

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NESTOR ERMOGENES ARROYO QUINTEROS,
et al.,

Plaintiffs,

v.

DYNCORP AEROSPACE OPERATIONS
LLC., *et al.*

Defendants.

Case No. 07cv1042 (RWR)
Consolidated with Case No.
01cv1908 (RWR) for case
management and discovery
purposes

FIRST AMENDED CONSOLIDATED COMPLAINT¹

I. INTRODUCTION — NATURE OF THE ACTION

1. The claims in this action arise from Defendants' conduct in connection with the implementation of their contracts with agencies of the United States and Colombian governments to exterminate, by the use of fumigants sprayed from airplanes and helicopters plantations of cocaine and/or heroin poppies in large tracts of the Colombian rainforest. During the course of implementing these contracts, Defendants also sprayed large sections of the Esmeraldas, Carchi, and Sucumbios provinces in Ecuador, across the border from Colombia, and caused severe physical and mental damages to Plaintiffs and their children. Furthermore, as a direct and proximate result of the cross-border spraying, the Provinces of Sucumbios, Carchi, and Esmeraldas have suffered damage to their natural resources and have expended, and will be required to expend in the future, funds to remediate the situation and to address their citizens'

¹ Plaintiffs file this **First Amended** Consolidated Complaint to include the following four actions originally filed in the District Court for the Southern District of Florida: (1) *Province of Sucumbios, Republic of Ecuador v. DynCorp Aerospace Operations, LLC, et al.*; (2) *Province of Esmeraldas, Republic of Ecuador v. DynCorp Aerospace Operations, LLC, et al.*; (3) *Province of Carchi, Republic of Ecuador v. DynCorp Aerospace Operations, LLC, et al.*; and, (4) *Nestor Ermogenes Arroyo Quinteros, et al. v. DynCorp Aerospace Operations, LLC, et al.*

health, security, and property. Plaintiffs have been subjected to serious and systematic damage to their persons and their property in violation of the Alien Tort Claims Act (“ATCA”), 28 U.S.C. § 1350, international laws, treaties, conventions, resolutions, and the common laws of the United States, the District of Columbia, the Commonwealth of Virginia, the State of Texas, the State of Delaware, and/or the country of Ecuador.

II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1350 over the violations of laws of nations and international treaties. Supplemental jurisdiction exists over the common law causes of action pursuant to 28 U.S.C. § 1367.

3. Alternatively and concurrently, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 (a)(2) as Plaintiffs are citizens of Ecuador and Defendants are all United States corporations incorporated in the United States with their principal places of business also within the United States. The amount in dispute between each Plaintiff and each Defendant exceeds \$75,000.

4. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c). Furthermore, venue is appropriate pursuant to the May 22, 2007 order of the United States District Court of the Southern District of Florida and this Court’s July 30, 2007 order.

III. PARTIES

5. There are approximately 3,200 individual Plaintiffs who have alleged personal injury and property damage claims against the DynCorp Defendants. Those Plaintiffs are herein collectively referred to as the “Individual Plaintiffs.” Second, the Provinces of Provinces of Sucumbios, Carchi, and Esmeraldas have brought claims against the Defendants. These Plaintiffs are collectively herein referred to as the “Provincial Plaintiffs.”

6. The Individual Plaintiffs are identified by name and Province in Appendix A, attached hereto and incorporated herein by reference. Additional information pertaining to these Plaintiffs' claims have also been provided in Plaintiffs' Rule 26 initial disclosure.

7. The Provincial Plaintiffs are the duly constituted political subdivisions of the Republic of Ecuador. They file suit herein in their own right and in their *parens patrie* capacity on behalf of their citizens and residents. The Provincial Plaintiffs have been suffered injury to their natural resources and economic damages as a direct and proximate result of Defendants' unlawful conduct, as set forth in greater detail herein.

8. Defendant DynCorp is a Delaware corporation with its principal place of business in El Segundo, California, doing business in a number of locations in the United States. Prior to 2003, its business consists of information technology and outsourcing professional and technical services primarily to the United States government, which accounts for a substantial portion of its revenue.

9. Defendant DynCorp Aerospace Technology ("DynCorp AT") was a division of DynCorp operating in Fort Worth, Texas. It provided technical and outsourcing services related to aviation.

10. Defendant DynCorp Technical Services ("DynCorp TS") is a Delaware corporation, and is also a division of DynCorp operating from Fort Worth, Texas. DynCorp TS has operations in more than 80 worldwide locations and employs over 12,000 worldwide. Its operations include aviation services, international program management, and personal and physical security services. Upon information and belief, in 1993 DynCorp TS acquired DynCorp AT and may now institutionally manage for the DynCorp Defendants, either partially or fully, the harmful aerial spraying operations described herein which caused injuries to Plaintiffs.

Further, as an acquiring company, with full knowledge of DynCorp AT involvement in a U.S. Government contract to conduct potentially harmful aerial spraying, DynCorp TS remains fully liable for its own acts and that of DynCorp AT.

10a. Defendant DynCorp International LLC is a Delaware corporation with its principal place of business in Falls Church, Virginia. Defendant DynCorp LLC was a wholly owned subsidiary of Defendant DynCorp up to and including 2005. Upon good faith information and belief, Defendant DynCorp International LLC may now institutionally manage for the DynCorp Defendants, either partially or fully, the harmful aerial spraying operations described herein which caused injury to Plaintiffs.

11. Defendant DynCorp is fully liable for its own acts and the acts of any subsidiaries, units, divisions, or other entities directly or indirectly under its ownership and control, including, but not limited to, DynCorp AT, DynCorp TS and DynCorp International LLC, in relation to the unlawful acts herein. Further, any such subsidiaries, units, divisions, or other entities are alter egos of Defendant DynCorp, or alternatively, are in an agency relationship with it. Defendant DynCorp is also vicariously liable under the doctrine of respondeat superior for the acts or omissions of any subsidiaries, units, divisions, or other entities under its ownership and control, and for the acts of any employees or agents.

IV. BACKGROUND FACTS

12. In the late 1990s the United States government, in conjunction with the government of the Republic of Colombia, developed a joint, wide-spread, multi-billion dollar cooperative agreement to disrupt and eradicate drug production and exportation from Colombia. This plan colloquially became known as "Plan Colombia." As of 2001, the State Department described the Plan as a \$1.3 billion interagency assistance package to Colombia.

13. A key aspect of Plan Colombia was aerial eradication of coca and heroin production in Colombia via herbicides. On or about February 1, 1998, the United States Government, by and through its executive agencies, issued Contract No. S-OPRAQ-0051 to Defendants for the eradication of coca and heroin poppy crops in Colombia by aerial spraying. On or about May 6, 2005, the United States Government, by and through its executive agencies, issued Contract No. S-AQMPD-05-C1103 to Defendants for the eradication of coca and heroin poppy crops in Colombia by aerial spraying.

14. On information and belief, the government contracts described above do not provide for the spraying of fumigants, herbicides, or the contamination with toxic chemicals of any part of Ecuador, especially the region where Plaintiffs reside. Rather, it would violate the terms of any contract with the United States government for Defendants to spray poisonous chemicals on the persons, land, livestock and water supply of Plaintiffs. On information and belief, the express terms of the contracts under which Defendants conducted operations in Colombia, those operations were intended and limited to operations within the territorial boundaries of the Republic of Colombia. No portions of those contracts permitted operations without Colombia or within the Republic of Ecuador.

15. At all relevant times herein, there have been no territorial disputes between the Republic of Colombia and the Republic of Ecuador and their shared border has been recognized by each sovereign and the international community.

16. The eastern **half** (approximately) of the border between the Province of Sucumbios and Colombia is delineated by the Río Putumayo, a major watercourse. The remainder of the border between Ecuador and Colombia is well marked on maps and aerial charts.

17. At all relevant times herein, Defendants were aware of, or should have been aware of, the precise and exact location of the border between Colombia and Ecuador.

18. On or about December 1, 2000, and continuing to the present, Defendants, pursuant to "Plan Colombia," conducted aerial spraying over areas of Colombia where suspected cocaine and heroin fields are located. Defendants utilized harmful chemicals which are injurious to humans, livestock, vegetation, and water which conducting its operations.

19. Defendants sprayed and continue to spray the toxic chemicals at, near and accross the border between Colombia and Ecuador without regard to the health, safety, and well-being of the Plaintiffs and knowing that the water and winds would carry the toxic chemicals to the areas inhabited by the Plaintiffs.

20. Furthermore, Plaintiffs have witnessed Defendants' planed flying over their villages in Ecuador, clearly beyond their intended Colombian targets, spraying them with the harmful chemicals. The toxic chemicals landed on Plaintiffs, their children, livestock, surrounding land, and drinking water.

21. The extent of Defendant's spraying operations in Colombia was massive. As of August 2001, the State Department had estimated that 50,000 hectares of coca plantations had been sprayed from the air nationwide.

22. On information and belief, Defendants repeatedly: (1) crossed the Colombia-Ecuador border and sprayed within Ecuador; and/or (2) sprayed in such close proximity to the border between Ecuador and Colombia such that it was known or knowable that substantial quantities of the sprayed herbicide would drift and flow into Ecuadorian territory. As alleged more fully herein, these actions by Defendants violated: (1) the express terms of the contracts between Defendants and the United States; (2) international law; and (3) the common law.

23. In approximately January of 2006, in response to the illegal actions of Defendants and the ecological and health crisis generated by the spraying, the Colombian government established a six mile wide no-spray zone along the Ecuadorian-Colombian border. At the end of 2006, the Colombian government rescinded its six mile buffer and permitted spraying within 330 feet of the border. Despite this change, Defendants remained obligated by international and common law, as well as the express terms of its contracts with the United States government, to exercise all due care to ensure that its spraying activities did not impact the environment or residents of Ecuador.

24. Defendants had knowledge and were aware of the adverse and harmful effects of their wrongful conduct. Defendants' aerial spraying has been the subject of critical **media** attention. Despite knowledge of the dangerous and harmful effects of their conduct, Defendants continue to spray toxic chemicals on Plaintiffs.

25. On good faith, information and belief the herbicide/fumigant used by Defendants in their spraying operations was a glyphosate-based herbicide. Commercial versions of the herbicide have been sold under the trade name Roundup®. It is alleged that the herbicide was obtained by Defendants in bulk and in a concentrated form. It is further alleged that Defendants were responsible for diluting the concentrated herbicide for application.

26. On good faith, information and belief the herbicide/fumigant contained, in addition to its active ingredient glyphosate: polyoxyethylenamine (POEA); COSMO FLUX-411f; and COSMO-iN-D.

27. On good faith, information and belief, the use label for Roundup® warns against contact with the eyes and skin, warns against applications to bodies of water, and warns against contact with food sources. Despite these use warnings, Defendants sprayed the herbicide on

Plaintiffs, Plaintiffs' drinking water sources, and Plaintiffs' food sources.

28. The herbicide sprayed by Defendants over Plaintiffs and Plaintiffs' lands and livestock has a very high inhalation toxicity rating.

29. Exposure to Roundup® by humans has been associated with: death; erosion of the gastrointestinal tract (seen as sore throat, dysphasia, and gastrointestinal hemorrhage); duodenal injury; pulmonary injury; respiratory injury; ocular injury; central nervous system injury; toxicity to human placental JEG3 cells and inhibition of steroidogenesis demonstrating endocrine toxicity; and other human diseases. Animal studies have demonstrated similar toxic effects of both glyphosate, the surfactants used in Roundup®, and the Roundup® formulation. POEA has been described as having serious pulmonary toxicity although not as much as the Roundup® combination. Furthermore, studies of the exposed population has displayed chromosomal and genetic damage associated with exposure to the herbicide mixture.

30. As a direct and proximate result of Plaintiffs' exposure to Defendants' spraying, they have been injured to their person. Each Plaintiff herein alleges that he or she has been exposed to Defendants' spraying, that his or her exposure was a substantial factor in causing or contributing to the suffered injury, that he or she did suffer injury, and that he or she has suffered damages as a result.

31. Roundup® is a broad spectrum herbicide. Roundup® is not intended to, and is incapable of, differentiating between illicit coca and poppy plants and legal crops or natural flora. As a direct and proximate result of Defendant's spraying, Plaintiffs' crops have been destroyed. Furthermore, deaths of animals including cows, pigs, horses, chickens, cats, dogs, as well as mountain animals, have been reported as a result of Defendants' spraying.

32. Defendants' spraying has also fouled Plaintiffs' drinking water supply. The

Provincial Plaintiffs have been damaged in their economies, provincial lands, waters and budgets. They have suffered increased housing costs, education costs, costs associated with the housing and feeding of refugees. Further the Provinces, as the political subdivisions responsible for protecting the environment, face remediation costs.

V. DEFENDANTS' VIOLATIONS OF INTERNATIONAL LAW

A. International Common Law

33. The present-day law of nations recognizes the territorial integrity of sovereigns. It is generally accepted as international law that trespass of international borders resulting in harm is unlawful. Such a right was generally accepted by the civilized world in the 18th Century. Furthermore, such a norm is analogous to, or a direct converse of, well-recognized and specific features of the 18th Century paradigms of international law. For example, transgression of a sovereign's borders and causing harm to citizens within the foreign nation is a direct corollary to violations of safe conduct, which was understood to be actionable.

34. It has become a specific, universal, and obligatory norm of international law that activities within a state's jurisdictional control be conducted so as to not cause significant injury to the environment or another state or of areas beyond the limits of national jurisdiction.

35. Such a norm has been set forth in section 601 of the Restatement (Third) of Foreign Relations Law of the United States. Such a norm has been observed in cases of cross-border environmental impact such as the *Trail Smelter* case and the *Gut Dam* case.

36. As alleged herein, Defendants violated international law by crossing the Ecuadorian-Colombian border and spraying herbicides in Ecuador.

37. As alleged herein, Defendants violated international law by aerial spraying within Colombia when and where it knew or should have known that such spraying would result in

herbicides being deposited within the Republic of Ecuador.

38. Herbicides were sprayed repeatedly by Defendants within one mile of the Ecuadorian border and the homes or farms of Plaintiffs. The herbicides were sprayed repeatedly day after day, with occasional rest periods of two and three days. On the days the fumigations took place, the spraying occurred between six in the morning and four in the afternoon. Heavy clouds of liquid spray dropped from the planes, shifted with the wind, and repeatedly fell on the homes and lands of Plaintiffs.

39. Defendants are responsible for all significant injury to the environment of another state (Ecuador) or to its property, or to persons or property within that state's territory or under its jurisdiction or control. Restatement (Third) of Foreign Relations Law § 601(3) (1987).

40. As a direct and proximate result of these violations of international law, Plaintiffs were injured to their persons and property.

**B. United Nations Convention Against Illicit Traffic in
Narcotic Drugs as Psychotropic Substances, 1988**

41. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter "The 1988 Convention") was signed in Vienna on December 20, 1988 and entered into force November 11, 1990. The Republic of Ecuador, the Republic of Colombia, and the United States (with declaration(s)) are all parties to The 1988 Convention.

42. Article 2, section 2, of The 1988 Convention states, "[t]he Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States."

43. Article 2, section 3, of The 1988 Convention states, "[a] Party shall not undertake

in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.”

44. Article 14 (“Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances”), section 2, of The 1988 Convention states, “[e]ach Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional **licit** uses, where there is historic evidence of such use, as well as the protection of the environment.”

45. Article 14, section 3, subdivision (c), of The 1988 Convention states as follows, “[w]herever they have common frontiers, the Parties shall seek to co-operate in eradication programs in their respective areas along those frontiers.”

46. Defendants’ spraying activities violate the provisions of The 1988 Convention

C. Narcotic Drug Bi-Laterals and Multi-Laterals

47. The United States has consistently advanced the principles set forth in The 1988 Convention with respect to its narcotic drug foreign relations in the Andean region.

48. The Declaration of Cartagena, T.I.A.S. 124111, signed in Cartagena on February 1, 1990 by the President of the United States and the President of the Republic of Colombia, states, in pertinent part, as follows, “[g]iven that the Parties act within a framework of respect for human rights, they reaffirm that nothing would do more to undermine the war on drugs than disregard for human rights by participants in the effort.” Section B (preamble).

* * *

“Eradication programs must safeguard human health and preserve the ecosystem.” Section B,

subdivision 5 (emphasis added).

* * *

“[The United Nations] has called for a Global Action Plan and it has convened a Special Session, February 20-23, 1990, to discuss the magnitude of this problem. This will be a proper occasion to reiterate the need to bring into force as quickly as possible the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which provides for energetic measures against illegal drug trafficking, while recognizing the ancestral and traditional uses of coca leaf.”

Section C, subdivision 4.

49. A Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Ecuador on Measures to Prevent the Diversion of Chemical Substances was signed in Quito on June 17, 1991 by the United States Ambassador, the Attorney General, and the Minister of Foreign Affairs of the Republic of Ecuador. T.I.A.S. 12129.

50. In this Memorandum of Understanding, these nations re-iterated their commitment to The 1998 Convention, stating, “[t]he contracting states declare that their cooperation in this area will also take into consideration the applicable provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, to which the two states are parties.” Article VII, Section 3.

51. Defendants’ spraying activities violate these international agreements and norms of international law.

D. Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

52. The Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques is a multilateral treaty done at Geneva on May 18, 1977, **which was**

later ratified by the Senate and signed by the President of the United States. 31 U.S.T. 333.

53. Article I, Section 1, of this Treaty provides, “[e]ach State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.”

54. Defendants’ spraying activities violate this Treaty.

E. Rio Declaration on Environment and Development

55. Principle 2 of the Rio Declaration on Environment and Development states, “[s]tates have, in accordance with the Charter of the United Nations and the principles of International law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

56. Defendants’ spraying violates this principle of international law.

FIRST CAUSE OF ACTION

Torts Committed in Violation of the Laws of Nations and Treaties of the United States 28 U.S.C. § 1350

57. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

58. As set forth above and herein, Defendants have tortuously caused harm to Plaintiffs as a direct and proximate result of their violations on the laws of nations and treaties of the United States.

59. Defendants were on actual or constructive notice of the laws of nations and United States Treaties applicable to their spraying operations pursuant to their contracts with the

United States Governments.

60. Despite that knowledge, Defendants negligently or intentionally violated various provisions of the laws of nations and treaties of the United States.

61. As a direct and proximate result of Defendant's violations of the laws of nation and treaties of the United States, Plaintiffs have been injured to their person and their property in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Negligence Per Se

62. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

63. There exist several international treaties, declarations, and conventions which impose obligations or duties on Defendants which are intended to protect a class of persons which includes Plaintiffs from harms including personal injury and property damage.

64. Defendants have violated or breached these treaties, declarations, and conventions.

65. As a direct and proximate result of Defendants' violations or breaches of these treaties, declarations, and conventions, Plaintiffs have suffered injuries to their persons and property.

66. The 1988 Convention provides, "The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States," and "[t]he measures adopted shall respect fundamental human rights and shall take due account of traditional illicit uses, where there is historic evidence of such use, as well as the protection of

the environment.”

67. Defendants’ sprayed in a manner which did not respect, and in fact breached, the sovereign equality and territorial integrity of the Republic of Ecuador. Defendants’ spraying operations were performed in a manner where Defendants knew or should have known that substantial amounts of herbicide would be deposited in Ecuador, on crops, on drinking water supplies, and on the Plaintiffs in a manner inconsistent with fundamental human rights and likely to cause harm to the environment.

68. The Cartagena Declaration provides, “[e]radication programs must safeguard human health and preserve the ecosystem.”

69. Defendants’ implementation of the spraying program was known to, or should have been known to, and in fact did, present a substantial risk of harm to human health and the ecosystem.

70. The Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques provides, “[e]ach State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.”

71. The Defendants’ spraying program was another hostile use of environmental modification which had widespread and several effects to Plaintiffs in Ecuador which resulted in destructions, damage, and injury. As a direct and proximate cause of Defendants’ actions, Plaintiffs have been injured and have suffered damages.

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THIRD CASUSE OF ACTION

Ordinary Negligence

72. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth herein.

73. At all times relevant herein, there existed a duty on the part of the Defendants to act with all due care towards the safety, health, and property of Plaintiffs.

74. Defendants breached that duty of care by engaging in the following conduct:

- a) Spraying directly on Plaintiffs' drinking water supplies;
- b) Failing to warn Plaintiffs that they would spray toxic chemicals on and near their villages on a continued and repeated basis;
- c) Failing to properly follow the warnings on the herbicide/fumigant labels;
- d) Failing to properly spray the intended Colombian targets, by spraying in such a manner that the winds carried the harmful chemicals into Ecuador; and
- e) Crossing the border and spraying the harmful chemicals on the Plaintiffs.

75. As a direct and proximate cause of Defendants' conduct, Plaintiffs have been injured and have suffered damages.

FOURTH CAUSE OF ACTION

Negligent Hiring

76. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

77. On good faith, information and belief, Defendants selected, hired, retained and contracted with pilots to fly the aircraft that sprayed toxic chemicals on Plaintiffs.

78. Defendants failed to exercise reasonable care in selecting, hiring, retaining, and contracting with these pilots. At the time that Defendants selected, hired, retained and contracted

with the pilots, Defendants knew or reasonably should have known that these pilots would violate Plaintiffs' rights and that, as a direct and proximate result of those violations, Plaintiffs would suffer injuries.

79. As a direct and proximate result of Defendants' negligent selection, hiring, retention and contracting with the pilots who sprayed toxic chemicals on Plaintiffs, Plaintiffs have suffered and continue to suffer injuries entitling them to damages in amounts to be ascertained at trial.

FIFTH CAUSE OF ACTION

Negligent Supervision

80. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

81. When engaging in the wrongful conduct alleged herein, the pilots who sprayed toxic chemicals on Plaintiffs were employees or agents of Defendants. Defendants exercised control over their employees or agents, and provided direction as to the flight paths, and the frequency and duration of the spraying.

82. Defendants knew or reasonable should have known that the pilots would not be able to control with precision the spraying line due to winds and movement of the aircraft, and that as a direct and proximate result, Plaintiffs would suffer injuries as alleged herein. Furthermore, Defendants knew or reasonably should have known that their pilots were directly spraying Plaintiffs and that as a direct and proximate result, Plaintiffs would suffer injuries as alleged herein.

83. Defendants had the authority to supervise, prohibit, control, and/or regulate the pilots that were acting as their employees and/or agents so as to prevent the acts and omissions

described herein from occurring. Defendants also had the ability to cease operations until such time as the violations alleged herein were stopped and/or prevented.

84. Defendants knew or reasonably should have known unless they intervened to protect Plaintiffs and properly supervise, prohibit, control and/or regulate the conduct described herein, Plaintiffs would suffer the injuries alleged herein.

85. Defendants failed to exercise due care by failing to supervise, prohibit, control or regulate their employees and/or agents, and also failed to make appropriate investigations into the possible negative impact on Plaintiffs once the initial spraying was completed. As a direct and proximate result of Defendants' negligent supervision, Plaintiffs have suffered and continue to suffer injuries entitling them to damages in amounts to be ascertained at trial.

SIXTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

86. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

87. Defendants' negligent conduct created a zone of physical danger for all Plaintiffs. Heavy clouds of liquid spray dropped from Defendants' planes, shifted with the wind, and repeatedly fell on the homes and lands of Plaintiffs.

88. Defendants' negligent spraying caused Plaintiffs to fear for their own safety, and caused Plaintiffs to suffer emotional distress.

89. Plaintiffs claimed distress is serious and verifiable.

90. As a direct and proximate result of Plaintiffs' distress they have suffered damages, in amounts to be ascertained at trial.

SEVENTH CAUSE OF ACTION

Nuisance

91. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

92. Defendants, at all times relevant herein, were the owners and/or operators of the planes that sprayed toxic herbicides on Plaintiffs' lands.

93. Defendants created and permitted a condition or activity at, near, and beyond the frontier between Ecuador and Colombia which caused contamination of Plaintiffs' lands with a toxic herbicide.

94. Defendants' continued and repeated activities at or near the frontier between Ecuador and Colombia caused a continues to cause a substantial and unreasonable interference with Plaintiffs' use and enjoyment of their properties.

95. Defendants' continued and repeated discharge, release, and spraying of a toxic herbicide constitutes a public and private nuisance and a substantial, unreasonable interference with Plaintiffs' use and enjoyment of their properties and the environment.

96. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiffs have suffered damages and will continue to suffer damages in amounts to be ascertained at trial.

EIGHTH CAUSE OF ACTION

Trespass

97. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

98. Defendants, without authorization, intentionally and repeatedly sprayed toxic chemicals over Plaintiffs' property from on or about December of 2000 to the present.

99. Defendants' intentional, reckless, foreseeable and unprivileged actions at, near, and beyond the frontier between Ecuador and Colombia directly and proximately resulted, and continues to result, in the intrusion and contamination of Plaintiffs' lands.

100. As a direct and proximate result of Defendants' actions and omissions, Plaintiffs have suffered damages and will continue to suffer damages in amounts to be ascertained at trial.

NINTH CAUSE OF ACTION

Battery

101. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

102. Defendants repeatedly and intentionally sprayed toxic chemicals over Plaintiffs, their land, livestock, and water supply which resulted in harmful and offensive contacts. Plaintiffs did not consent to the intentional, repeated, harmful and offensive contacts.

103. As a direct and proximate result of these acts of battery, Plaintiffs have suffered damages in amounts to be ascertained at trial.

TENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

104. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

105. By intentionally and repeatedly spraying and continuing to spray toxic chemicals over Plaintiffs, Plaintiffs' families, livestock, and property, Defendants engaged in outrageous conduct which went beyond all bounds of decency.

106. By conducting an aerial attack on Plaintiffs and spraying them with toxic chemicals, Defendants committed acts described herein which were intended to cause Plaintiffs

to suffer severe emotional distress. In the alternative, Defendants engaged in the conduct with reckless disregard of the probability of causing Plaintiffs to suffer severe emotional distress. Plaintiffs were present at the time the outrageous conduct occurred, and Defendants knew that Plaintiffs were present.

107. The outrageous conduct of Defendants was the cause of severe emotional distress and physical damage suffered by the Plaintiffs.

108. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be ascertained at trial.

ELEVENTH CAUSE OF ACTION

Strict Liability

109. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

110. The handling, use, storage, disposal and/or spraying of massive amounts of toxic herbicide near populated areas constitutes an ultrahazardous and/or abnormally dangerous activity.

111. A toxic herbicide has been released by Defendants and has contaminated the air, land, water, subsurface water, groundwater, drinking water, and soil of Plaintiffs' properties all of which render the same hazardous.

112. As a direct and proximate result of such activity and such contamination, Plaintiffs have suffered damages and will continue to suffer damages in amounts to be ascertained at trial.

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TWELFTH CAUSE OF ACTION

Medical Monitoring

113. Plaintiffs incorporate by reference paragraphs 1 through 57 of this Consolidated Complaint as if set forth fully herein.

114. As a result of Defendants' conduct, Plaintiffs have been exposed to known hazardous and toxic chemicals.

115. As a result of the exposure, Plaintiffs are at a heightened risk of contracting latent diseases, including cancer.

116. Early medical detection and treatment of these diseases is medically necessary and advisable.

117. Plaintiffs are entitled to recover the costs of a medical monitoring program in an amount to be ascertained at trial.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For general damages in an amount as shall be proved at the time of trial in a sum according to proof;
2. For special damages in an amount as shall be proven at the time of trial in a sum according to proof;
3. For punitive and exemplary damages;
4. For costs of suit incurred herein;
5. For the reasonable cost of medical monitoring;

6. For such other and further relief as the Court deems just and proper under the circumstances.

Dated **this 26 day of March, 2008.**

s/Jeff L. Frazier

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 26, 2008, we electronically filed the foregoing document with the Clerk of Court. I also certify that the foregoing document is being served by e-mail this day on all counsel of record or pro se parties identified on the attached Service List.

s/Jeff L. Frazier
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