

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 08-01916-MD-MARRA/JOHNSON**

IN RE: CHIQUITA BRANDS INTERNATIONAL, INC.,  
ALIEN TORT STATUTE AND  
SHAREHOLDER DERIVATIVE LITIGATION

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This Document Relates To:  
ATS ACTIONS  
08-80421-CIV-MARRA  
08-80508-CIV-MARRA  
10-60573-CIV-MARRA

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**DECLARATION OF MICHAEL EVANS**

I, Michael Evans, declare as follows:

1. I am a senior analyst and director of the National Security Archive’s Colombia and Mexico documentation projects. The facts stated herein are based on my personal knowledge. If called upon to do so, I could and would competently testify thereto.
2. The National Security Archive (“the Archive”) is a non-profit organization founded in 1985 by journalists and scholars. The primary objective of the Archive is to promote transparency and combat excessive government secrecy. The Archive is based out of the Gelman Library at The George Washington University and houses millions of pages of declassified documents obtained and organized by the Archive’s staff. The Archive has successfully and frequently employed the U.S. Freedom of Information Act (“FOIA”) to obtain declassified United States government documents.
3. As part of the Archive’s Colombia Project, we have collected, analyzed and compiled thousands of declassified U.S. government documents related to payments made by Chiquita Brands International (“Chiquita”) to guerrilla groups, paramilitaries and governmental actors in Colombia. That publicly-available compilation – “The Chiquita Papers” – includes

documents obtained through FOIA requests from the Department of Justice (“DOJ”), the Federal Bureau of Investigation (“FBI”), and the Department of State (“DOS”).

4. In November 2008, the Archive submitted two FOIA requests to the U.S. Securities and Exchange Commission (“SEC”) requesting the production of all records held by the SEC relating to: 1) the criminal investigation which led to Chiquita’s 2007 guilty plea for making payments to a designated terrorist organization; 2) the SEC investigation of bribes paid by Chiquita to Colombian officials that resulted in an October 2001 judgment against the company for books and records and internal control violations; and 3) SEC records pertaining more generally to the finances of Banadex, formerly Chiquita’s wholly-owned subsidiary in Colombia. Many of these records are documents that Chiquita was forced to turn over during the course of criminal and regulatory investigations conducted by DOJ, FBI and SEC. The SEC produced 14 batches of documents in response to our requests (hereinafter, the “SEC Production”). Chiquita opposed the release of the 13<sup>th</sup> and 14<sup>th</sup> SEC productions and sued SEC to prevent them from being handed over to the Archive. On July 17, 2015, the U.S. Court of Appeals for the District of Columbia Circuit held that the SEC should produce the documents over Chiquita’s objections. SEC delivered the 13<sup>th</sup> and 14<sup>th</sup> productions to the Archive on September 15, 2015, and October 1, 2015, respectively. On December 31, 2015, the Archive filed an appeal with the SEC challenging certain redactions and withholdings from the 14<sup>th</sup> SEC Production. Exhibit 3-A.
5. The Archive is reviewing the SEC Production and will make them publicly available on the Archive’s Web site after that review is complete.
6. After reviewing the 14 batches of documents in the SEC Production, earlier FOIA productions from DOJ, DOS and FBI, the Report of the Special Litigation Committee, *In re Chiquita Brands Int’l, Inc. Alien Tort Statute and Shareholder Derivative Action*, Case No. 0:08-md-

09160KAM, D.E. 202-4 (hereinafter the “SLC Report”), and other relevant material, I have concluded, to a reasonable degree of certainty that:

- a. The individual pseudonymously named Chiquita Employee #2 in the SLC Report is in fact John Ordman, a former Senior Vice President for the Chiquita Fresh Group. *See* Exhibit 3-A at 8.
  - b. The individual pseudonymously named Chiquita Employee #3 in the SLC Report is in fact John Paul Olivo, Colombian operations controller from 1996 until December 2001. *Id.* at 8.
  - c. The individual pseudonymously named Banadex Employee #1 in the SLC Report is in fact Charles Keiser, General Manager of Banadex from 1989 until February 2000.
  - d. The individual pseudonymously named Banadex Employee #3 in the SLC Report is in fact Juan Manuel Alvarado. Mr. Alvarado was Security Manager for Banadex from March 1992 until October 1999.
  - e. And, the individual pseudonymously named Banadex Employee #10 in the SLC Report is in fact Alvaro Acevedo Gonzalez. Mr. Gonzalez was General Manager of Banadex from November 2001 until June 2004.
7. Between 1999 and 2000, the SEC conducted depositions of at least seven Chiquita employees in connection with its investigation of evidence that Chiquita paid bribes to a Colombian customs official. Transcripts of these seven depositions were included in the 14<sup>th</sup> SEC production. The names of the deponents were redacted from the transcripts, but I have cross-referenced the testimony with other publicly available documents, including the SLC Report, and to a reasonable degree of certainty have concluded the following:<sup>1</sup>

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<sup>1</sup> A full explanation for my conclusions is attached as Exhibit 3-A, which is my administrative appeal to the SEC seeking removal of certain redactions and additional productions.

- a. The witness deposed by the SEC on February 8, 1999 is Wilfred “Bud” White. Mr. White was Chiquita’s Vice President of Internal Audit from 1988 until 1997.
  - b. The witness deposed by the SEC on April 27, 1999 is Jorge Forton. Mr. Forton oversaw Chiquita’s financial operations in Colombia from 1994 to 1998.
  - c. The witness deposed by the SEC on May 24, 1999 is Orlando J. Dangond. Mr. Dangond was “Manager, Materials and Supplies” for Chiquita’s operations in Colombia for the Santa Marta Division (between October 1991 and December 1994) and for all Chiquita’s Colombian operations (between January 1995 and August 1997).
  - d. The witness deposed by the SEC on November 23, 1999 is John Ordman. Mr. Ordman was Senior Vice President of European Banana Sourcing for the Chiquita Fresh Group and reported to Robert F. Kistingner.
  - e. The witness deposed by the SEC on December 2, 1999 is William Tsacalis. I understand that Mr. Tsacalis is a defendant in this litigation.
  - f. The witness deposed by the SEC on December 15, 1999 is John Paul Olivo. Mr. Olivo was “Colombian operations controller” from 1996 until December 2001.
  - g. The witness deposed by the SEC on January 6, 2000 is Robert F. Kistingner. I understand Mr. Kistingner is a defendant in this litigation.
8. I certify that Exhibit 3-A is a true and correct copy of the administrative appeal submitted to the SEC FOIA office on December 31, 2015 by the Archive.
  9. I certify that Exhibit 3-B is a true and correct copy of pages from the 14<sup>th</sup> batch of the SEC Production.
  10. I certify that Exhibit 3-C is a true and correct copy of a document produced by the SEC as part of the 5<sup>th</sup> production; it contains handwritten notes from an anonymous Chiquita

employee.

11. I certify that Exhibit 3-D is a true and correct copy of documents produced by the SEC as part of the 13<sup>th</sup> production; it includes spreadsheets and handwritten notes from an audit of the Colombian General Manager's account reflecting "sensitive" payments made by Chiquita, including to the *Convivir* groups.
12. I certify that Exhibit 3-E is a true and correct copy of a document produced by the SEC as part of the 5<sup>th</sup> production; it is a copy of a memo produced by Steven Kreps and circulated on November 30, 1999 regarding "Accounting for Confidential Payments."
13. I certify that Exhibit 3-F is a true and correct copy of documents produced by the Department of Justice in response to our FOIA requests; it contains internal audit forms of the Colombian General Manager's account signed by Bret Jacobs.
14. I certify that Exhibit 3-G is a true and correct copy of a document produced by the SEC as part of the 5<sup>th</sup> production; it is an email from Steven Kreps to Alvaro Acevedo and Manrique Ugalde regarding "FCPA information" dated November 26, 2001.
15. I certify that Exhibit 3-H is a true and correct copy of a document produced by the SEC as part of the 13<sup>th</sup> production; it includes an SEC transcription of a Chiquita voicemail tape from 1997.
16. I certify that Exhibit 3-I is a true and correct copy of a document produced by the SEC as part of the 13<sup>th</sup> production; it is a copy of handwritten notes from 2002 regarding Chiquita's "sensitive" payment procedures.
17. I certify that Exhibit 3-J is a true and correct copy of a document produced by the SEC as part of the 13<sup>th</sup> production; it is a copy of General Manger's expense sheets with handwritten notes, which refer to Juan Manuel Alvarado.
18. I certify that Exhibit 3-K is a true and correct copy of a document produced by the

Department of Justice in response to our FOIA requests; it is a copy of a draft memo from September 2000 regarding “Colombia Security.”

19. I certify that Exhibit 3-L is a true and correct copy of a document produced by the SEC as part of the 5th production; it is a copy of an email from Fuad Giacomani from January 15, 2003, regarding payments from the “Manager Fund.”

20. I certify that Exhibit 3-M is a true and correct copy of a document produced by the Department of Justice in response to our FOIA requests; it is a copy of memo distributed on January 5, 1994 with handwritten notes regarding “Reportable Payments in Colombia and Manager’s Expense Payments.”

21. I certify that Exhibit 3-N is a true and correct copy of a document produced by the SEC as part of the 13th production; it is a copy of a memo from David Hills, dated July 11, 2001, regarding “Colombian Port Issues.”

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC, on March 8, 2016.

By: 

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MICHAEL EVANS



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