UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-MD-01916-MARRA

IN RE: CHIQUITA BRANDS INTERNATIONAL, INC.
ALIEN TORTS STATUTE AND
SHAREHOLDER DERIVATIVE LITIGATION
____/

This Document Relates To:

ATS ACTIONS

07-60821-CIV-MARRA (*Carrizosa*)
08-80421-CIV-MARRA (N.J. Action) (*Does 1-11*)
08-80465-CIV-MARRA (D.C. Action) (*Does 1-144/Pérezes 1-795*)
08-80508-CIV-MARRA (*Valencia*)
08-80408-CIV-MARRA (N.Y. Action) (*Manjarres*)
10-60573-CIV-MARRA (*Montes*)
10-80652-CIV-MARRA (D.C. Action) (*Does 1-976*)
11-80404-CIV-MARRA (D.C. Action) (*Does 1-677*)
17-81285-CIV-MARRA (D.C. Action) (*Does v Hills*)
18-80248-CIV-MARRA (Ohio Action) (*John Doe 1*)
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SUMMARY JUDGMENT ORDER (SECOND) ON REMAND FROM THE ELEVENTH CIRCUIT COURT OF APPEALS IN *CARRIZOSA*

On September 6, 2022, the Eleventh Circuit Court of Appeals issued an order affirming in part and reversing in part this Court's grant of final summary judgment in favor of Defendants on the first twelve bellwether cases submitted to summary judgment procedures in this long-running MDL. *Carrizosa v. Chiquita Brands International, Inc.*, 47 F.4th 1278 (11th Cir. 2022). The Court of Appeals remanded for reconsideration of select cases under a different evidentiary framework, and specifically directed this Court to reassess the admissibility of correspondence generated by Colombian prosecutors in four of the twelve bellwether cases at issue. In two of those cases, this

Court must reevaluate whether the summary judgment record establishes a triable issue of fact on AUC involvement in the killing of Plaintiffs' decedents.

In the other two cases, the Court of Appeals found sufficient evidence to establish a triable issue on the AUC's involvement in the killing -- independent of any substantive evidentiary value which might be drawn from the prosecutors' letters. Thus, in these two cases the Court also must determine the admissibility of the prosecutors' letters and, regardless of the outcome of that analysis, must proceed to resolve the remaining issues posed by Defendants' summary judgment motion. The Court must likewise reach the alternative arguments raised by Defendants' summary judgment challenges in the six other non-Wolf bellwether cases where summary judgment on the AUC link issue was reversed in *Carrizosa*.

In the Wolf Plaintiff cases -- the remaining two of the initial set of twelve bellwethers -- the Court of Appeals affirmed the summary judgment entered against Wolf Plaintiff Doe 378 and dismissed the appeal of Wolf Plaintiff Doe 840 for lack of standing.[1] Hence, no further proceedings on remand are required on these two cases.

In short, on remand this Court is tasked with assessing the admissibility of the prosecutors' letters in four of the Non-Wolf Plaintiff cases (decedents Pablo Perez 43; John Doe 11; Franklin Fontalvo Salas; John Doe 8) under the public records exception to the hearsay rule. From there, it

[1] As to Wolf Plaintiff Doe 378, the Court of Appeals ruled that Plaintiff had "at best" only proffered a "mere scintilla" of admissible evidence on the question of AUC involvement in the murder of her brother. The Court stated, "[t]he only direct evidence [plaintiff] has presented shows that her brother, a banana worker, went out one evening in violation of an AUC-imposed curfew, and that at some point while he was out, he was shot and killed by an unidentified individual who took his identification card." *Carrizosa*, 47 F.4th at 1335-36.

As to Wolf Plaintiff Doe 840, the appeal was filed by Ludy Rivas Borja on behalf of her now-deceased mother and the originally named Plaintiff, Genoveva Isabel Borja Hernandez, following Borja's unsuccessful motion to substitute herself in place of Doe 840 in the district court. Finding Borja's challenge to the denial of her substitution request was not timely raised in the briefing on appeal, the appellate court dismissed the appeal for lack of standing. *Carrizosa*, 47 F.4th at 1336-37.

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must evaluate the sufficiency of evidence on an AUC link to the murder or disappearance of Plaintiffs' decedents in two of those cases (Pablo Perez 43 and John Doe 11). If a triable issue on an AUC link is found in these two cases, the Court must then proceed to resolve Defendants' alternative and remaining challenges to the sufficiency of proofs on the other elements of the claims[2] -- as it is also obliged to do in the other eight non-Wolf cases where the adverse summary judgment on the AUC-link factor was reversed by *Carrizosa*.

The factual background of this case is set forth in the Court's original summary judgment decision, as well as in other decisions of this Court and of the Court of Appeals. Thus, familiarity with the underlying facts is assumed. With the guidance from the Court of Appeals in *Carrizosa,* the Court has reviewed the summary judgment evidentiary record, Defendants' motion, the parties' briefing and applicable law to make its threshold determinations on the admissibility of the prosecutor letters. The Court has also reevaluated the sufficiency of evidence of an AUC link to the deaths of decedents Pablo Perez 43A and John Doe 11 as instructed by the Court of Appeals.

From there, the Court has reviewed the record and parties' briefing to resolve Defendants' alternative challenges to the sufficiency of Plaintiffs' proofs on other elements of the Colombian law and TVPA claims charged in all Non-Wolf Plaintiff cases which have withstood summary judgment. Having completed its review of those arguments, the Court now grant Defendants' Motion for Summary Judgment in part and denies the Motion in part for reasons which follow.

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[2] Defendants' alternative summary judgment arguments were not reached in the Court's original summary judgment order [DE 2551] in light of the Court's threshold adverse finding on failure to establish a triable issue on an AUC link to each attack and hence a failure to adduce evidence showing a genuine issue of material fact on the element of causation in both the Colombian law and TVPA claims presented.

I. COLOMBIAN PROSECUTOR LETTERS

The Court of Appeals remanded four of the first twelve bellwether cases selected by the parties to this MDL for a threshold determination on the admissibility of certain letters generated by the Colombian prosecutors. The non-Wolf Plaintiffs proffered the letters for admission under Fed. R. Evid. 803(8)(A), the public record hearsay exception for "a record or statement of a public office" which sets out "a matter observed while under a legal duty to report" or in a civil case which sets forth "factual findings from a legally authorized investigation." Fed. R. Evid. 803(8)(A)(ii), (iii).

A. Decedent John Doe 11 (Plaintiffs Juana Doe 11 (wife) and Minor Doe 11A (daughter))

Plaintiffs Juana Doe 11 and Minor Doe 11A asserted claims for the death of John Doe 11, who was shot in public on August 13, 2003, in Aracataca, department of Magdalena, Colombia. The Court of Appeals observed that the AUC *modus operandi* evidence does not match the circumstances of John Doe 11's murder. It also upheld the exclusion of Juana Doe 11's testimony (stating she listened to AUC commander Lugo Mangones confess to the killing via an audio tape given to her by the state attorney and heard Mangones directly confess to the murder when she personally confronted him at a hearing) [DE 2348-38 at 57]. The appellate court agreed that the remarks did not qualify as statements against interest under Rule 804(b)(3) because Plaintiffs did not establish that Mangones was unavailable under Rule 804(a).

At the same time, the Court of Appeals credited other circumstantial evidence in the case -- specifically referencing statistical data supplied by Plaintiffs' political science expert, Oliver Kaplan, Ph.D., to the effect that 90% of the murders in the Uraba region during the relevant time frame were believed attributable to the AUC and Mr. Kaplan's ultimate expert opinion that "most" of the non-Wolf bellwether murders were "probably" caused by the AUC. The Court of Appeals

also observed, without deciding, that this "might be enough" to survive summary judgment on the threshold AUC connection issue. It ultimately remanded the case with directions for this Court to determine the issue, in light of the totality of admissible evidence on record and in light of its threshold ruling on the admissibility of the prosecutor's correspondence.

The John Doe 11 letter (July 28, 2017) is addressed to Plaintiff and contains an author signature block for "Elsie Carrillo Morales," identified as "Investigation Technician II," and an "approved by" signature block for "Ilsy Carolina Herrera Herrera," designated as "Government Attorney No. 31." This letter recites that the author, "per the instructions of Government Attorney's Office No. 31," within the Court of the Specialized Transitional Justice Unit, has "consulted the Information System of the National Transitional Justice Unit … and found that, in fact, victim [Plaintiffs' decedent] [appears] as a victim of the crime of theft and forced disappearance in an event which occurred on August 13, 2003, in the Municipality of Aracataca."

This letter further recites:

> I am enclosing the video clip of the confession of JOSE GREGORIO MANGONES LUGO, alias Carlos Tijeras, a beneficiary under the Justice and Peace Act [postulado], regarding the homicide of [Plaintiffs' decedent] spontaneous statement [version libre] dated November 12, 2008.

[DE 2346-75 at 2]. [3]

At page 2, the letter references the enclosure of "One CD," but the summary judgment record does not reflect the submission of this item or any other audio evidence of the alleged confession in the Court file. This letter does not purport to record matters which the author personally

[3] Another John Doe 11 letter dated 2-28-2008, authored by "Deicy Jaramillo R.," identified as "Government Attorney No. 3, Unit of Justice and Peace" [DE 2346-74] asserted that Lugo Mangones, a beneficiary of the Justice and Peace Processes, had "admitted his involvement in this criminal act during the procedure in which he provided a statement." This letter advises the applicant that she will "promptly be given notice of the date when this criminal act will be tried."

observed while under a duty to report, nor does it purport to set out the Specialized Transitional Justice Unit's opinions or conclusions on the identity of the person(s) responsible for the murder.

The author's reference to a confession of Mangones "regarding" the homicide of the victim in the July 17, 2017, letter is hearsay within hearsay, the substantive content of which is not admissible without a separate hearsay exception allowing its admission. Plaintiffs have not identified any such exception to the hearsay rule, nor does this Court independently discern one. Thus, the prosecutor's reference to Mangones' alleged confession -- made before some unidentified third party or entity -- is not rendered admissible by the fact it is contained in prosecutorial correspondence which contains other matter qualifying for admission under the public record hearsay exception (e.g., the logistical details describing the event and decedent's confirmed status as homicide victim – data presumably representing the fruits of the agency's investigation into the death). *See e.g., United States v. Aguila-Montes De Oca*, 275 F. Appx 707 (9th Cir. 2008) (border patrol agent's written note summarizing defendant's alleged claim of United States citizenship at the border did not fall within the admissibility exception for public records)(citing *United States v. Orellana-Blanco*, 294 F.3d 1143, 1150-51 (9th Cir. 2002)(concluding that INS officer's interview capturing the gist of defendant's statements rather than the exact words did not qualify for public records hearsay exception)); *United States v. Sallins*, 993 F.2d 344, 347 (3d Cir. 1993) (details as to out-of-court statements made by person who called 911 contained in police computer record of the call held inadmissible as hearsay within hearsay; while contents of police records are admissible in some circumstances under Rule 803(8), the contents of a police report that record statements or observations of someone other than the police officer are double hearsay); *United States v. Pena-Gutierrez,* 222 F.3d 1080 (9th Cir. 2000) (alien

statement to an immigration officer was hearsay-within-hearsay when contained in immigration officer's report).

While factual findings of an investigation undertaken by the prosecutors' office set out in correspondence to a victim's family could be admissible under Rule 803(8)(A)'s public record hearsay exception, hearsay statements in the correspondence are not. *See e.g., Roxbury-Smellie v. Fla. Dept. of Corrections*, 324 F. Appx 783, 785 (11th Cir. 2009) (interview statements of co-worker contained in investigative report are hearsay, even though factual findings made by investigator fall within the public records exception to hearsay); *Jessup v. Miami-Dade County*, 697 F. Supp. 2d 1312, 1322 (S.D. Fla. 2010) ("[W]hile 'factual findings' in internal affairs reports are generally admissible under an exception to the hearsay rule, Fed. R Evid. 803(8), summaries of interviews that are contained in those reports are also double hearsay that cannot be admitted at trial or considered on summary judgment"); *Gregory v. Wal-Mart Stores East, LP*, 2013 WL 12180710 at *6 (S.D. Ga. 2013) (police report admissible to the extent it contains opinion and conclusions formed during investigation, but any statement in the report made by nonparty witnesses or bystanders is inadmissible as hearsay within hearsay). The Court accordingly concludes that the author's reference to Mangones's acceptance of responsibility at a hearing and reference to a taped recording of his purported confession – offered to prove that Mangones did confess to this homicide -- constitutes inadmissible hearsay entitled to no consideration in determining whether a triable issue on AUC involvement in this homicide is established.

Excluding the letter, the Court must now assess, under the guidance of *Carrizosa*, whether the circumstantial evidence in the case is otherwise sufficient to establish a triable issue on AUC involvement in the murder. As determined in *Carrizosa*, such evidence includes the statistical data evidence regarding killings and massacres in the victims' municipalities in the relevant time frame

gathered by Mr. Kaplan from "Colombian sources and information" leading Kaplan to conclude that "almost all (90 percent) of the killings of civilians in the bellwether victims' municipalities during the time frame of this case were committed by paramilitaries," *Carrizosa*, 47 4th at 1319 (citing Kaplan Report; DE 2348-4 at 41), and that "[m]any if not all of the human right violations against the bellwether victims in this case were caused by the AUC paramilitaries." *Id.*

In the somewhat analogous case of Non-Wolf Plaintiff Nancy Mora Lemus, the Court of Appeals found Professor Kaplan's statistical evidence and opinion evidence -- viewed "in the absence of another reason for the murder" and in light of evidence of an AUC presence in the area -- sufficient to establish a triable issue on AUC involvement in the crime, notwithstanding the absence of matching *modus operandi* evidence, and notwithstanding any adjudicative findings from the Justice and Peace Commission from which an AUC link could plausibly be inferred. *Carrizosa*, 47 F.4th at 1332. Following that reasoning here,[4] the Court credits the circumstantial evidence proffered through Kaplan -- appearing as it likewise does here in the "absence of another reason for the murder"— and finds it adequate to establish a triable issue on AUC involvement in the murder of John Doe 11. Defendants' motion for summary judgment on the threshold causation issue regarding an AUC connection to this death is therefore denied.

B. Decedent Pablo Perez 43A (Plaintiff Juana Perez 43A) (Mother)

Juana Perez 43A testified that, on the morning of her son's murder on September 14, 2002, she noticed a young man in front of her home following her son to work. She saw the man stop and heard shots fired, although she did not witness the shooting. Juana Perez 43A also testified

[4] *But see Carrizosa*, 47 F.4th at 1335-36 (upholding adverse summary judgment against Wolf Plaintiff, Doe 368, whose brother was shot and killed in public, after going out at night in violation of an AUC curfew in effect in his municipality despite warnings from his family to stay home and abide by the curfew and finding this testimony "at best" constituted a "mere scintilla" of evidence of AUC involvement in the murder).

that she learned Mangones later accepted responsibility for the death, but admitted she was not present when he gave his confession.

The Court of Appeals upheld the exclusion of Plaintiff's testimony about the confession, agreeing that she failed to establish that Mangones was unavailable under Rule 804(a)(5). It also found she was not competent to testify about the content of the confession because her testimony was not based on personal knowledge. Further, the appellate court found Juana Perez 43A does not benefit from *modus operandi* evidence because the murder of her son "does not share sufficient similarities with the AUC's behavior." While the Court of Appeals also found that "statistical data evidence and Mr. Kaplan's opinion help her," *Carrizosa*, 47 F.4th at 1333, it deferred ruling on the sufficiency of that evidence pending this Court's threshold ruling on the admissibility of two prosecutor's letters, under the public record hearsay exception, and a reassessment of the evidentiary record in light of that ruling.

The first Juana Perez 43A letter (2-14-19), from "Prosecutor 218" of the Specialized Transitional Unit, stated that the records of that Unit "confirmed" the homicide of Plaintiff's decedent, and reported that "[s]uch events took place on September 14, 2004, at the surroundings of the Plantacion Farm, Town of Orihueca, and Municipality of Zona Bananera – Magdalena, attributable to members of the extinct northern block of the William Rivas Front of the AUC." [DE 2346-50 at 1]

This letter further stated, "We reviewed testimonies given by demobilized accused persons under the Statute 975 of 2005, finding that the accused person Jose Gregorio Mangones Lugo at the testimony hearings dated October 11, 2007, and November 11, 20008 confessed the event." *Id.* The author further advised that the prosecutor's office had filed a partial indictment at a hearing before a Magistrate who then ordered the detention of Mangones "regarding the crime of homicide

of a protected person." *Id.* Subsequently, at hearing of December 5, 2011, the Magistrate Judge "confirmed the criminal charges against" Mangones, leading to issuance of a "sentence judgment" in July 2015, finding in favor of the victims and their representatives on claims for damages resulting from the homicide [DE 2346-50 at 2-3]. While the Court does not find the references to Mangones confession of guilt admissible, as it is a hearsay within hearsay summary report of testimony given before third party bodies, the Court does find the reference to an indictment and sentence judgment for this homicide admissible under *Carrizosa's* recognition of a prosecutorial judgment memorialized in an indictment as admissible under the public records hearsay exception presumably as the ultimate product of the fact findings of the prosecutor's investigation into the homicide.

The second Juana Perez 43A letter (3-1-19), appearing under the signature block of Prosecutor No. 218, stated that a review of the national prosecutor's recordkeeping system confirmed Mangones accepted responsibility for this homicide during hearings held in October 2001 and November 2008, together with co-defendant Rolando Rene Garabito Zapata, who also "accepted that he participated in the incident" [DE 2346-77]. In an apparent response to Plaintiff's request for a copy of the Mangones judgment, the letter referenced "a copy of the testimonial hearings of the accused persons" which took place on those dates as an attachment to the letter in the form of an "electronic file, "CD R MAXEL brand," which the author instructed the recipient to keep "confidential."

There is no indication that the hearing events described in the letters were based on the personal observations of the author. To the contrary, the first letter refers to the author's "review of the testimonies," implying that the author was simply relaying the content of a transcript. The substantive content of these letters is thus not admissible under the public record hearsay exception

for matters observed and recorded by one under a duty to report. On the other hand, the letters do reference the prosecutor's issuance of a "partial indictment" against Mangones– an event which is reasonably viewed as the product of the prosecutors' investigation into the circumstances of the homicide and conclusion regarding culpability of Mangones as a participant in it. In addition, the statement in the first letter describing the event of September 2004 as one found "attributable" to the William Rivas Front of the AUC is likewise reasonably interpreted to reflect a fact finding made by the prosecutor's office on the basis of its investigation into the homicide.

The Court concludes that the second Juana Perez 43A letter – to the extent offered as proof of Mangones' responsibility for this homicide as a plausible inference to be drawn from the fact of formal criminal charges lodged by the Colombian prosecutor's office – is admissible under Rule 803(8)(A)(iii). Viewing both letters together with the totality of other evidence on file - including Dr. Kaplan's expert report and apparent absence of another reason for the homicide, the Court finds the cumulative weight of the evidence in this case sufficient to establish a triable issue on AUC involvement.

C. Plaintiff Juvenal Fontalvo Camargo/ Decedent Franklin Fabio Fontalvo Salas (son)

The Court of Appeals has determined that Plaintiff Juvenal Fontalvo Camargo introduced sufficient evidence to withstand summary judgment on the question of whether the AUC murdered his son, Franklin Fabio Fontalvo Salas, a banana farm worker. This finding was based on the testimony of the Plaintiff himself and two other witnesses – one who saw Mr. Salas kidnapped by men traveling by motorcycle and one who found the body of Plaintiff's son at the entrance of a different banana farm and who was later threatened for moving the body.

In material part, Plaintiff himself testified to several encounters he had with AUC members after his son's death (including one instance where he was detained by persons, he believed to be

AUC operatives based on their dress, military uniforms and open weapon carry, and another where Mangones himself allegedly called and demanded to know why Plaintiff had retrieved the body). Plaintiff testified that he recognized AUC members by their military dress and fact that they always openly carried their weapons.

The Court of Appeals found this testimony, viewed in connection with the statistical data evidence, Mr. Kaplan's opinion, and *modus operandi* evidence regarding the AUC's use of motorcycles, sufficient to show a triable issue on AUC involvement in the murder. It thus reversed the adverse summary judgment entered against Mr. Camargo, and it remanded the matter for further proceedings. At the same time, it remanded for a further evidentiary ruling on the admissibility of a prosecutor's letter proffered by Mr. Camargo from the Justice and Peace Commission [DE 2346-60].

The Camargo letter, dated September 5, 2008, authored by Jose Alvarez Martinez, a criminal investigator with the National Unit of Justice and Peace, stated that that Jose Gregorio Mangones Lugo, a former commander of the William Rivas block, "accepted his participation in the homicide" of Mr. Camargo's son in "preliminary testimony" given before a Justice and Peace tribunal. The author advised of the date and place of an "indictment hearing" on the matter which the agency anticipated would proceed on a date in October 2008.

Upon consideration, this Court finds the public record hearsay exception inapplicable to this letter, since it is not a report of matters personally observed by one under a duty to report, nor does it purport to set forth fact findings of the agency. The internal reference to a confession of Mangones is simply hearsay within hearsay, with no independent exception to sustain its introduction. Defendants' hearsay objections to the admission of this letter are accordingly sustained and the letter is excluded from consideration.

D. John Doe 7 / Decedent John Doe 8 (son)

John Doe 7 testified by affidavit that a now-deceased AUC commander, Gilberto Camacho, made incriminating statements after Plaintiff personally confronted him fifteen days after the death of his son and demanded to know why he killed his son. According to Plaintiff, Camacho did not deny that he killed the son but instead explained that the son "was full of vices," a response which the Court of Appeals interpreted as a statement against interest and one which reasonably implied the personal participation of Camacho in the crime. John Doe 7 additionally testified that he knew Camacho as someone with whom he "had worked together before" and that he understood Camacho to "already (be) a paramilitary because he was armed and attended [] meetings" in town called to order by the AUC -- who forced the attendance of all local workers through intimidation (including the Plaintiff) [DE 2348-129 at ¶¶ 19-20].

Based on this evidence, the Court of Appeals found an adequate evidentiary predicate for Plaintiff's professed belief in Camacho's AUC affiliation and deemed his testimony recounting the conversation with Camacho to be admissible and probative of an AUC connection to the crime. *Carrizosa*, at 1330-31. The Court of Appeals further found this testimony, viewed together with other statistical evidence and the fact that Plaintiff's son was a homicide victim identified on the Hasbun Acta 138 (indictment), sufficient to show a triable issue on AUC involvement in this death. *Id.* at 1331. It accordingly reversed the summary judgment against John Doe 7.

On remand, the Eleventh Circuit nevertheless directed this Court to make a separate evidentiary assessment on the admissibility of a letter from an Assistant to the Attorney General. This letter was proffered under the public records hearsay exception, as further proof of AUC involvement in the crime. In this letter**,** dated October 29, 2018, the author, Stefania Restrepo Lara, identified as Asst. to Attorney General III, stated that the name of Plaintiffs' decedent was

run through a Justice and Peace data base, which provided information on the "date and location of the events," confirmed to have occurred on September 24, 2000, in the municipality of Turbo-Antioquia [DE 2348-129 at 35-38]. The author offered further "observations" to effect that "the event was indexed on June 16, 2017, with the postulated individual Raul Emilio Hasbun Mendoza." Finally, the author reported that "as of this date, the event is in a Concentrated Hearing" before the superior court of Medellin, Court of Justice and Peace.

This letter does not purport to describe matters personally observed by the author, nor does it purport to set forth factual findings of investigations duly conducted by the Attorney General's Office. The letter simply confirms that the event was "indexed," in government data bases, with Raul Hasbun identified as "the postulated individual" who was then currently participating in a "concentrated hearing" before the Justice and Peace tribunal. The letter appears in a sequence of other spreadsheets bearing a header from the National Attorney General's Office, Transitional Justice Proceedings, and setting forth a column labelled "Factual Reference in Version," ¶4.4, showing the following statement: "The postulated individual, Raul Emilio Hasbun Mendoza, agrees to the event freely and voluntarily, about circumstances of time, method and place (mediated co-author)." [DE 2349-129 at 37]. It is not clear that these documents were an attachment to the prosecutor's correspondence.

In any event, both documents simply describe third party statements attributed to Hasbun made in the "version of the events" segment of Justice and Peace proceedings. As with the reference to Mangones confessions in the correspondence discussed above, the statements attributed to Hasbun constitute hearsay within hearsay. Because no separate hearsay exception is identified which would allow the admission of the double hearsay, Defendants' objections to the

admission of this correspondence – to extent offered to prove Hasbun's alleged acceptance of responsibility for the crime - are sustained.

Notwithstanding the exclusion of this letter, as the Court of Appeals has already upheld the sufficiency of other evidence in this case bearing on the question of AUC involvement in the murder of John Doe 11, the Court will address Defendants' alternative challenges to the adequacy of proofs on the other elements of the Colombian law and TVPA claims presented in this case and the non-Wolf cases which have withstood summary judgment on the threshold causation issue.

II. REMAINING SUMMARY JUDGMENT CHALLENGES TO SUFFICIENCY OF PLAINTIFFS' PROOFS

As noted, Defendants raised a series of alternative challenges to the sufficiency of proofs on Plaintiffs' Colombian law claims and the TVPA claims. These challenges are not specific to the individual case histories of the underlying attacks. Defendants raised these identical challenges in their second round of summary judgment briefing directed to the remaining seventeen bellwether cases drawn from the parties' initial bellwether case pool.

As the Court has addressed Defendants' additional legal challenges in its contemporaneously issued order relative to Defendants' summary judgment motions directed to the remaining Plaintiffs drawn from the first bellwether round (seventeen remaining cases), the Court hereby incorporates and adopts those findings in full here in the interest of judicial efficiencies.

III. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED**:

1. As to the case of Decedent John Doe 11 (Plaintiffs Juana Doe 11 and Minor Doe 11A), the Court sustains Defendants' hearsay objections to the prosecutor's correspondence proffered as proof of AUC involvement in the homicide [DE 2346-75] under the public

record hearsay exception. Notwithstanding the exclusion of this evidence, the Court concludes that the totality of admissible evidence on file is sufficient to establish a triable issue on AUC involvement in this death, and accordingly **DENIES** Defendants' motion for summary judgment on the threshold causation issue as to Plaintiffs Juana Doe 11 ad Minor Doe 11A.

2. As to the case of Decedent Pablo Perez 43A (Plaintiff Juana Perez 43A), the Court overrules Defendant's hearsay objections to the prosecutor's correspondence proffered as proof of AUC involvement in this homicide [DE 2346-50, 2346-77]. Further, considering the substantive content of this correspondence, under the totality of evidence on file including statistical evidence proffered by Mr. Kaplan, Kaplan's ultimate opinions on AUC involvement in the bellwether Plaintiffs' deaths and the presence of the AUC in general region of the crime, the Court finds a triable issue on AUC involvement and accordingly **DENIES** Defendant's motion for summary judgment on this threshold causation issue as to Plaintiff Juana Perez 43A.

3. As to the case of Decedent Franklin Fabio Fontalvo Salas (Plaintiff Juvenal Fontalvo Camargo), and as to the case of Decedent John Doe 8 (Plaintiff John Doe 7), the Court sustains Defendants' hearsay objections to the prosecutors' correspondence proffered as proof of AUC involvement in these homicides. However, as to these Plaintiffs, the *Carrizosa* court has reversed the adverse summary judgments on the threshold AUC link to the attack issue and remanded the matters to this this Court for further proceedings. In these cases, the Court therefore proceeds to resolve Defendant's further and alternative challenges to the sufficiency of proofs on other elements of the Plaintiffs' claims (*see* ¶ 4).

4. As to the ten Non-Wolf Plaintiff bellwether cases (two cases remanded for a threshold reevaluation of AUC-link evidence, and eight cases reversed on the AUC-connection issue) all which have effectively withstood summary judgment on Defendants' threshold causation challenge: (1) John Doe 7/John Doe 8, decedent; (2) Juvenal Fontalvo Camargo/Franklin Fabio Fontalvo Salas, decedent; (3) Jane Doe 7/John Doe 11, decedent; (4) Nancy Mora Lemus/Miguel Antonio Rodriguez Duarte, decedent; (5) Juana Doe 11 and Minor Doe 11A/John Doe 11, decedent; (6) Seven Children of Jose Lopez 339/Jose Lopez 339, decedent; (7) Juana Perez 43A/Pablo Perez 43A, decedent; (8) Ana Ofelia Torres Torres/Ceferino Antonio Restrepo Tangarife, decedent; (9) Pastora Durango/ Waynesty Machado Durango, decedent; (10) Gloria Eugenia Munoz/Miguel Angel Cardona, decedent), the Court rules as follows on Defendants' alternative challenges to the sufficiency of proofs on the Colombian law claims (all Defendants) and TVPA claims (Individual Defendants only):

a. As to the Colombian law claims, and Defendants' further challenges to the sufficiency of proofs on "but for" causation relative to Chiquita's financial support of AUC; the "voluntary" quality of Defendants' decision-making; deviations from the good business person standard of care as relevant to the financial support and material support alleged with regard to AUC access to Chiquita's Turbo port; and "but for" causation relative to the actions or omissions of the Individual Defendants, the Court finds sufficient evidence to withstand summary judgment. Defendants' motion for summary judgment on the Colombian law claims based on any one or more of these alterative grounds is accordingly **DENIED.**

b. As to the TVPA claims, ruling is reserved pending the completion of *Daubert* briefing directed to all expert testimony and evidence proffered on the "state action" element of claim. Ruling on the alternative challenges to the TVPA claims is also reserved pending completion of *Daubert* briefing and a ruling on Defendants' threshold "state action" challenge to the TVPA claims.

3. As to the above (10) Non-Wolf Plaintiff bellwether cases which have withstood summary judgment, the Court shall schedule a case management conference by separate order of the Court.

4. Defendants' motion for summary judgment on the punitive damage claim is **GRANTED** and all punitive damage claims under the Colombian law claims are dismissed for failure to state a claim on which relief may be granted.

5. Defendants' motion for summary judgment on the multiple, individual specific torts asserted, for failure to assert a cognizable claim under controlling Colombian Civil Code is **GRANTED** and the individual tort claims (intentional/unintentional infliction of emotional distress; negligent hiring negligence *per se;* negligent retention and supervision) are dismissed. Consequently, the bellwether cases withstanding summary judgment shall proceed on only the remaining negligence-stye Colombian law claims (including wrongful death claims).[5]

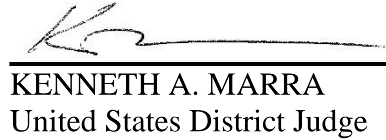
4. The Wolf and Non-Wolf Plaintiffs' motions for partial summary judgment on the affirmative defense of "duress" are **DENIED**.

5. The Wolf Plaintiffs' motion for partial summary judgment on liability, based on negligence

[5] To extent any TVPA claims survive after completion of Daubert briefing as directed above and the Court's determination on the "state action" and other TVPA elements, as necessary, those claims will proceed as well.

per se, is **DENIED.**

DONE AND ORDERED in Chambers in West Palm Beach, Florida this 15th day of December, 2022,



KENNETH A. MARRA
United States District Judge

cc. all counsel