business by its employees,
26 officers, directors and other agents. “It is [also] the responsibility of all . . . its subsidiaries
27 worldwide to comply with this Business Code of Conduct and Ethics . . . [and that] the values
28 explained in this [Code] are to be consistently applied throughout the world in ADM’s business,

1 not only when it's convenient or consistent with other business objectives, but in all situations."
2 ADM also asserts that it "will deal fairly with its customers, suppliers and business partners [and
3 that] no ADM representative should take unfair advantage of anyone through. . .
4 misrepresentation of material facts or any other unfair dealing practice."

5 43. Like Nestlé and ADM, Defendant Cargill's Position Paper on cocoa industry
6 labor explicitly states that "[a]busive treatment towards children in agriculture or in any other
7 industry is not acceptable." Cargill's International Code of Conduct also states that Cargill will
8 "comply with the letter and spirit of all applicable . . . laws designed to accomplish equal and fair
9 opportunities in employment."

11 **IX. HARM TO THE INDIVIDUAL PLAINTIFFS**

12 **A. Former Child Slave Plaintiffs**

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

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

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

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

25
26 **B. Global Exchange**

27 47. Global Exchange is a San Francisco based human rights organization dedicated to
28 promoting environmental, political and social justice globally. Global Exchange's members, who

1 are American consumers of cocoa-based products, have suffered specific and concrete injuries
2 due to Defendants' use of slave child labor on farms from which their cocoa is sourced. In
3 addition Global Exchange has fair trade stores (both physical and on the internet) selling fair
4 trade chocolate, and have been forced to pay a premium for this chocolate due to the unfair
5 competition of slave produced chocolate.

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

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

14 15 **X. DEFENDANTS' VIOLATIONS OF LAW**

16 50. The causes of action maintained herein arise under and violate the following laws,
17 agreements, conventions, resolutions and treaties:

- 18 (a) Alien Tort Statute (ATS), 28 U.S.C. § 1350;
19 (b) Torture Victim Protection Act, 28 U.S.C. § 1350, *note*;
20 (c) Protocol Amending the Slavery Convention, done Dec. 7, 1953, 7 U.S.T. 479
21 (entered into force Dec. 7, 1953);
22 (d) Slavery Convention, concluded Sept. 1926, 46 Stat. 2183, T.S. No. 788. 60 I.N.T.S
23 253 (entered into force Mar. 9, 1927);
24 (e) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and
25 Institutions and Practices Similar to Slavery;
26 (f) International Labour Organisation Convention No. 29 Concerning Forced or
27 Compulsory Labor (1930), 39 U.N.T.S. 55 (entered into force May 1, 1932);
28 (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);

- 1 (I) ILO Convention 182 on the Worst Forms of Child Labour (1999) 38 I.L.M. 1207
2 (entered into force November 19, 2000);
- 3 (j) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- 4 (k) Universal Decl. of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- 5 (l) International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N.
6 Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
- 7 (m) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
8 Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc.
9 A/39/51 (1984);
- 10 (n) Declaration on the Protection of All Persons From Being Subjected to Torture and
11 Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30
12 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- 13 (o) Customary international law;
- 14 (p) Federal Common and Statutory Law, including the United States Constitution;
- 15 (q) California state law, including the Code of Business & Professional Conduct,
16 §§17200, *et. seq.*

17 **XI. CLAIMS FOR RELIEF**

18 **COUNT I**

19 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS**

20 **AGAINST ALL DEFENDANTS**

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

22 51. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1-50 of
23 this Complaint as if fully set forth herein.

24 52. The Former Child Slave Plaintiffs were placed in fear for their lives, were
25 deprived of their freedom, separated from their families and forced to suffer severe physical and
26 mental abuse.

27 53. Defendants' use of forced labor under these conditions of torture violate the law
28 of nations, customary international law, and worldwide industry standards and practices,
including, but not limited to those identified in paragraph 50.

54. To the extent necessary, Defendants' actions occurred under color of law and/or in
conspiracy or on behalf of those acting under color of official authority, such that the injuries

1 inflicted on these Plaintiffs as a result of the forced labor were inflicted deliberately and
2 intentionally through the acts and/or omission of responsible state officials and/or their agents to
3 act in preventing and/or limiting the trafficking or otherwise the use of child slaves. Upon
4 information and belief, there are also several farms which are owned by government officials,
5 whether directly or indirectly, or are otherwise protected by government officials either through
6 the provision of security services or through payments made to such officials that allow farms
7 and/or farmer cooperatives to continue the use of child labor.

8 55. Defendants' conduct in violation of customary international law has caused the
9 Former Child Slave Plaintiffs significant injury and these Plaintiffs will continue to experience
10 pain and suffering, and extreme and severe mental anguish and emotional distress.

11 56. The conduct of Defendants was malicious, fraudulent and/or oppressive and done
12 with a willful and conscious disregard for the Former Child Slave Plaintiffs' rights and for the
13 deleterious consequences of Defendants' actions. The Former Child Slave Plaintiffs are thereby
14 entitled to compensatory and punitive damages in amounts to be proven at trial.

15
16 **COUNT II**
17 **CRUEL, INHUMAN, OR DEGRADING TREATMENT**
18 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
19 **AGAINST ALL DEFENDANTS**
20 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

21 57. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1-56 of
22 this Complaint as if fully set forth herein.

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

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

1 payments made to such officials that allow farms and/or farmer cooperatives to continue the use
2 of child labor.

3 64. The acts described herein placed all members of the Former Child Slave Plaintiffs
4 in great fear for their lives and caused them to suffer severe physical and mental pain and
5 suffering.

6 65. The acts described herein were inflicted deliberately and intentionally for
7 purposes which included, among others, punishing the victim or intimidating the victim or third
8 persons, and constitute torture in violation of the law of nations under both the ATS and the
9 TVPA. The Former Child Slave Plaintiffs are thereby entitled to compensatory and punitive
10 damages in amounts to be proven at trial.

11
12 **COUNT IV**
13 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS**
14 **AGAINST ALL DEFENDANTS**
15 **UNITED STATES CONSTITUTION AMENDMENT XIII**

16 66. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1 to 65 of this
17 Complaint as if fully set forth herein.

18 67. The Former Child Slave Plaintiffs were knowingly recruited, harbored, transported,
19 provided, or obtained by Defendants, or those acting in concert with them, for the purposes of
20 forcing them to work on cocoa farms and plantations.

21 68. The labor of the Former Child Slave Plaintiffs were knowingly provided or obtained
22 by Defendants, or those acting in concert with them, by means of severe physical and mental abuse
23 and restraint against them and other persons, or by schemes, plans, patterns, and duress intended to
24 induce fear of severe physical and mental abuse and restraint against them and other persons.

25 69. The conduct of Defendants was malicious, fraudulent and/or oppressive and done
26 with a willful and conscious disregard for the Former Child Slave Plaintiffs' rights and for the
27 deleterious consequences of Defendants' actions.

28 70. Through such actions, Defendants and those working in concert with them violated
the Thirteenth Amendment to the United States Constitution. The Former Child Slave Plaintiffs are

1 thereby entitled to compensatory and punitive damages in amounts to be proven at trial, and
2 reasonable attorneys' fees.

3
4 **COUNT V**
5 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS**
6 **AGAINST ALL DEFENDANTS**
7 **18 U.S.C. §§ 1589, 1590, 1595**

8 71. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1 to 70 of this
9 Complaint as if fully set forth herein.

10 72. The Former Child Slave Plaintiffs were knowingly recruited, harbored, transported,
11 provided, or obtained by Defendants, or those acting in concert with them, for the purposes of
12 forcing them to work on cocoa farms and plantations.

13 73. The labor of the Former Child Slave Plaintiffs were knowingly provided or obtained
14 by Defendants, or those acting in concert with them, by means of severe physical and mental abuse
15 and restraint against them and other persons, or by schemes, plans, patterns, and duress intended to
16 induce fear of severe physical and mental abuse and restraint against them and other persons.

17 74. The conduct of Defendants was malicious, fraudulent and/or oppressive and done
18 with a willful and conscious disregard for the Former Child Slave Plaintiffs' rights and for the
19 deleterious consequences of Defendants' actions.

20 75. Through such actions, Defendants and those working in concert with them violated
21 18 U.S.C. §§ 1589, 1590, and 1595. The Former Child Slave Plaintiffs are thereby entitled to
22 compensatory and punitive damages in amounts to be proven at trial, and reasonable attorneys' fees.

23 **COUNT VI**
24 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS**
25 **AGAINST ALL DEFENDANTS**
26 **VIOLATION OF THE CALIFORNIA CONSTITUTION, ART. 1 § 6**

27 76. The Former Child Slave Plaintiffs incorporate by reference paragraphs 1 to 75 of
28 this Complaint as if fully set forth herein.

77. The Former Child Slave Plaintiffs were knowingly recruited, harbored,

1 transported, provided, or obtained by Defendants, or those acting in concert with them, for the
2 purposes of forcing them to work on cocoa farms and plantations.

3 78. The labor of the Former Child Slave Plaintiffs was knowingly provided or
4 obtained by Defendants, or those acting in concert with them, by means of severe physical and
5 mental abuse and restraint against them and other persons, or by schemes, plans, and patterns and
6 duress intended to induce fear of severe physical and mental abuse and restraint against them and
7 other persons.

8 79. Through such actions, Defendants and those working in concert with them
9 violated California Constitution, Art. 1, § 6, which prohibits slavery and involuntary servitude.
10 Plaintiffs' claims under the California Constitution are actionable pursuant to § 52.1 of the
11 California Civil Code, as amended July 7, 2000.

12 80. The conduct of Defendants was malicious, fraudulent and/or oppressive and done
13 with a willful and conscious disregard for the Former Child Slave Plaintiffs' rights and for the
14 deleterious consequences of Defendants' actions. Plaintiffs are thereby entitled to compensatory
15 and punitive damages in amounts to be proven at trial, and reasonable attorneys' fees.

16
17 **COUNT VII**
18 **BREACH OF CONTRACT UNDER CORPORATE CODE OF CONDUCT**
19 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
20 **AGAINST ALL DEFENDANTS**

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

23 82. As stated in paragraphs 39 to 43 of this Complaint, each of the Defendants
24 maintain strict business practices, as incorporated into their code of conduct and/or code of
25 ethical business practices, which prohibit the use of forced child labor and that requires
26 compliance with all local and international laws on the issue of child labor.

27 83. Upon information and belief, such ethical business practices regarding forced
28 child labor are incorporated into exclusive buyer contracts, agreements, and/or memorandum of
understandings (MOUs) that Defendants maintain with their supplier farms and/or farmer

1 cooperatives, whether directly or indirectly through specified buyers, agents, or middlemen, and
2 that such provisions were intended to specifically benefit children who would be subject to
3 forced labor.

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

12
13 **COUNT VIII**
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 paragraphs 1 to 84 of
18 this Complaint as if set forth herein.

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

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

88. As a direct and proximate result of Defendants' breaches of duties, the Former

1 Child Slave Plaintiffs have suffered injuries to their persons as described herein. Such Plaintiffs
2 are thereby entitled to compensatory and punitive damages in amounts to be ascertained at trial.

3
4 **COUNT IX**
5 **UNJUST ENRICHMENT**
6 **BY ALL FORMER CHILD SLAVE PLAINTIFFS**
7 **AGAINST ALL DEFENDANTS**

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

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

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

18 **COUNT X**
19 **VIOLATION OF CALIFORNIA BUSINESS**
20 **AND PROFESSIONS CODE § 17200, et. seq.**
21 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

24 93. Together all Plaintiffs bring a cause of action pursuant to California's
25 Business and Professions Code § 17204. The conduct of the Defendants named herein has and
26 continues to be detrimental to the general public, and Plaintiffs are seeking to enforce important
27 rights affecting the public interest within the meaning of the Code of Civil Procedure § 1021.5.

28 94. The fraudulent and deceptive practices of Defendants alleged herein constitute

1 ongoing and continuous unfair business practices within the meaning of California's Business
2 and Professions Code § 17200. Such practices include, but are not limited to, the knowing use of
3 forced labor in the cultivating and harvesting of cocoa beans by child slaves in Cote d'Ivoire, and
4 the making of material misrepresentations and omissions, whether directly or indirectly, through
5 various trade associations including, but not limited to, the National Confectionary Association,
6 the Chocolate Manufacturers Associations, and the World Cocoa Foundation.

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

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

19 97. Plaintiff Global Exchange was forced to expend significant resources in educating
20 their members and the general public about the use of child labor by Defendants, by promoting
21 and selling "fairly traded" chocolate, and effectively monitoring the corporate commitments
22 made by Defendants, whether directly or indirectly. As a result of Defendants' failure to
23 adequately address the issue of child labor, utilize fair trade cooperatives, and compensate the
24 Former Child Slaves, Plaintiff Global Exchange has lost significant resources. In addition,
25 Global Exchange has fair trade stores (both physical and on the internet) selling fair trade
26 chocolate, and have been forced to pay a premium for this chocolate due to the unfair
27 competition of slave produced chocolate.

28 98. Plaintiffs therefore collectively seek injunctive relief, disgorgement of all profits

1 resulting from these unfair business practices, restitution and other appropriate relief on behalf of
2 themselves and members of the general public as provided in Business and Professions Code
3 § 17203.

4 **XI. DEMAND FOR JURY TRIAL**

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

7 **XII. PRAYER FOR RELIEF**

8 100. WHEREFORE, Plaintiffs respectfully request the Court to:

- 9 (a) enter judgment in favor of the Former Child Slave Plaintiffs on all counts of the
10 Complaint;
- 11 (b) award the Former Child Slave Plaintiffs compensatory and punitive damages;
- 12 (c) grant the Former Child Slave Plaintiffs equitable relief including, but not limited
13 to, an injunction prohibiting further damage to their persons, and their rights under the laws of
14 California and customary international law;
- 15 (d) award all Plaintiffs injunctive relief, disgorgement of all profits resulting from
16 these unfair business practices alleged herein such that restitution is made to the general public
17 and Global Exchange;
- 18 (e) award Plaintiffs the costs of suit including reasonable attorneys' fees; and
- 19 (f) award Plaintiffs such other and further relief as the Court deems just under the
20 circumstances.

21 Dated: _____

22 _____
23 Terry Collingsworth, *Esq.* (DC Bar # 471830)
INTERNATIONAL LABOR
RIGHTS FUND

24 _____
25 Paul Hoffman, *Esq.* (S.B. # 71244)
26 SCHONBRUN, DeSIMONE, SEPLOW,
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27 *Attorneys for All Plaintiffs*