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**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

**EMPERATRIZ MARINA MENDOZA
GOMEZ, et al.,**

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., et al.,

Defendants.

CASE NO. BC412620

~~[PROPOSED]~~ JUDGMENT

DATE OF FILING OF
ACTION: April 28, 2009

TRIAL DATE: None set.

1 On April 28, 2009, plaintiffs' counsel, Terrence P. Collingsworth and William Scherer,
2 Conrad & Scherer, LLP, and David Grunwold, Attorney at Law, initiated this action, then-styled
3 *Juana Perez 1A v. Dole Food Company, Inc.*, against Dole Food Company, Inc. ("Dole Food"), on
4 behalf of 73 anonymous residents of Colombia. On April 9, 2010, plaintiffs' counsel Terrence P.
5 Collingsworth, Conrad & Scherer, LLP, Brian Witzer, Law Offices of Brian D. Witzer, Inc., and
6 David Grunwold, Attorney at Law filed a First Amended Complaint for Damages in the above-
7 captioned action on behalf of 185 named Colombian plaintiffs.

8 On May 17, 2010, Dole Food filed demurrers to plaintiffs First Amended Complaint pursuant
9 to Code of Civil Procedure section 430.10, subsections (d), (e) and (f), and section 430.50(a)
10 (hereinafter "Demurrers"). Shortly thereafter, on May 27, 2010, Dole Food filed a Motion for Cost
11 Bond under Code of Civil Procedure section 1030, on the grounds that all plaintiffs reside outside of
12 California, and there was a reasonable possibility that Dole Food would prevail against each plaintiff
13 (hereinafter "Cost Bond Motion").

14 On July 6, 2008, Dole Food's Demurrers and Cost Bond Motion came on for hearing in
15 Department 308, the Honorable Ann I. Jones, presiding. After hearing argument from counsel and
16 considering all of the papers filed in support of and in opposition to Dole Food's Demurrers, the
17 Court, on July 7, 2010, the Court issued an order, a true and correct copy of which is attached hereto
18 as Exhibit 1 and incorporated by reference herein, sustaining in part and overruling in part Dole
19 Food's Demurrers. The Court ruled that:

20 The statute of limitations bars this action as to all plaintiffs except for Arelis Margarita
21 Hernandez Rivera and Julio Nestor Medina [Coronado]. As to all plaintiffs except
22 these two, the demurrer is granted without leave to amend.

23 As to these two plaintiffs, their current allegations against Dole under the doctrines of
24 alter ego and agency are insufficient as a matter of law and, further, necessitate adding
25 Tecbaco as an indispensable party.

26 Given the numerous contradictory allegations contained in the FAC, it is unlikely that
27 these two plaintiffs can cure these defects in good faith. However, in an abundance of
28 caution, the court will afford these plaintiffs with one additional opportunity to amend.

(Exh. 1, at 22-23.)

The Court ordered plaintiffs Hernandez Rivera and Medina Coronado to "file and serve their
amended complaints within 45 days of the date of this order." (*Id.* at 23.) More than 45 days have

1 elapsed since entry of the Court's July 7, 2010 order on Dole Food's Demurrers. Neither plaintiff
2 Hernandez Rivera, nor plaintiff Medina Coronado, has filed an amended pleading.

3 After hearing argument from counsel and considering all of the papers filed in support of and
4 in opposition to Dole Food's Cost Bond Motion, on July 7, 2010, the Court issued an order, a true
5 and correct copy of which is attached hereto as Exhibit 2 and incorporated by reference herein,
6 granting Dole Food's Cost Bond Motion, and ordering "each plaintiff in this action" to "post \$16,926
7 within 30 days of entry of this order." (Exh. 2 at 11.) More than 30 days have elapsed since entry of
8 the Court's July 7, 2010 order on Dole Food's Cost Bond Motion. No plaintiff in the above-
9 captioned action has posted a cost bond in any amount.

10 On August 25, 2010, Dole Food appeared before this Court to request that the above-
11 captioned action be dismissed with prejudice pursuant to Code of Civil Procedure sections 581(f)(1)
12 and (2), and 1030(d), and that judgment be entered in Dole Food's favor. By separate order, the
13 Court has granted Dole Food's request and dismissed plaintiffs' First Amended Complaint with
14 prejudice.

15 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

16 Defendant Dole Food Company, Inc. is entitled to judgments against the following 185 plaintiffs in
17 the above-captioned action, and that said plaintiffs shall have and recover nothing from said
18 defendant:

- 19 1. Emperatriz Marina Mendoza Gomez
- 20 2. Iluminada Escorcia de Silva
- 21 3. Yadira Isabel Merino Lea
- 22 4. Suleima Esther Sanjuan Castro
- 23 5. Nayeth Sofia Teran Noriega
- 24 6. Zunilda Esther Castro Mercado
- 25 7. Josefina Yaneth Nunez Avila
- 26 8. Angela Cevilia Orozco Badillo
- 27 9. Damaso Teran Perez
- 28 10. Gilma Isabel Teran Perez

- 1 11. Jose del Carmen
- 2 12. Mabel del Socorro Sarmiento Julio
- 3 13. Angela Bolano Morales
- 4 14. Nelvis Maria Mendoza Caicedo
- 5 15. Tomas Segunda Amarante Perejo
- 6 16. Emilio de Jesus Alfaro Hernandez
- 7 17. Mirian Esther Soto Charris
- 8 18. Arelis Margarita Hernandez Rivera
- 9 19. Dominga Dolores Carrillo Echorbot
- 10 20. Flor Catalina Franco Gutierrez
- 11 21. Cristobal Cristo Ariza Sanchez
- 12 22. Magalis del Carmen Batista Mozo
- 13 23. Jairo Segundo Banquez Correa
- 14 24. Emel Segundo Ortega Montalvo
- 15 ~~24.~~ 25. Agustin Ortega Niebles
- 16 26. Hugo Alberto Ortega Niebles
- 17 27. Carmela Maria Ortega Niebles
- 18 28. Zoila Rosa Ortega de Yanes
- 19 29. Bernadina Rojas Villamizar
- 20 30. Jesus Manuel Obregon Mercado
- 21 31. Angelica Maria Wolf Ferreira
- 22 32. Luz Marina Julio Diaz
- 23 33. Enelda Patricia Morelli Navarro
- 24 34. Gladys Calvo Parra
- 25 35. Nelsis Maria Fernandez San Juan
- 26 36. Yanett Del Carmen Lara Cuello
- 27 37. Rosiris Judith Garcia Cervantes
- 28 38. Delfina Judith Osias Perez

- 1 39. Julio Nestor Medina Coronado
- 2 40. Petrona Merino Caceres
- 3 41. Alidys Esther Rodriguez Arzuaga
- 4 42. Silva Rosa Velasquez de Bermejo
- 5 43. Maria Victoria Sarco Polo
- 6 44. Marta Elizabeth Martinez Torres
- 7 45. Alcira Esther Sandoval Garcia
- 8 46. Alicia Matilde Tovar Lopez
- 9 47. Juana Maria Torres de Arriza
- 10 48. Esmeralda Cecilia Fontalvo Caceres
- 11 49. Blanca Nieves Juvinao de Avila
- 12 50. Gladys Maria Reales Melendrez
- 13 51. Soraida Padilla Flores
- 14 52. Lida Isabel Morales Pina
- 15 53. Graciela Maria Navas Pina
- 16 54. Aquilino Rafael Merino Caceres
- 17 55. Nirris Socorro Cantillo Rivera
- 18 56. Audrea Del Carmen Lora Calderon
- 19 57. Duvis Esther Carrillo Carillo
- 20 58. Rocio Beatriz Martinez Meza
- 21 59. Judith del Carmen Dias Bolano
- 22 60. Julia Marina Garizado Armor
- 23 61. Joohnys Arturo Bustamante Montiel
- 24 62. Ilaria Isabel Suarez de Martinez
- 25 63. Maria Esther Ferreira Diaz
- 26 64. Angel Torres Niebles
- 27 65. Sara Matilde Arza Martinez
- 28 66. Manuel de los Santos

- 1 67. Argenida Sarabia Angarita
- 2 68. Yasmery Altamiranda Vargas
- 3 69. Maria Anazaria
- 4 70. Yerania Maria Guitierrez Elias
- 5 71. Duvis Mercado Bustamonte
- 6 72. Belisa Izabel
- 7 73. Ediltrudis Guerrero Martinez
- 8 74. Rosa Maria Labrales de Guitierrez
- 9 75. Luz Marina Martinez Valiente
- 10 76. Nerys Esther Banques Galindo
- 11 77. Damiana Esther Brochero Perez
- 12 78. Maria De Los Reyes Guarnes Mejia
- 13 79. Ana Mercedes Silvera Mercado
- 14 80. Sonia Ester Sandoval Martinez
- 15 81. Carmen Dolores Charris Sandoval
- 16 82. Jorge Enrique Charris Perea
- 17 83. Roquelina Dolores Charris Perea
- 18 84. Alejandro Manuel Charris Perea
- 19 85. Manuel Eugenio Nieves Rodrigue
- 20 86. Jose Gregorio Leon Llanos
- 21 87. Matilde Isabel Llanos Martinez
- 22 88. Elvira Rosa Tobias de Alfaro
- 23 89. Elizabeth Romero Barrios
- 24 90. Dilia Esther Munoz Mosquera
- 25 91. Herlinda Maria Martinez Ugreta
- 26 92. Amalia Esther Tapia de Caballero
- 27 93. Ruth Francisca Anchila Conrado
- 28 94. Silfida Rosa Ariza Castro

- 1 95. Edilsa Acosta Vanegas
- 2 96. Leyla Maria Gonzalez Montenegro
- 3 97. Jorge Alberto Correa Mercado
- 4 98. Dexy Rangel Sanchez
- 5 99. Iveth del Socorro Fandino Cadexia
- 6 100. Evelia Melendrez de Agudelo
- 7 101. Beatriz Sosa Garcia
- 8 102. Sunilda Graciela Marino Villanueva
- 9 103. Eduardo Antonio Bayena Sanjuan
- 10 104. Ana Mercedes Marin Legarda
- 11 105. Cesar Augusto Parejo Granados
- 12 106. Gladys Maria Bayena Suarez
- 13 107. Ludis Bravo Charris
- 14 108. Francisca Emilia Gil
- 15 109. Delfina Isabel Fandino Egea
- 16 110. David Jesus Marin Santiago
- 17 111. Alba Amparo Marulanda Lozano
- 18 112. Helen Mayulis Salcedo de la Hoz
- 19 113. Luz Marina Sarabia Polo
- 20 114. Belquis Deisy Caban Orozco
- 21 115. Julio Segundo Santos Sierra
- 22 116. Edith Encarnacion Cabrera Zambrano
- 23 117. Yucelis Elena Sierra Espinoza
- 24 118. Alejandro Antonio Aguirre Ruiz
- 25 119. Cleotilde Esther Martinez Atencio
- 26 120. Dolis Cecilia Zamora Hernandez
- 27 121. Noehemy Ayola Casteneda
- 28 122. Marlene Esther de la Rosa

- 1 123. Purificacion Ayala Donado
- 2 124. Ana Del Carmen Sarmiento Granados
- 3 125. Jaime Alfonso Charris Jimenez
- 4 126. Nidia Rosa Candanoza
- 5 127. Luis Carlos Candanoza Bovea
- 6 128. Leonor Maria Bovea Guerrero
- 7 129. Jaime De Los Milagros Candanoza Del Valle
- 8 130. Elizabeth Cecilia Torres Ruiz
- 9 131. Luis Yefrith Candanoza Toscano
- 10 132. Denis Fontalvo de Mendoza
- 11 133. Marina Salome Bovea Castillo
- 12 134. Josefa Cecilia Martinez de Manga
- 13 135. Dubis Mercedes Merino Suarez
- 14 136. Hilda Dolores Rodriguez Ramos
- 15 137. Nicolas Calixto Melendrez Campo
- 16 138. Delia Rosa Sarmiento Ordonez
- 17 139. Yolanda Diaz Plata
- 18 140. Olga Pacheco Rodriguez
- 19 141. Josefa Isabel Polo Buelvas
- 20 142. Rosalia Hernandez Mendoza
- 21 143. Guillermo Argote Jimenez
- 22 144. Sergio Enrique Montiel Jimenez
- 23 145. Miladis Maria Zarate Olmos
- 24 146. Denys Maris Cantillo Perez
- 25 147. Natividad Sobrino Montenegro
- 26 148. Natalis Arcon Beltran
- 27 149. Atrix Mercedes Bermejo Velasquez
- 28 150. Doris Beatriz Pertuz Pedroza

- 1 151. Neyla Rosa Montalvo Castillo
- 2 152. Gregorio Ambrosio Marquez Ibanez
- 3 153. Maria Eugenia Camargo Melendrez
- 4 154. Manuela Melendrez Santodomingo
- 5 155. Emilse Ester Vargas Polo
- 6 156. Martina Isabel Abdala Pena
- 7 157. Nerys Blanquiceth Negrete
- 8 158. Ines Maria Rada
- 9 159. Luisa M. Rada Montes
- 10 160. Lucelys Bolano Montero
- 11 161. Hercilia Sierra Uparela
- 12 162. Dilia Ahumada Correa
- 13 163. Ruth Maria Sosa de Palma
- 14 164. Argenida del Carmen Fandino Gamero
- 15 165. Evelia Torres Montenegro
- 16 166. Rosiris del Socorro Santrich Angulo
- 17 167. Sobeida Esther Ahumada Camacho
- 18 168. Maria Concepcion Ochoa Morron
- 19 169. Ana Elis Suarez Palma
- 20 170. Maria Josefa Fernandez de Ferrer
- 21 171. Lorenza Herrera Escobar
- 22 172. Adelina Josefa Bellio Martinez
- 23 173. Heidy Berdugo Lechuga
- 24 174. Ines Maria Gil Aguirre
- 25 175. Josefa Maria Jimenez Vizcaino
- 26 176. Yaquelin Del Socorro Guitierrez Conrado
- 27 177. Carmen Alicia Marquez Villamizar
- 28 178. Manuel de Jesus Tapias Caraballo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/07/10

DEPT. 308

HONORABLE ANN I. JONES

JUDGE

N DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

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J LOPEZ/C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC412620

Plaintiff
Counsel

JUANA PEREZ 1A ET AL

VS

Defendant NO APPEARANCES
Counsel

DOLE FOOD COMPANY INC ET AL

Deemed Complex 6-8-09

**170.6 JUDGE M. STERN(Deft)

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANT DOLE FOOD COMPANY, INC. TO
FIRST AMENDED COMPLAINT;

MOTION OF ABOVE DEFENDANT FOR COST BOND UNDER CODE OF
CIVIL PROCEDURE SECTION 1030

RULING ON SUBMITTED MATTERS

The court having taken the above matters under sub-
mission on July 6, 2010, now makes its rulings as
set forth in the below-listed documents filed this
date:

1. COURT'S RULING ON DEMURRER OF DEFENDANT DOLE
FOOD COMPANY, INC., HEARD ON JULY 6, 2010.
2. COURT'S RULING ON MOTION OF DEFENDANT DOLE
FOOD COMPANY, INC., FOR COST BOND UNDER CODE OF CIVIL
PROCEDURE SECTION 1030 HEARD ON JULY 6, 2010

COUNSEL FOR DEFENDANT DOLE IS TO GIVE NOTICE.

A copy of this minute order as well as the Court's
Rulings are mailed via U.S. Mail to counsel for de-
fendant Dole Food Company, Inc. addressed as follows:

ANDREA E. NEUMAN, GIBSON, DUNN & CRUTCHER, 3161
MICHELSON DR., IRVINE, CA 92612-4412

<p align="center">MINUTES ENTERED 07/07/10 COUNTY CLERK</p>

ORIGINAL FILED

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUL 7 2010

**LOS ANGELES
SUPERIOR COURT**

JUANA PEREZ, ET AL)
Plaintiffs)
vs)
DOLE FOOD CO., INC.,)
ET AL)
Defendants)
_____)

CASE NO. BC412620

COURT'S RULING ON DEMURRER OF DEFENDANT DOLE FOOD COMPANY, INC.,
HEARD ON JULY 6, 2010

Having read the pleadings, and having heard argument, and having taken the matter under submission, the court rules as follows:

I. Background

Plaintiffs are the heirs of 167 decedents who were murdered by members of a violent paramilitary organization known as the United Self-Defense Forces of Colombia (hereinafter, the "AUC"), allegedly at the behest of defendant Dole Food Company, Inc. ("Dole" or "defendant"). Specifically, plaintiffs allege that Dole paid the AUC to perform violent services on its behalf including, *inter alia*: driving small farmers from their land; driving leftist guerillas out of the banana zones; protecting Dole's property from theft and vandals; using terrorist tactics to discourage union membership; and generally acting as the local police force for Dole.

The First Amended Complaint ("FAC") asserts causes of action for: (1) Wrongful Death; (2) Battery; (3) Assault; (4) Negligent Hiring and Supervision; (5) Intentional Infliction of Emotional Distress; (6) Negligent Infliction of Emotional Distress; (7) Civil Conspiracy; and (8) Negligence.

Dole demurs to the FAC on the ground that all of plaintiffs' causes of action are barred by the statute of limitations, and on a number of other grounds, as discussed below.

In addition, Dole has requested that the court judicially notice a certified translation of an interview with plaintiffs' counsel Terry Collingsworth that appeared in a Colombian newspaper. While defendant is correct that the court may take judicial notice of the existence of the article, the court may not take notice of the truth of the statements contained therein. This article, however, is not adduced for the truth of the statements; rather it is relevant to show the purported knowledge held by plaintiffs' agent, Mr. Collingsworth, as of its publication. The contents of this article are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Accordingly, defendant's request for judicial notice is granted. See Cal. Evid. Code Section 452(h).

II. Relevant Law

A demurrer tests the sufficiency of a complaint as a matter of law and raises only questions of law. See Cal. Code Civ. Proc., § 589; Schmidt v. Foundation Health, 35 Cal. App. 4th 1702, 1706 (1995). In testing the sufficiency of the complaint, the court

must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. See Blank v. Kirwan, 39 Cal. 3d 311, 318 (1985). Accordingly, "[w]hether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer." Stevens v. Superior Court, 180 Cal. App. 3d 605, 610 (1986).

A general demurrer is proper where the complaint "does not state facts sufficient to constitute a cause of action" or discloses a defense that would bar recovery. See Cal. Code Civ. Proc., § 430.10(e); Casterson v. Superior Court, 101 Cal. App. 4th 177, 183 (2002). If there is a reasonable possibility that a defect in the complaint could be cured by amendment, the court should sustain the demurrer with leave to amend. See City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 68 Cal. App. 4th 445, 459 (1998). However, "where the nature of the plaintiff's claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result." Id.

III. Analysis

A. Statute of Limitations

When the existence of some affirmative defense, such as the statute of limitations, appears on the face of the complaint or from matters of which the court may or must take judicial notice, a demurrer on that ground is proper. See Cochran v. Cochran, 56 Cal. App. 4th 1115, 1120 (1997). Thus, when the relevant facts are not in dispute, the court may decide the

application of the statute of limitations as a question of law. See Sahadi v. Scheaffer, 155 Cal. App. 4th 704, 713 (2007).

The two-year statute of limitations prescribed by Code of Civil Procedure section 335.1 applies to all of plaintiffs' causes of action.¹ Plaintiffs anonymously initiated this lawsuit against Dole on April 28, 2009. Based on the allegations contained in the FAC, it appears that 67 of the 73 original plaintiffs remain parties to the action. Arelis Margarita Hernandez Rivera ("Hernandez") and Julio Nestor Medina Coronado ("Medina") are the only original plaintiffs whose causes of action accrued on or after April 28, 2007. As such, all of the original plaintiffs, with the exception of Hernandez and Medina, filed their claims beyond the period permitted by the statute of limitations.

It also appears that 118 additional parties were named as plaintiffs when the FAC was filed on April 9, 2010. According to the FAC, the causes of action asserted by the new plaintiffs all accrued on or before November 9, 2007.² Defendant argues, and plaintiffs do not dispute, that "[n]one of the claims asserted by the 118 new plaintiffs relate back to the initial Complaint." (Demurrer at 3, n.4). Because all of the causes of action asserted by the new plaintiffs accrued prior to April 9, 2008, the claims of these plaintiffs are also presumptively time-barred.

¹ On January 1, 2003, the statute of limitations period for personal injury actions was expanded from one to two years following the Legislature's enactment of Code of Civil Procedure section 335.1, which governs actions "for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another." See Krupnick v. Duke Energy Morro Bay, 115 Cal.App.4th 1026, 1028 (2004).

² Plaintiff Efrain Antonio Pacheco Rodriguez was allegedly "murdered on November 9, 2007 by remnants of the Northern Block of the AUC." (FAC ¶ 223.)

Plaintiffs counter that their claims were equitably tolled because "the FAC alleges that Plaintiffs had no reason to suspect that Dole was behind the murders because Dole concealed its relationship to the AUC." (Opposition at 3.) By their reliance on equitable tolling, plaintiffs concede by implication that, without it, the majority of the claims asserted in the FAC are barred by the statute of limitations. Further, at oral argument, plaintiffs' counsel argued that it wasn't until he interviewed certain terrorist leaders that he knew, for certain, the identity of the Dole defendants.

"The general rule governing statutes of limitation is that the time for commencing an action continues to tick away so long as the proposed defendant can be sued and a personal judgment obtained against him." Bigelow v. Smik, 6 Cal. App. 3d 10, 12 (1970). In order to avoid the unjust application statutes of limitations where circumstances effectively render timely commencement of an action impossible or virtually impossible, the limitations period may be "tolled." See Grell v. Laci Le Beau Corp., 73 Cal. App. 4th 1300, 1305 (1999).

"Tolling" is the temporary suspension of the running of the statute of limitations pursuant to statute or a judicial decision. See id. Equitable tolling is a judicially created doctrine that operates "to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness." See Lantzy v. Centex Homes, 31 Cal. 4th 363, 370 (2003).

It is a well-established principle of California law that equitable tolling of the statute of limitations is permitted

when the defendant has fraudulently concealed a cause of action. See Regents of University of California v. Superior Court, 20 Cal. 4th 509, 533 (1999). The purpose is "to disarm a defendant who, by his own deception, has caused a claim to become stale and a plaintiff dilatory." See id.

To establish that equitable tolling applies, a plaintiff must show: (1) fraudulent conduct by the defendant resulting in concealment of the operative facts; (2) failure of the plaintiff to discover the operative facts that are the basis of its cause of action within the limitations period; and (3) due diligence by the plaintiff until discovery of those facts. See Sagehorn v. Engle, 141 Cal. App. 4th 452, 460-61 (2006). Further, "[t]he doctrine focuses primarily on the plaintiff's excusable ignorance of the limitations period. [Citation.] [It] is not available to avoid the consequences of one's own negligence.'" Id.

Here, plaintiffs allege that Dole "actively concealed its payments and other forms of support to the AUC by using 'convivirs.'" (FAC ¶ 381.) Convivirs are "private security companies licensed by the Colombian government to assist the local police and military in providing security." (FAC ¶ 352.) Plaintiffs also allege that they "did not know, had no reason to know, and had no reason to suspect that Dole financed the AUC murders of their decedents until, at the earliest, May, 2007." (FAC ¶ 376.) Finally, plaintiffs allege that "[a]t all relevant time, Plaintiffs exercised all due diligence in investigating the cause of their decedents' deaths." (FAC ¶ 381.)

Dole counters that these allegations are contradicted by other allegations contained in the FAC. The FAC "simultaneously

alleges that Dole [. . .] had an allegedly open and notorious relationship with the AUC in the Magdalena region where plaintiffs resided, yet at the same time asserts that [Dole] was "actively concealing" its relationship with the AUC from individuals who lived and worked on or around banana farms in the Magdalena region." (Reply at 3.)

As a review of the operative pleading discloses, Dole is correct. According to the FAC, "there was a major, visible presence of the AUC security forces in and around the Dole plantations." (FAC ¶ 354). Specifically, the FAC alleges that "[t]he AUC set up security check points and sub-command posts throughout the banana zone, and no person entering or leaving a Dole owned or controlled plantation could do so without passing through AUC security." (FAC ¶ 354). In addition, the head administrators for the Dole plantations allegedly "gave the AUC forces free access to the plantations, allowed them to use company vehicles, and provided land for AUC encampments."³ (FAC ¶ 354).

³As correctly noted by defense counsel at the hearing, the gravamen of plaintiffs' case is that Dole used the AUC to intimidate and rebuff its employees efforts to obtain worker benefits in the Magdalena region of Columbia. Accepting as true plaintiffs' allegations that the head administrators on the Dole plantations provided the AUC forces access to the plantations, allowed encampments on the property and gave them company vehicles to use, plaintiffs were intimidated because they believed that the AUC was operating under the auspices of Dole. It is entirely inconsistent for plaintiffs to assert that they had no reasonable basis to allege Dole's involvement with the AUC until after terrorist leaders were interviewed by plaintiffs' counsel. (Compare FAC ¶¶ 354, with 376, 381). In California, the law is quite clear that the accrual date of plaintiffs' cause of action is not delayed due only to plaintiffs' ignorance as to the identity of a particular defendant. Bernson v. Browning-Ferris, 7 Cal. 4th 926, 936 (1994). Rather, the statute of limitations tolls until such a time that plaintiff knows, or through the exercise of reasonable diligence should have discovered, the defendants' identity. Id.

Read as a whole, the FAC utterly fails to support plaintiffs' argument that plaintiffs -- who are all family members of either an employee of Dole, a member of the union representing Dole workers, a person living on or around Dole plantations, or a person squatting on property the Dole claimed -- were unaware or misled about Dole's alleged relationship with the AUC. Several plaintiffs have alleged that their family members were murdered as a result of a "labor dispute with management" at a plantation controlled by Dole. For example, "[o]ne week before his death, Mario Alfonso Ortega Niebles reported having an argument with the owner of Finca Siria, and that he was afraid that something might happen to him." (FAC ¶ 42.) The FAC also alleges that some decedents were murdered in order to intimidate union leaders and to discourage Dole employees from joining the Sintrainagro trade union: "Eduardo Enrique Cera Contreras was at home at 11:00 PM when a group of heavily armed paramilitaries came to his door and asked for 'Camilo,' whom they said was the head of Sintrainagro, the trade union representing banana workers at Dole. Eduardo Enrique Cera Contreras told them they he didn't know 'Camilo.' Immediately, the paramilitaries shot Eduardo Enrique Cera Contreras twice, killing him." (FAC ¶ 11.) Additionally, some plaintiffs have alleged that their family members were "murdered in order to intimidate the other squatters into vacating their plots so that Dole could recover the land for banana production." (FAC ¶ 18.) The FAC states that "shortly after Abel Antonio Bolano Morales was murdered, the remaining squatter families did vacate their plots, and within several weeks heavy machinery was brought in to destroy their cultivation, and later the land was planted with Dole bananas." (FAC ¶ 18.)

These allegations, which for purposes of this motion are assumed to be true, lead to the inescapable conclusion that plaintiffs were aware of this information at the time their family members were murdered. A plaintiff cannot be intimidated by the AUC's actions to abandon union activities or other worker grievances unless they believe that Dole was behind the conduct. Certain allegations in the FAC flatly contradict plaintiffs' present contention that plaintiffs had no reason suspect that Dole had a role in the murder of their family members. Instead, the FAC's allegations make clear that plaintiffs were on inquiry notice of the alleged relationship between Dole and the AUC long before May 2007.

Plaintiffs fail to address these contradictory allegations.⁴ Instead, they argue that "there is no objective date to which all Plaintiffs could point as the date they had reason to suspect Dole had a role in their crime" and that this lack of any objective accrual date necessarily "requires that a jury resolve the factual dispute." (Opposition at 4.) Plaintiffs are mistaken.

A plaintiff seeking to avoid the statute of limitations by showing fraudulent concealment "must plead with particularity the facts showing fraudulent concealment." See Union Carbide Corp. v. Superior Court, 36 Cal. 3d 15, 25 (1984) (it is a "well-recognized proposition that if on the face of the complaint the action appears barred by the statute of

⁴ According to the FAC, "[m]any of the Plaintiffs did not learn of this first revelation of the Dole-AUC relationship until much later [. . .] as they did not have access to media." However, the FAC also states that plaintiff Nerys Esther Banques Galindo's father was allegedly "at home watching the evening news" on the night he was murdered. (FAC ¶ 117.) Similarly, plaintiff Edith Encarnacion Cabrera Zambrano was allegedly "at home watching television" with her son on the night he was murdered. (FAC ¶ 191.)

limitations, plaintiff has an obligation to anticipate the defense and plead facts to negate the bar"). Plaintiffs' argument that all 185 plaintiffs had no reason to suspect Dole's complicity until counsel interviewed a terrorist leader in June 2008, who implicated Dole, is insufficient. See CAMSI IV v. Hunter Techn. Corp., 230 Cal. App. 3d 1525, 1536-1537 (1991) ("mere conclusory allegations that delay in discovery was reasonable are insufficient and will not enable the complaint to withstand general demurrer).

As discussed above, plaintiffs concede that the FAC does not allege when and how they came to suspect that Dole was involved in their family members' deaths. Moreover, the FAC fails to plead due diligence on the part of each plaintiff prior to discovery of Dole's involvement. The conclusory allegation that "[a]t all relevant time, Plaintiffs exercised all due diligence in investigating the cause of their decedents' deaths," is insufficient to do so. (FAC ¶ 381.)

Finally, plaintiffs argue in a footnote that "a distinct statutory basis to toll the statute of limitations is if Plaintiffs were unable to file due to a statute of war." (Opposition at 4, n.5.) Where the existence of a state of war precludes a plaintiff from commencing an action, he or she is treated as being under a "disability to commence an action." See Code Civ. Proc. § 354. In this case, plaintiffs contend that Paragraph 3 of the FAC demonstrates that "the danger of the civil conflict continued into 2008." (Opposition at 4.) However, that paragraph only states that "[g]athering information in Colombia about past and ongoing relationships between U.S. multinationals and the AUC remains very difficult, but was impossible until the AUC leadership demobilized, a

process that began in 2007 and was largely complete by the end of 2008." (FAC ¶ 3.) The fact that the civil conflict may have made it difficult for plaintiffs to discover information about Dole does not demonstrate that prior to 2008 it was unsafe for plaintiffs to file this lawsuit, or that the courts were otherwise closed to plaintiffs.

Given that plaintiffs have failed to carry their burden of showing that tolling applies, plaintiffs' claims (except those of Arelis Margarita Hernandez Rivera and Julio Nestor Medina) are barred by the statute of limitations.

B. Alter Ego and Agency

Dole is the only named defendant in the FAC. Dole's former subsidiary C.I. Tecnicas Baltime de Colombia SA ("Tebaco"), which the FAC refers to as "Baltime," has not been named as a defendant. The FAC acknowledges that Tebaco was established to be "Dole in Colombia." (FAC ¶ 324.)

Plaintiffs allege that Tebaco was an alter ego of Dole and was acting as Dole's agent in Colombia, and "was acting within the scope of its agency as a participant in Dole's actions in providing substantial support to the AUC." (FAC ¶ 324.) The FAC also states that "[a]ll reference and allegations herein to Dole apply equally to Baltine unless specifically identified otherwise." (FAC ¶ 324.) Plaintiffs' allegations totally conflate "agency" and "alter ego" liability and make it

impossible for the court to assess the adequacy of these separate theories of liability.⁵

Defendant argues that the FAC "simply concludes that Dole Food is liable for alleged wrongful conduct on the part of Tecbaco and its alleged employees, and purports to 'define' 'Dole' collectively as Dole Food or its former subsidiary Tecbaco, without setting forth any facts upon which to base an 'alter ego' claim, or an 'agency' theory or liability." (Demurrer at 8.) For the reasons discussed below, the court agrees with defendant.

Alter ego liability will be imposed on a parent corporation for the acts or omissions of its subsidiary if (1) there is such a unity of interest and ownership between the two corporations that their separate personalities no longer exists, and (2) an inequitable result would otherwise occur. See Laird v. Capital Cities/ABC, Inc., 68 Cal. App. 4th 727, 742 (1998). In other words, to justify piercing the corporate veil, the plaintiff must show "specific manipulative conduct" by the parent toward the subsidiary which "relegate[s] the latter to the status of merely an instrumentality, agency, conduit or adjunct of the former." See Institute of Veterinary Pathology, Inc. v.

⁵ Plaintiffs' contention at oral argument that all subsidiaries are necessarily agents of their parent corporation is neither pled nor is it legally accurate. Laird v. Capital Cities/ABC, 68 Cal. App. 4th 727, 737 (1998) (an employee who seeks to hold a parent corporation liable for the acts or omissions of its subsidiary on the theory that the two corporate entities constitute a single employer has a heavy burden to meet under California law. Corporate entities are presumed to have separate existences, and the corporate form will be disregarded only when the ends of justice require this result. See Mesler v. Bragg Management Co., 39 Cal. 3d 290, 300 (1985). In particular, there is a strong presumption that a parent company is not the employer of its subsidiary's employees. Cf. Frank v. U.S. West, Inc., 3 F.3d 1357, 1362 (10th Cir. 1993).

California Health Laboratories, Inc., 116 Cal. App. 3d 111, 119-120, (1981).

Courts consider several factors in determining whether there is a sufficient unity of interest and ownership, including: (1) commingling of funds and other assets of the two corporations; (2) use of the same offices and employees; (3) use of one as a mere shell or conduit for the affairs of the other; (4) inadequate capitalization; (5) disregard of corporate formalities; (6) lack of segregation of corporate records; and (7) identical directors and officers. See Roman Catholic Archbishop, 15 Cal. App. 3d 405, 411 (1971); Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 539 (2000); Associated Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d 825, 839-840 (1962).

Similarly, "[t]he nature of the control exercised by the parent over the subsidiary necessary to put the subsidiary in an agency relationship with the parent must be over and above that to be expected as an incident of the parent's ownership of the subsidiary and must reflect the parent's purposeful disregard of the subsidiary's independent corporate existence." See Sonora Diamond, 83 Cal. App. 4th at 542. In addition, a plaintiff must make a strong showing beyond facts evidencing the broad oversight typically indicated by the common ownership and directorship that is typically present in the parent-subsidiary relationship. See id. To make such a showing, the plaintiff must demonstrate that the parent has "moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." Id.

In this case, the FAC is completely devoid of any allegations tending to show that a unity of interest exists between Dole and Tecbaco, or that Dole has otherwise disregarded corporate formalities.⁶ The bald allegation that "Dole has exercised relatively complete management and control of Baltine" is insufficient to demonstrate that Dole had moved beyond the establishment of general policy and direction for its subsidiary. (FAC ¶ 324.) As such, plaintiffs have not met their burden of overcoming the presumption of the separate existence of the corporate entity. See MacPherson v. Eccleston, 190 Cal. App. 2d 24, 27 (1961). To the extent that plaintiffs' causes of action against Dole are predicated on theories of alter ego and agency, the demurrer is sustained.⁷

C. Joinder

Dole also contends that the FAC is "defective for its failure to joint Tecbaco, a necessary and indispensable party to this litigation." (Demurrer at 9.)

Joinder of parties is governed by Code of Civil Procedure section 389. That section provides that a party must be joined if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to

⁶At oral argument, plaintiffs' counsel simply assigned liability to Dole for acts taken by its subsidiary. However, a parent company is not liable for the acts of its subsidiary absent facts justifying piercing the corporate veil. See, e.g., Inst. Of Veterinary Pathology, Inc. v. Cal. Health Labs., Inc., 116 Cal. App. 3d 111, 119 (1981) ("Liability may be imposed only where the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former"). That defense counsel was able to obtain declarations from former employees of Tecbaco in support of its application for a bond is not a sufficient indicia of unity of control.

⁷ The FAC does allege that "[r]epresentatives of Dole both from the parent company and Baltine, met with leaders of the AUC to reach an agreement to cooperate and to arrange a payment system." (FAC ¶ 343.)

the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." See Code Civ. Proc. § 389(a).

Plaintiffs appear to characterize this as a three-factor test, and thereby imply that defendant must satisfy all "three distinct parts or clauses of section 389(a)." (Opposition at 8.) However, the statute is framed in the disjunctive; accordingly, a party need only show that one of these clauses applies. See Countrywide Home Loans, Inc. v. Superior Court, 69 Cal. App. 4th 785, 791 (1999).

According to defendant, Tecbaco is an indispensable party because (1) complete relief cannot be accorded among the parties without Tecbaco, and (2) the action threatens Tecbaco's interests. The court agrees.

The parties fail to cite, and the court's own research has failed to yield, a single California authority addressing the necessity of joining as a party a subsidiary of a parent corporation. In Countrywide Home Loans, the only case cited by plaintiffs in support of its argument that Tecbaco is not an indispensable party, the court explained that it is "appropriate to use federal precedents as a guide to application of the statute."⁸ See 69 Cal. App. 4th at 792. Accordingly, the court

⁸ Code of Civil Procedure section 389 tracks the language of its federal counterpart, rule 19 of the Federal Rules of Civil Procedure. See Countrywide Home Loans, 69 Cal. App. 4th at 791. The federal rule provides

