

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CLAUDIA BALCERO GIRALDO, *et al.*, )

)

Plaintiffs, )

)

Case No. 2:09-cv-1041-RDP

)

PUBLIC REDACTED

)

VERSION

DRUMMOND COMPANY, INC., *et al.*, )

)

Defendants. )

)

PLAINTIFFS' OPPOSITION TO DEFENDANT AUGUSTO JIMENEZ'  
MOTION FOR SUMMARY JUDGMENT

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
II.	PLAINTIFFS' STATEMENT OF FACTS IN OPPOSITION .....	3
	A. Plaintiffs' Response to Jimenez' Statement of Facts .....	3
	B. Plaintiffs' Statement of Undisputed Material Facts .....	4
	C. Plaintiffs' Statement of Disputed Material Facts .....	10
III.	ARGUMENT .....	14
	A. The Doctrine of Superior Responsibility Applies to Corporate Officers Under International Law .....	14
	B. A Jury Could Find Jimenez Liable Under a Theory of Superior Responsibility .....	15
	1. Wrongdoing by Jimenez' Subordinates .....	16
	2. Jimenez' Effective Control Over the Wrongdoers .....	17
	3. Jimenez Knew or Should Have Known About the Wrongdoing .....	18
	a. Evidence of Jimenez' Knowledge of the Wrongdoing .....	18
	b. Blanco and Charris' Testimony Is Admissible .....	21
	4. Jimenez Failed to Prevent or Punish the Wrongdoing .....	23
	C. Jimenez Approved and Ratified DLTD's Torts .....	24
	D. Jimenez Aided and Abetted and Conspired with the AUC .....	26

E.	Jimenez Ratified the AUC's Murders .....	27
IV.	CONCLUSION .....	30

## TABLE OF AUTHORITIES

### CASES

<i>Bourjaily v. U.S.</i> , 483 U.S. 171 (1987) .....	22
<i>Chavez v. Carranza</i> , 559 F.3d 486 (6th Cir. 2009) .....	14, 23
<i>Cost Recovery Servs. LLC v. Alltel Commc'ns, Inc.</i> , 259 F. App'x 223 (11th Cir. 2007) .....	2
<i>Crigler v. Salac</i> , 438 So. 2d 1375 (Ala. 1983) .....	24, 26
<i>Demers v. Adams Homes of Nw. Fla., Inc.</i> , 321 F. App'x 847 (11th Cir. 2009) .....	21
<i>Doe v. Qi</i> , 349 F. Supp. 2d 1258 (N.D. Cal. 2004) .....	18
<i>E. Ala. Behavior Med., P.C. v. Chancey</i> , 883 So. 2d 162 (Ala. 2003) .....	28
<i>Ford ex rel. Estate of Ford v. Garcia</i> , 289 F.3d 1283 (11th Cir. 2002) .....	14, 15, 17, 18, 23, 24
<i>In re Yamashita</i> , 327 U.S. 1 (1946) .....	18
<i>Jones v. Childers</i> , 18 F.3d 899 (11th Cir. 1994) .....	21
<i>Kadic v. Karadzic</i> , 70 F.3d 232 (2d Cir. 1995) .....	14

<i>Nahimana v. Prosecutor</i> , Case No. ICTR-99-52-A (ICTR Nov. 28, 2007) . . . . .	15, 16, 18, 19, 23
<i>Onyx Env'tl. Servs., LLC v. Maison</i> , 407 F. Supp. 2d 874 (N.D. Ohio 2005) . . . . .	25
<i>Pescia v. Auburn Ford-Lincoln Mercury Inc.</i> , 68 F. Supp. 2d 1269 (M.D. Ala. 1999) . . . . .	26
<i>Prosecutor v. Delalic</i> , Case No. IT-96-21-A (ICTY Feb. 20, 2001) . . . . .	14, 17, 19
<i>Prosecutor v. Musema</i> , Case No. ICTR-96-13-T (ICTR Jan. 27, 2000) . . . . .	15
<i>Prosecutor v. Oric</i> , Case No. IT-03-68-T (ICTY June 30, 2006) . . . . .	16
<i>U.S. v. Ammar</i> , 714 F.2d 238 (3d Cir.1983) . . . . .	23
<i>U.S. v. Joshi</i> , 896 F.2d 1303 (11th Cir. 1990) . . . . .	20
<i>U.S. v. McMurray</i> , 34 F.3d 1405 (8th Cir. 1994) . . . . .	23
<i>U.S. v. Myers</i> , 972 F.2d 1566 (11th Cir. 1992) . . . . .	27
<i>U.S. v. Siegelman</i> , 640 F.3d 1159 (11th Cir. 2011) . . . . .	23

**RULES**

Fed. R. Evid. 404 ..... 21

Fed. R. Evid. 801 ..... 22, 23

**OTHER AUTHORITIES**

3A Fletcher Encyclopedia of the Law of Corporations § 1135 (2012) ..... 24

S. Rep. No. 102-249, 102d Cong., 1st Sess. (1991) ..... 18

## I. INTRODUCTION AND SUMMARY OF ARGUMENT

The law is clear that those who aid and abet or conspire with murderers; those who ratify the acts of murderers; those who know or should know that their subordinates have participated in such crimes; or those who approve the crimes of the companies they lead are just as liable as the person who literally pulled the trigger. Augusto Jimenez' opening argument—that Plaintiffs do not claim that he “directly participated in the killings at issue here” (Mot. at 8)—is thus irrelevant given Plaintiffs' focus on and evidence supporting the other theories of liability.

Following the lead of his co-Defendants, Jimenez ignores key evidence against him. For example, Drummond employees reporting directly to Jimenez, including Alfredo Araujo and General Rafael Peña, played key roles in Drummond's AUC funding. Jimenez likewise knew about the scheme in which security advisor Jim Adkins agreed to provide contractor Jaime Blanco with significant funds from Drummond to pass on to the AUC. Furthermore, Jimenez was personally involved in the arrangement for security contractor Secolda to make payments to the AUC. Any of this evidence standing alone is enough to defeat summary judgment; joined with the additional evidence presented below, it is clear that the jury should decide Plaintiffs' claims against Jimenez.

Notably, Plaintiffs have presented far more evidence incriminating Jimenez here than was presented in *Drummond I*, where nonetheless the District Court

largely denied Jimenez' motion for summary judgment. DLTD Pls' Ex. 1, Doc. 329 at 4, Case No. CV-03-BE-0575-W (Mar. 5, 2007).<sup>1</sup> There, the plaintiffs did not have much more admissible evidence against Jimenez than certain threats he made, including saying that "the fish dies by opening his mouth." Pls' Ex. 1, Doc. 314 at 18-19, Case No. CV-03-BE-0575-W (Dec. 22, 2006). By contrast, Plaintiffs have now amassed testimony from former AUC members and collaborators, including Jaime Blanco, Jairo Charris, El Tigre, Samario, and Jose Gelvez, which directly links Jimenez and his subordinates to the murders at issue.

Like his fellow individual defendant Mike Tracy, Jimenez also utterly fails to address Plaintiffs' superior responsibility theory.<sup>2</sup> Jimenez has thus waived any argument that he merits summary judgment on that theory. *See Cost Recovery Servs. LLC v. Alltel Commc'ns, Inc.*, 259 F. App'x 223, 226 (11th Cir. 2007); *see also* Tracy Opp. at 1-2. In summary, Jimenez, like his co-Defendants, advances the position that nobody should be held legally responsible for Drummond's longstanding support for the AUC's reign of terror in the area where Drummond

<sup>1</sup> To avoid duplicative filings, Plaintiffs are generally not re-filing copies of exhibits that have already been submitted in support of prior briefs by Plaintiffs or Defendants. Plaintiffs will simply cite to previously filed exhibits. Exhibits cited as "DLTD Ex." were filed with DLTD's motion for summary judgment. Exhibits cited as "DLTD Pls' Ex.," "DCI Pls' Ex.," and "Tracy Pls' Ex." were filed with Plaintiffs' oppositions to DLTD, DCI, and Tracy's motions, respectively. Exhibits cited as "Pls' Ex." are being filed with this brief.

<sup>2</sup> Although Jimenez did not challenge Plaintiffs' superior responsibility theory in his summary judgment motion, he has long been on notice of this theory of liability. Indeed, the issue was fully briefed in relation to Jimenez' motion to dismiss (but the Court did not rule on it). *See* Doc. No. 91 at 25-28 (Plaintiffs' brief); Doc. No. 99 at 5-8 (Jimenez' brief).



operated. Jimenez does not, however, present any credible denial that there is substantial evidence tying Drummond and its officers (including Jimenez) to the AUC and the murders at issue. Rather, as shown below, there is sufficient evidence to deny Jimenez' motion and move this case to trial.<sup>3</sup>

## II. PLAINTIFFS' STATEMENT OF FACTS IN OPPOSITION

Plaintiffs incorporate by reference the Statement of Facts submitted as part of their oppositions to Drummond Ltd. ("DLTD"), Drummond Company, Inc. ("DCI"), and Tracy's motions for summary judgment.

### A. Plaintiffs' Response to Jimenez' Statement of Facts

2. Disputed. *See* Pls' Response to DLTD's Statement of Facts ¶ 2.

3. Disputed insofar as Jimenez implies that he will continue to be President of DLTD's Colombian branch. On November 6, 2012, DLTD announced that "Jimenez has tendered his resignation as President of Drummond Ltd. Colombia, which will be effective as of December 31, 2012." Pls' Ex. 2.

5. Disputed insofar as Jimenez implies that he was not informed of Adkins' work and did not receive security reports from Adkins. DLTD Ex. C, Tracy Dep. 107:5-10 (Adkins "had discussions [with Jimenez] and they would have been discussing security issues"); DLTD Pls' Ex. 25 (2001 email by Adkins

---

<sup>3</sup> Jimenez incorporates some arguments by reference (*see* Mot. at 5 n.6, 8-9 n.7, & 13), so Plaintiffs adopt by reference their arguments on the same issues from their oppositions to DLTD, DCI, and Tracy's motions for summary judgment.

forwarded to Jimenez regarding Viginorte's connections to the paramilitaries).

6. Disputed. Adkins at times worked out of the Bogota office. DLTD Ex. K, Adkins Dep. 132:17-133:10.

7. Disputed. Jimenez knew that Drummond contractors were cooperating with and funneling money to the AUC. PSUMF ¶¶ 9 & 12; PSDMF ¶¶ 5-7.<sup>4</sup> In addition, Jimenez personally participated in arranging payment schemes. PSDMF ¶ 7. Jimenez also knew of the role of Drummond employees like Adkins in arranging AUC payments. PSDMF ¶¶ 5-6.

8. Disputed. Jimenez knew it was illegal to make payments to the AUC and knew of the campaign of terror carried out by the AUC against civilians, yet continued to approve of Drummond's support for the AUC. PSUMF ¶¶ 8 & 11-14; PSDMF ¶¶ 5-7. Jimenez also knew and approved of a plan to have the AUC commit related killings. PSDMF ¶ 8. In addition, Jimenez personally participated in arranging payments from security contractor Secolda to the AUC. PSDMF ¶ 7.

## **B. Plaintiffs' Statement of Undisputed Material Facts**

1. Between 1996 and 2006, Drummond's security department in Colombia (aside from Adkins) reported to Jimenez and Jimenez supervised the

---

<sup>4</sup> Plaintiffs are using the same abbreviations for factual statements from prior briefs, including for Plaintiffs' Statement of Undisputed Material Facts ("PSUMF") and Plaintiffs' Statement of Disputed Material Facts ("PSDMF"). Where the factual statement referenced comes from Plaintiffs' opposition to another Defendant's motion, or from one of Defendants' briefs, it is so indicated (*e.g.*, "DCI Opp. PSUMF" or "Jimenez SUMF").

development and implementation of Drummond’s security plans. Tracy SUMF ¶ 4 (“the DLTD security department reported to Augusto Jiménez of DLTD”); DLTD Ex. C, Tracy Dep. 54:4-8 (“The security group reported to Augusto Jiménez.”); *id.* at 201:19-202:1 (“the security department . . . was managed by Dr. Jiménez”); DLTD Ex. D, Drummond Dep. 33:12-17 (“Mr. Jimenez was in charge of our security. He was the head of our security.”); Pls’ Ex. 3 at DR072751 ( [REDACTED] [REDACTED] [REDACTED] ); DLTD Ex. E, Jimenez Dep. 88:15-89:2 (Jimenez participated in security meetings); *id.* at 90:9-17 (Jimenez participated in developing security plans); *id.* at 119:1-4 (Jimenez was informed of each security incident on the railroad.); Pls’ Ex. 4, Echeverri Dep. 42:3-8 (DLTD consultant Fabio Echeverri discussed security issues with Jimenez).

2. Jimenez represented Drummond in security meetings with the Colombian armed forces, police, and political leaders, and he helped secure protection for Drummond from the Colombian armed forces. DLTD Ex. E, Jimenez Dep. 89:3-12 (Jimenez was informed by Colombian government officials about “national security problems” and he “receive[d] general reports on security” from high commanders of the Army, Navy, and police); *id.* at 105:22-107:6 (communications with political leaders); *id.* at 37:2-44:3 (communications with

Colombian presidents); *id.* at 39:3-10 (requesting support from Colombian security forces).

3. Jimenez approved the hiring of and monitored Drummond contractors in Colombia. DLTD Ex. D, Drummond Dep. 44:10-17 (Jimenez approved the hiring of Echeverri as a consultant); *id.* at 191:7-15 (Jimenez was responsible for monitoring contractors); DCI Pls' Ex. 19 at DR046990-92 ( [REDACTED] [REDACTED] ).

4. Jimenez had authority to terminate the employment or cancel the contracts of anyone working for or providing services to Drummond in Colombia and having connections to illegal groups like the AUC. Jimenez SUMF ¶ 3 (Jimenez was President of DLTD's Colombian branch); DLTD Ex. D, Drummond Dep. 85:12-18 (investigations into suspected paramilitary assistance by employees were "under the auspices of Dr. Jiménez"); DCI Pls' Ex. 23 (Jimenez' involvement in terminating the contract of employee with suspected guerrilla links).

5. Jimenez had effective control over Alfredo Araujo, DLTD's director of community relations, during Araujo's entire time with DLTD. DLTD Ex. T, Araujo Dep. 99:13-100:2 (Araujo "always reported directly to" Jimenez).

6. Jimenez had effective control over General Rafael Peña, DLTD's security chief, during Peña's entire time with DLTD. DLTD Ex. E, Jimenez Dep.

25:22-27:12 (Peña reported to Jimenez); DLTD Ex. C, Tracy Dep. 54:9-16 (Peña, the head of security, reported to Jimenez).

7. Jimenez had effective control over Jaime Blanco, director of Drummond food service contractor ISA. PSUMF ¶ 4 (Jimenez' authority to cancel the contracts of anyone providing services to Drummond with AUC connections); DLTD Ex. N, Blanco Dep. 108:10-15 (Jimenez' participation in the termination of Blanco's contract); Pls' Ex. 5 at DR187632-34 (same); DLTD Ex. N, Blanco Dep. 47:11-48:8 (Blanco and Jimenez met "[m]any, many times").

8. Jimenez knew of the AUC's violent methods, knew of the AUC's presence near Drummond's operations, and knew that it was illegal to provide support to the AUC. Tracy Pls' Ex. 22 at DR115899 (2001 email to Jimenez stating that paramilitaries killed five people in Chiriguana, a town where some Drummond union officers lived); Pls' Ex. 6 at DR062175 & DR062177 (security memo by Adkins that Jimenez received referencing paramilitary tactic of engaging in "sweeps that empty out nearly entire villages"); DLTD Ex. E, Jimenez Dep. 55:6-16 ("Payments to illegal groups is also prohibited under Colombian law."); DLTD Pls' Ex. 37 at No. 19 (Jimenez knew that the U.S. had designated the AUC a terrorist organization); DLTD Opp. PSUMF ¶¶ 9-11 (citing public reports on AUC by U.S. State Department and Human Rights Watch).

9. Jimenez was notified and knew that Drummond contractor Viginorte had connections to the AUC. DLTD Pls' Ex. 25 (2001 email by Adkins forwarded to Jimenez about Viginorte and the AUC).

10. Jimenez should have known that the Colombian military was controlling and supporting paramilitary groups in the area of Drummond's operations. Pls' Ex. 7 at DR127164 (Jimenez subordinate Peña acknowledged that "Paramilitaries are associated w/ Army"); PSUMF ¶ 8 (Jimenez knew of the AUC's presence near Drummond's operations).

11. Jimenez did nothing to investigate reports of Drummond employees or contractors supporting the AUC. DLTD Ex. E, Jimenez Dep. 134:20-135:12 (Jimenez merely "assum[ed] that all the procedures in place in the company are followed"); *id.* at 74:11-23 (Jimenez did not remember if he did anything to investigate Viginorte after receiving information about its paramilitary links); *id.* at 66:20-67:11 (Jimenez did not remember if Drummond conducted an investigation of either Araujo or Peña after receiving evidence that they had been involved in the union leader murders).

12. On more than one occasion, Jimenez did not deny that Drummond employees or contractors had collaborated with the AUC when he was faced with such accusations. Mot. at 12 ("Blanco's only specific testimony about a

conversation with Mr. Jiménez reveals that Mr. Jiménez did not respond when confronted with Blanco’s allegations that Jim Adkins was involved in the union leader murders”); Pls’ Ex. 8 at DOS00000022 (in a meeting with a U.S. government official, Jimenez “carefully sidestepped . . . the issue of whether the [cafeteria] contractor the union complained about was affiliated with or sympathetic to paramilitaries”).

13. Jimenez had a duty to investigate or report Drummond employees or contractors who were reportedly supporting the AUC. DLTD Ex. D, Drummond Dep. 85:12-18 (investigations into suspected paramilitary assistance by Drummond employees were “under the auspices of Dr. Jiménez”); DLTD Ex. E, Jimenez Dep. 55:6-16 (claiming it was Drummond’s policy to cancel contracts with any contractor if there was evidence they were paying an illegal group); Tracy Opp. PSUMF ¶ 17 (citing Tracy’s testimony about the “duty to report any instances” where it was “suspect[ed]” that a Drummond employee “was collaborating with the AUC”).

14. Jimenez did nothing to prevent or punish support for the AUC by Drummond employees, contractors, or the military. PSUMF ¶ 11 (Jimenez did not even investigate reports of Drummond employees or contractors supporting the AUC); Tracy Pls’ Ex. 21 (Jimenez was involved in authorizing payments to

military in 2005); Pls' Ex. 9 at DR003156 (Jimenez was involved in the decision to increase payments to the military in 2006).

### **C. Plaintiffs' Statement of Disputed Material Facts**

1. Drummond contractors (including Blanco, Viginorte, and Secolda) and the military paid, collaborated with, or otherwise had connections to the AUC. Tracy Opp. PSDMF ¶ 1. *Compare* DLTD Mot. at 20-21.

2. Among other wrongdoing, Araujo and Peña were involved in using Drummond funds to bring the AUC and its violent tactics to Drummond's area of operations. DLTD Opp. PSDMF ¶¶ 1, 3 & 7-8; *see also* DLTD Pls' Ex. 46 ¶ 12 (El Tigre's men killed five people "[i]n line with what we had agreed to with Araujo"); DLTD Ex. W, Gelvez Dep. 50:17-55:13 & DLTD Opp. PSDMF ¶ 1 (Peña agreed on behalf of Drummond to support the build-up of the AUC in 1996); Pls' Ex. 7 at DR127158 (Peña spoke at security meeting of the "need to clean the company of a few bad personnel"). *Compare* DLTD Mot. at 20-21.

3. Jimenez knew or should have known that Araujo had links to the AUC and was involved in (among other wrongdoing) establishing Drummond's relationship with the AUC. DLTD Opp. PSDMF ¶¶ 1, 3 & 7-8; DLTD Pls' Ex. 2, Charris Dep. 92:2-11 (Adkins told Charris that Jimenez and Araujo were "in agreement about the death of the union leaders"); *id.* at 19:4-20:15 (Jimenez



among those aware of Drummond’s use of the AUC to combat the FARC); DLTD Pls’ Ex. 28 at DR062822-23 ( [REDACTED]

[REDACTED]); DLTD Ex. K, Adkins Dep. 275:16-21

(Adkins “knew that [Araujo] grew up with a lot of them [paramilitaries] and that he

should know a lot of them”); DLTD Ex. T, Araujo Dep. 31:14-17 (Araujo knows

AUC leader Jorge 40); *id.* at 132:2-12 (Araujo is still friends with Blanco);

PSUMF ¶ 5 (Araujo reported to Jimenez). *Compare* DLTD Mot. at 20-21.

4. Jimenez knew or should have known that Peña had links to the AUC and that he was involved in establishing Drummond’s relationship with AUC.

DLTD Pls’ Ex. 2, Charris Dep. 92:2-11 (Adkins told Charris that Jimenez and Peña were “in agreement about the death of the union leaders”); PSUMF ¶ 6 (Peña reported to Jimenez). *Compare* DLTD Mot. at 14-15.

5. Blanco served as an intermediary between Drummond and the AUC and provided substantial assistance to the AUC on behalf of Drummond between approximately 1996 and 2001. DLTD Opp. PSDMF ¶¶ 1, 3 & 7. *Compare* DLTD Mot. at 20-21.

6. Jimenez knew that Blanco and Adkins were jointly collaborating with the AUC. DLTD Ex. N, Blanco Dep. 54:14-20 (stating that Jimenez “actually . . . knew about the relationships and the relationships that I handled between Mr. Jim

[Adkins] and the AUC”); *id.* at 55:1-3 (stating that Jimenez “expressed it to me on several occasions that I had some responsibility in the killing of the union members together with Mr. Jim [Adkins]”); *id.* at 109:17-110:9 (Jimenez “had knowledge. He was talking about the Piratulo . . . Piratulo (ph) are mistakes, are errors are things that kids do. That Piratulo or errors or mistakes that Mr. Jim Adkins would do were me in relation to the AUC. At a conversation that I had with him when we were getting rid of the contract he expressed that to me.”); DLTD Pls’ Ex. 45 ¶ 40 (“At another time [Jimenez] voiced his concern about who would manage Drummond’s relationship with the AUC if I left. . . . At that moment, I knew that I was acting as intermediary between Drummond and the AUC with the approval of both Garry Drummond and Augusto Jimenez.”); Jimenez Mot. at 12 (“even accepting Blanco’s testimony as more than mere speculation, Blanco only describes Mr. Jiménez’s knowledge of *Adkins*’ alleged dealings with the AUC”) (emphasis in original). *Compare* DLTD Mot. at 20-21.

7. Jimenez was personally involved in payments made by Drummond security contractor Secolda to the AUC. DLTD Ex. N, Blanco Dep. 113:11-115:8 (“Q[:] Did Jorge 40 or Adkins tell you the name of the security company that was making payments to Jorge 40 at that time you met? A[:] Secolda. . . Q[:] So who was it that arranged for Secolda to make an arrangement with Drummond for

security? A[:] Jorge Cuarenta told me that Augusto Jimenez was handling that himself directly . . . Q[:] And what exactly did Jorge 40 tell you about Augusto Jimenez and the relationship to Secolda? A[:] That he was dealing directly with that subject matter, Mr. Echeverri directly with Augusto, because Mr. Jim wasn't there anymore.”). *Compare* Mot. at 3 (denying collaboration with the AUC).

8. Jimenez knew and approved of Drummond's coordination with the AUC in order to murder the Drummond union leaders. DLTD Pls' Ex. 2, Charris Dep. 92:2-11 (Adkins told Charris that Jimenez was “in agreement about the death of the union leaders”); *id.* at 93:17-94:5 (“Q[:] So that the record is clear, which of the Drummond managers did Jim Adkins tell you were aware of the plan to kill the union leaders on March 12? A[:] . . . All of the people of their utmost trust, such as Augusto Jimenez . . . .”); *id.* at 97:16-98:19; DLTD Ex. N, Blanco Dep. 51:1-16 (“I told Mr. Augusto Jimenez that the person that had determined or influenced or for the killing of the union leaders was Jim [Adkins]. . . . Charris served as direct contact for Mr. Jim with relation to the AUC.”); DLTD Pls' Ex. 45 ¶ 40 (“I attended many meetings with Drummond, in their offices in Bogota with . . . Jimenez. At one of these meetings, Jimenez stated his satisfaction with the death of the union leaders as this solved a big problem for Drummond.”). *Compare* Mot. at 3.

9. Jimenez knew of the AUC's presence on Drummond's property. DLTD Opp. PSDMF ¶ 2 (evidence from several sources of the AUC entering the Drummond mine); Jimenez SUMF ¶ 3 (Jimenez was President of DLTD's Colombian branch). *Compare* DLTD Ex. K, Adkins Dep 252:6-253:3.

### III. ARGUMENT<sup>5</sup>

#### A. The Doctrine of Superior Responsibility Applies to Corporate Officers Under International Law.

Plaintiffs' opposition to Tracy's motion for summary judgment contains an extensive discussion of the law of superior responsibility, which Plaintiffs incorporate by reference here. Tracy Opp. at 14-20. As an overview, the doctrine of superior responsibility, which is applicable to ATS and TVPA cases, imposes liability on superiors when they knew or should have known of their subordinates' violations of international law but failed to prevent such acts or punish the wrongdoers. *See Ford ex rel. Estate of Ford v. Garcia*, 289 F.3d 1283, 1288-89 (11th Cir. 2002) (TVPA); *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009) (TVPA and ATS); *Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir. 1995) (ATS).

International law is clear that *all* civilian superiors, including corporate officers, may be held liable under a superior responsibility theory. *See Prosecutor v. Delalic*, Case No. IT-96-21-A, Judgement (ICTY Feb. 20, 2001) ¶ 195 (excerpt <sup>5</sup> *Locarno v. Drummond Company, Inc.*, No. 7:09-CV-00557, Doc. 95 at 3-6, provided the Fed. R. Civ. P. 56 standard for summary judgment. Plaintiffs adopt that standard here.

found at Tracy Pls' Ex. 24) (superior responsibility "encompasses political leaders and other civilian superiors in positions of authority").<sup>6</sup> For example, the Appeals Chamber of the International Criminal Tribunal for Rwanda affirmed the conviction of a key figure at a private radio station in relation to genocide-inciting broadcasts by the station's employees. *See Nahimana v. Prosecutor*, Case No. ICTR-99-52-A, Judgement (ICTR Nov. 28, 2007) ¶ 856-57 (excerpt found at Tracy Pls' Ex. 25). Other decisions affirm that businesspeople and other non-political civilians are liable for failing to prevent or punish their subordinates' crimes. *See Prosecutor v. Musema*, Case No. ICTR-96-13-T, Judgement and Sentence (ICTR Jan. 27, 2000) ¶¶ 895, 900 & 906 (excerpt found at Tracy Pls' Ex. 27) (convicting director of the Gisovu Tea Factory for genocide in relation to the acts of the factory employees); Tracy Opp. at 17-18 (citing superior responsibility actions against a doctor and priest).

**B. A Jury Could Find Jimenez Liable Under a Theory of Superior Responsibility.**

Jimenez chose not to challenge Plaintiffs' superior responsibility theory in his opening brief (and cannot do so on reply). Accordingly, Jimenez has not identified undisputed facts meriting summary judgment on that theory.

Nonetheless, Plaintiffs offer a summary of their evidence here to demonstrate that a

<sup>6</sup> The Eleventh Circuit has relied heavily on *Delalic*. *See Ford*, 289 F.3d at 1290-92 (repeatedly citing *Delalic* with approval); *see id.* at 1291 n.8 (*Delalic* "states the matter with great clarity").

reasonable jury could hold Jimenez liable under that theory.

**1. Wrongdoing by Jimenez' Subordinates.**

For Jimenez to be liable for failing to prevent or punish wrongdoing by his subordinates, there must first be actionable wrongdoing by those subordinates. Jimenez may be held liable for crimes personally committed by his subordinates and those “planned, instigated, ordered, . . . or otherwise aided and abetted” by his subordinates. *Nahimana* ¶ 486; *see also Prosecutor v. Oric*, Case No. IT-03-68-T (ICTY June 30, 2006) ¶ 301 (excerpt found at Tracy Pls’ Ex. 32) (superior may be liable if subordinate aided and abetted crimes).

As discussed in detail in Plaintiffs’ opposition to DLTD’s motion for summary judgment, Araujo, Peña, and Blanco were directly involved in making Drummond’s first contacts with the AUC and agreeing to provide Drummond funds to the AUC to support the war against leftist guerrillas in the area of Drummond’s operations. DLTD Opp. PSDMF ¶¶ 1, 3 & 7-8. Below is a brief summary of some of the specific wrongdoing by Jimenez’ subordinates.

Araujo: Araujo agreed in 1999 to give the AUC funds to fight the guerillas. DLTD Opp. PSDMF ¶¶ 1 & 3 (citing AUC commander El Tigre’s testimony); *see also id.* ¶ 3 (the specific agreement with Araujo was that El Tigre would “clean up the area of guerillas,” which he understood meant “killing all of the guerillas or

guerilla men that are armed in the area and civilians as well”); *id.* ¶ 7 (Araujo met with Blanco, Charris, and AUC members Samario and Tolemaida regarding plans for AUC to kill civilians) (citing Samario’s testimony); *id.* ¶ 8 (Araujo was in charge of relationship with Jorge 40) (citing Charris’ testimony); *id.* ¶ 7 (El Tigre’s men killed five people because of “what we had agreed to with Araujo”) (citing El Tigre’s declaration).

Peña: In 1996, Peña agreed on Drummond’s behalf to support the build-up of the AUC. PSDMF ¶ 2 & DLTD Opp. PSDMF ¶ 1; *see also id.* ¶ 2 (Peña agreed that Drummond would provide free access of its facilities to the AUC).

Blanco: Blanco served as an intermediary between Drummond and the AUC and provided substantial assistance to the AUC on behalf of Drummond between approximately 1996 and 2001. PSDMF ¶ 5. This assistance initially took the form of delivering \$10,000 cash payments from Drummond to the AUC and later involved providing the AUC with overpayments Drummond gave to Blanco specifically to be passed along to the AUC. DLTD Opp. PSDMF ¶ 1.

## **2. Jimenez’ Effective Control Over the Wrongdoers.**

“[T]he threshold to be reached in establishing a superior-subordinate relationship” is the “material ability to prevent or punish criminal conduct.” *Ford*, 289 F.3d at 1290 (quoting *Delalic* ¶ 256). In other words, the superior must have

“effective control” over the subordinate. *Id.* In the civilian context, that control need not mirror the level of control seen in the military. *See Nahimana* ¶ 605.

Finally, multiple superiors may be held liable for the crimes of the same subordinate. *See Doe v. Qi*, 349 F. Supp. 2d 1258, 1332 n.47 (N.D. Cal. 2004).

As their ultimate supervisor, Jimenez had effective control over Araujo and Peña. PSUMF ¶ 5 (Araujo “always reported directly to” Jimenez); *id.* ¶ 6 (Peña reported to Jimenez). Indeed, Jimenez’ *de jure* control over both of them “is *prima facie* evidence of effective control, which accordingly can be rebutted only by the defense putting forth evidence to the finder of fact that the defendant lacked this effective control.” *Ford*, 289 F.3d at 1291. Next, considering Jimenez could have cancelled Blanco’s food service contract at any time because of Blanco’s AUC connections, Jimenez also had effective control over Blanco. PSUMF ¶ 7.

### **3. Jimenez Knew or Should Have Known About the Wrongdoing.**

#### **a. Evidence of Jimenez’ Knowledge of the Wrongdoing.**

The *mens rea* for superior responsibility is satisfied when the superior “knew or should have known” of the crimes. *Ford*, 289 F.3d at 1288; *see also* S. Rep. No. 102-249, at 9 (1991) (citing *In re Yamashita*, 327 U.S. 1 (1946)). That standard is satisfied when, for example, the superior has “some general information in his possession[] which would put him on notice of possible unlawful acts by his



subordinates.” *Nahimana* ¶ 791 (quoting *Delalic* ¶ 238).

Although Plaintiffs can easily demonstrate that Jimenez should have known of his subordinates’ wrongdoing, discovery provided ample evidence showing that Jimenez actually knew about Drummond’s financing of the AUC through his subordinates’ efforts. Below is a brief summary of that evidence.

Araujo and Peña: Jimenez, Araujo, and Peña were all identified by Adkins as knowing about the plan for the AUC to kill the union leaders. PSDMF ¶¶ 3-4. Also, Jimenez learned of claims [REDACTED] [REDACTED] *Id.* ¶ 3. In addition, Jimenez received regular security updates from Peña’s security department, took part in implementing DLTD’s security policies, and supervised both Araujo and Peña. PSUMF ¶¶ 1 & 5-6. Furthermore, Araujo and Peña were open in their support of the AUC and its violent methods. For example, Peña spoke candidly at a security meeting about the “need to clean the company of a few bad personnel.” PSDMF ¶ 2. Araujo’s support for the AUC has always been so open that to this day he remains friends with Blanco, who was convicted for conspiring with the AUC in the union leader murders. *Id.* ¶ 3. Collectively, the evidence indicates that Jimenez knew about Araujo and Peña’s wrongdoing, as Jimenez undeniably had “some general information” putting “him on notice of possible unlawful acts by” Araujo and Peña. *Nahimana* ¶ 791.

Blanco: Jimenez told Blanco that he had knowledge of Drummond's relationship with the AUC, including Blanco's role as an intermediary. PSDMF ¶¶ 5-6. For example, Blanco testified that, in 2001, Jimenez talked to him about "errors or mistakes" by Adkins "in relation to the AUC." *Id.* ¶ 6. On a different occasion, Jimenez "voiced his concern [to Blanco] about who would manage Drummond's relationship with the AUC if [Blanco] left." *Id.* Blanco's testimony shows that Jimenez had actual knowledge of the arrangements Adkins had made to finance the AUC through Blanco.

Corroborating Blanco's testimony is Jimenez' practice of remaining silent or nonresponsive when confronted by others about Drummond's relationship with the AUC. PSUMF ¶ 12 (citing instances when Jimenez "carefully sidestepped" the issue of Blanco's AUC connection and refused to respond when confronted by Blanco with the claim that Adkins was involved in the union leader murders). Jimenez' conduct is an admission of knowledge of Drummond's relationship with the AUC. *See U.S. v. Joshi*, 896 F.2d 1303, 1311 (11th Cir. 1990) (statement is admissible as an adoptive admission under Rule 801(d)(2)(B) when it is "such that an innocent defendant would normally be induced to respond" and when there are "sufficient foundational facts from which the jury could infer that the defendant 'heard, understood, and acquiesced in the statement'").

**b. Blanco and Charris' Testimony Is Admissible.**

Jimenez challenges the admissibility of both Blanco and Charris' testimony relating to the union leader murders on relevance grounds. Mot. at 14-15. The union leaders were killed by the AUC with Drummond's approval, and Blanco and Charris have knowledge of those involved in authorizing the murders. PSUMF ¶ 12; PSDMF ¶¶ 3-4, 6 & 8. Testimony concerning Defendants' knowledge and approval of those related murders is plainly relevant to their intent to assist the AUC with respect to the murders at issue here and their knowledge of the Drummond-AUC relationship. As such, the testimony is admissible under Fed. R. Evid. 404(b). *See Jones v. Childers*, 18 F.3d 899, 913 (11th Cir. 1994) (evidence of other fraud is admissible because "it demonstrates 'motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident'") (quoting Rule 404(b)); *Demers v. Adams Homes of Nw. Fla., Inc.*, 321 F. App'x 847, 853-54 (11th Cir. 2009) (testimony regarding defendant's other discriminatory actions is admissible under Rule 404(b)).<sup>7</sup>

Both Jimenez and Tracy also challenge Charris' testimony about Adkins' statements as inadmissible hearsay. *E.g.*, Mot. at 15-19.<sup>8</sup> Charris testified, in part,

---

<sup>7</sup> While Jimenez focused on the relevance of Blanco's testimony about the union leader murders, he conveniently ignores other testimony by Blanco demonstrating Jimenez' support for the AUC. *See, e.g.*, PSDMF ¶¶ 6-7.

<sup>8</sup> DLTD did not claim that Charris' testimony would be inadmissible against it, and any such claim would be futile. Also, because Tracy merely adopted Jimenez' argument on the subject

that Adkins identified several Drummond executives who knew about the plan for the AUC to kill Drummond union leaders. Mot. at 14-15. Adkins named Jimenez, Tracy, Garry Drummond, Araujo, Peña, and others. *Id.*

Adkins' statements are admissible against Jimenez and Tracy as coconspirator statements. Fed. R. Evid. 801(d)(2)(E) (a statement offered against an opposing party is not hearsay when "made by the party's coconspirator during and in furtherance of the conspiracy"). First, Plaintiffs have submitted ample evidence that there was a conspiracy between Defendants, other Drummond employees and contractors, and the AUC. DLTD Opp. PSDMF ¶¶ 1-10; DLTD Opp. at 36 & 45-46; DCI Opp. at 39-45; Tracy Opp. at 29-30. Adkins' statement itself also "must be considered." Fed. R. Evid. 801(d)(2); *see also* Fed. R. Evid. 801 advisory committee's note (Rule 801(d)(2) "codifies the holding in *Bourjaily* [*v. U.S.*, 483 U.S. 171 (1987)] by stating expressly that a court shall consider the contents of a coconspirator's statement in determining 'the existence of the conspiracy and the participation therein . . . .'").

Second, Charris, Adkins, Jimenez, and Tracy (among others) were all part of

---

(Tracy Mot. at 8 n.4), Plaintiffs address the admissibility issues as to both individual defendants here. Finally, Plaintiffs adopt by reference the arguments in their opposition to DLTD's motion as to why Blanco's testimony is admissible. DLTD Opp. at 3 n.2. Notably, Blanco provided other testimony relevant to Jimenez' liability, *see supra* note 7, but Jimenez did not challenge the admissibility of that testimony. Mot. at 13 (seeking to exclude "Blanco's testimony regarding the murders of the union leaders").

the conspiracy. PSDMF ¶¶ 5-8; DLTD Opp. PSDMF ¶¶ 1-10; Tracy Opp. PSUMF ¶¶ 14-21; Tracy Opp. PSDMF ¶ 4. Third, Adkins' statement was made in furtherance of the conspiracy, as it was made to Charris (someone personally involved in the killings at issue) shortly before the killings. DCI Opp. at 43-45; PSDMF ¶ 8. Notably, the Eleventh Circuit "applies a liberal standard in determining whether a statement was in furtherance of a conspiracy." *U.S. v. Siegelman*, 640 F.3d 1159, 1181 (11th Cir. 2011) (noting that "[s]tatements between conspirators which provide reassurance, serve to maintain trust and cohesiveness among them, or inform each other of the current status of the conspiracy further the ends of the conspiracy . . . .") (quoting *U.S. v. Ammar*, 714 F.2d 238, 252 (3d Cir.1983)); *see also U.S. v. McMurray*, 34 F.3d 1405, 1412 (8th Cir. 1994) ("It is well established that Rule 801(d) is to be construed broadly in favor of admissibility.").<sup>9</sup>

#### **4. Jimenez Failed to Prevent or Punish the Wrongdoing.<sup>10</sup>**

A superior is liable for failing to take "necessary and reasonable measures to prevent or punish the commission of the crime by a subordinate." *Nahimana* ¶

---

<sup>9</sup> Adkins' statements are also admissible against Tracy as admissions by an agent. *See* Fed. R. Evid. 801(d)(2)(D) (a statement offered against an opposing party is not hearsay when it "was made by the party's agent or employee on a matter within the scope of that relationship and while it existed"); *see also* Tracy Opp. PSUMF ¶ 9 (Tracy had effective control over Adkins).

<sup>10</sup> Causation is not an element of superior responsibility. *See Chavez*, 559 F.3d at 499 ("The law of command responsibility does not require proof that a commander's behavior proximately caused the victim's injuries."); *see also Ford*, 289 F.3d at 1298-99 (Barkett, concurring).

484; *see also Ford*, 289 F.3d at 1288 (element is satisfied where there is a failure “to prevent the commission of the crimes” or “to punish the subordinates after the commission of the crimes”). There is no evidence on the record that Jimenez attempted to prevent the crimes or that he punished the wrongdoers. Although Jimenez had the responsibility to implement Drummond’s supposed policy against collaborating with the AUC (PSUMF ¶ 13) and authority to punish employees or contractors who violated that policy (PSUMF ¶ 4), he ignored his duty with respect to Blanco, Araujo, and Peña. PSUMF ¶¶ 11-12 & 14.

**C. Jimenez Approved and Ratified DLTD’s Torts.**

As discussed in more detail in Plaintiffs’ opposition to Tracy’s motion, it is well established that “a corporate officer [who] participates in the wrongful conduct, or knowingly approves” of the corporation’s wrongful conduct, is liable. 3A Fletcher Cyclopedic of the Law of Corporations (hereinafter “Fletcher”) § 1135 (2012); *see id.* (showing required is that “the officer directed, controlled, approved, or ratified the decision that led to the plaintiff’s injury”); *Crigler v. Salac*, 438 So. 2d 1375, 1380 (Ala. 1983) (articulating same rule). Jimenez thus may be held directly liable for approving or ratifying torts committed by DLTD.<sup>11</sup>

---

<sup>11</sup> In the operative Complaint, Plaintiffs allege that Jimenez approved Drummond’s support for the AUC. *See* Third Amended Complaint, Doc. No. 233 ¶ 164 (“Jimenez was a direct participant in Drummond’s plan to make significant payments to the AUC’s Juan Andres Alvarez Front”); *id.* ¶ 165 (“Adkins approved the payments to the AUC” on behalf of Jimenez and others); *id.* ¶ 191 (Alfredo Araujo “used his position in the company to get Defendant

Evidence of DLTD's torts was thoroughly set out in Plaintiffs' opposition to DLTD's motion, which Plaintiffs incorporate by reference. Jimenez' personal participation in funding the AUC (through Secolda) and in approving AUC violence (*i.e.*, the union leader murders) clearly demonstrates that Jimenez expressly approved of DLTD's tortious conduct. PSDMF ¶¶ 7-8. Also relevant is the fact that Jimenez was President of DLTD's Colombian branch, that he oversaw the implementation of DLTD's security policies, that he had effective control over Araujo, Peña, and Blanco, that he knew about the Drummond-AUC relationship, and that he allowed payments to contractors and the Colombian military at the time when DLTD was actively supporting the AUC through these entities. Jimenez SUMF ¶ 3; PSUMF ¶¶ 1, 5-7, 9-10, 12, 14; PSDMF ¶¶ 1 & 3-7. These latter facts are enough to infer approval. *See Onyx Env'tl. Servs., LLC v. Maison*, 407 F. Supp. 2d 874, 879 (N.D. Ohio 2005) (holding that "a jury could find that Feniger tacitly authorized Maison's representations" in part because "Onyx presented evidence that Feniger controlled the day to day operations of EPI").

As discussed in more detail in Sections III.B.4 and III.E, Jimenez also failed to do anything when confronted with evidence that Drummond employees and contractors were supporting the AUC. That, likewise, is enough to infer approval.

---

Jimenez and others to agree to the plan to make substantial payments to the AUC"). Plaintiffs now present evidence supporting their approval-based theory of liability.

*See Crigler*, 438 So. 2d at 1380 (corporate officers “cannot avoid personal liability for wrongs committed by claiming that they did not authorize and direct that which was done in the regular course of that business, with . . . such acquiescence on their part as warrants inferring such consent or approval”) (quoting Fletcher). In addition, Jimenez’ inaction amounts to ratification of DLTD’s torts. *See* Doc. No. 43 at 31 (holding that one element of ratification involves the “fail[ure] to take adequate steps to remedy the situation”) (quoting *Pescia v. Auburn Ford-Lincoln Mercury Inc.*, 68 F. Supp. 2d 1269, 1283 (M.D. Ala. 1999)).

**D. Jimenez Aided and Abetted and Conspired with the AUC.**

Plaintiffs discuss the law governing aiding and abetting and conspiracy in their opposition to DLTD’s motion, DLTD Opp. at 27-35, and incorporate that discussion by reference. Jimenez lodges the same basic challenge to Plaintiffs’ aiding and abetting and conspiracy theories. Specifically, Jimenez argues that Plaintiffs lack evidence that Jimenez “personally participated in a scheme to provide support to the AUC, and that he shared the AUC’s intent to kill civilians near Drummond’s rail line.” Mot. at 8. Plaintiffs, however, have submitted evidence on both fronts. Regarding Jimenez’ personal participation, former AUC commander Jorge 40 stated that Drummond contractor Secolda was providing funds to the AUC and that Jimenez “was handling that himself directly.” DLTD



Ex. N, Blanco Dep. 113:11-115:6 (quoted in PSDMF ¶ 7).

Next, evidence of Jimenez' knowledge was thoroughly discussed in Sections III.B.3 and III.C. In summary, multiple sources demonstrate that Jimenez both knew about and actively supported Drummond's collaboration with the AUC. PSDMF ¶ 6 (quoting Blanco's testimony that "[Jimenez] voiced his concern about who would manage Drummond's relationship with the AUC if [Blanco] left"); PSDMF ¶ 8 (quoting Adkins' statement that Jimenez was "in agreement about the death of the union leaders"); PSDMF ¶ 7 (quoting Jorge 40's statement that Jimenez "was handling . . . directly" Secolda's payments to the AUC); PSUMF ¶ 8 (Jimenez knew of AUC's violent methods). Jimenez' intent is established by the same facts because the "natural and probable consequences" of Jimenez' conduct include the AUC's murders of the decedents. *U.S. v. Myers*, 972 F.2d 1566, 1573 (11th Cir. 1992) (approving jury instruction stating that "you may infer that a person ordinarily intends all the natural and probable consequences of an act knowingly done").

**E. Jimenez Ratified the AUC's Murders.**

Plaintiffs discuss the applicable law of ratification in their opposition to DLTD's motion, DLTD Opp. at 36-40, and incorporate that discussion by reference here. As a threshold matter, Jimenez' ratification of the AUC's killings

is, of course, a separate basis of liability from his ratification of DLTD's torts, which is discussed above.

Jimenez' conclusory challenge to Plaintiffs' ratification evidence is that Plaintiffs' theory "is entirely without . . . any basis in the evidence." Mot. at 8-9 n.7. (Jimenez' legal challenge merely references DLTD's motion, *id.*, and that challenge is addressed in Plaintiffs' opposition to that motion.) Jimenez' perfunctory challenge to Plaintiffs' ratification evidence unfairly provides no notice as to the elements being challenged. Nevertheless, Plaintiffs will make an element-by-element showing as to why the ratification theory should go to the jury. As this Court has already held, liability for ratification requires that Jimenez (1) had actual knowledge of the wrongful conduct; (2) knew or should have known that the conduct constituted a tort; and (3) armed with that knowledge, failed to take adequate steps to remedy the situation. Doc. No. 43 at 31.

The first element (knowledge) is satisfied if Jimenez had at least the "means of knowledge of all material facts." *E. Ala. Behavior Med., P.C. v. Chancey*, 883 So. 2d 162, 170 (Ala. 2003). Jimenez, of course, actually knew about the AUC's killings. PSUMF ¶ 8; PSDMF ¶¶ 6 & 8. Even assuming (in the face of substantial evidence to the contrary) that Jimenez disclaims actual knowledge of the killings, he cannot plausibly claim that, as the well connected head of DLTD who

supervised Colombian security and community relations employees, he did not have the means to obtain such knowledge.

As to the second element, there is no question that the AUC's killings were torts, and that Jimenez knew they were torts. No reasonable person could claim otherwise. In fact, Jimenez admitted that just funding the AUC was illegal. PSUMF ¶ 8. Finally, Jimenez failed to take adequate steps to prevent more AUC killings or punish Drummond employees or contractors assisting the AUC. As discussed in Section III.B.2, Jimenez had effective control over several people who enabled the AUC to become a killing machine in the area surrounding Drummond's operations. In addition, Jimenez knew of Adkins' role as one of the masterminds of Drummond's plan to support the AUC. PSDMF ¶ 6. Yet Jimenez did nothing to prevent Araujo, Peña, Blanco, and Adkins from assisting the AUC and failed to punish them for their assistance. PSUMF ¶¶ 11-12 & 14. For example, given Jimenez' duty to report suspected violations of the supposed policy prohibiting collaboration with the AUC, Jimenez could have reported Adkins to Garry Drummond with the expectation that Drummond would fire Adkins or report him to the authorities. PSUMF ¶ 13; DCI Opp. PSUMF ¶¶ 3-5 & 8; DCI Opp. 40-43. But Jimenez did not do that, and likewise did nothing to stop contractors assisting the AUC. PSUMF ¶ 14. Rather, Jimenez was busy "handling" Secolda's

AUC payment scheme and worrying “about who would manage Drummond’s relationship with the AUC if [Blanco] left.” PSDMF ¶¶ 6-7.

#### IV. CONCLUSION

For all the above reasons, Jimenez’ motion should be denied.

Dated: November 9, 2012

Respectfully submitted,

/s/ Terrence Collingsworth  
Terrence Collingsworth (DC Bar No. 471830)  
Christian Levesque (DC Bar No. 501778)  
Eric Hager (DC Bar No. 975861)  
Conrad & Scherer, LLP  
1156 15th Street NW, Suite 502  
Washington D.C. 20005  
202-543-4001  
tcollingsworth@conradscherer.com  
ehager@conradscherer.com  
clevesque@conradscherer.com

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to the following:

William Anthony Davis, III  
tdavis@starneslaw.com  
H. Thomas Wells, III  
twells@starneslaw.com  
Philip G. Piggott  
ppiggott@starneslaw.com  
STARNES DAVIS FLORIE LLP  
PO Box 598512  
Birmingham , AL 35259-8512  
205-868-6000

William H. Jeffress, Jr.  
william.jeffress@bakerbotts.com  
David A. Super  
david.super@bakerbotts.com  
Rachel B Cochran  
rachel.cochran@bakerbotts.com  
Sara E Kropf  
sara.kropf@bakerbotts.com  
Bryan H. Parr  
bryan.parr@bakerbotts.com  
BAKER BOTTS LLP  
1299 Pennsylvania Avenue, NW  
Washington , DC 20004-2400  
202-639-7700

/s/ Terrence Collingsworth

\_\_\_\_\_  
Terrence Collingsworth