

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 08-MD-01916-KAM**

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

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**This Document Relates to:**

**ATS ACTION:**

**08-80465-CIV-MARRA**

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**ORDER GRANTING DEFENDANT CHIQUITA'S SECOND MOTION TO COMPEL  
COMPLIANCE WITH COURT ORDERS ON WITNESS PAYMENT DISCOVERY  
and  
ORDER OVERRULING ASSERTION OF PRIVILEGE OVER WITNESS PAYMENT  
DOCUMENTS AND DIRECTING PRODUCTION OF DOCUMENTS FROM  
PLAINTIFFS' COUNSEL, CONRAD & SCHERER AND ATTORNEY  
TERRENCE COLLINGSWORTH (INTERNATIONAL RIGHTS ADVOCATES)**

**THIS CAUSE** is before the Court on the Defendant Chiquita Brand International, Inc. ("Chiquita")'s second motion to compel witness payment discovery from Conrad & Scherer (C&S) and Attorney Terrence Collingsworth (collectively "Plaintiffs' Counsel") as previously ordered by the Court pursuant to Orders entered August 4, 2015 [DE 872] and May 5, 2015 [DE 797] ["Discovery Orders"], together with Attorney Terrence Collingsworth (International Rights Advocates)'s Response [DE 1094] and Conrad & Scherer's Response [DE 1095] in Opposition to the Motion.

Pursuant to procedures prescribed in the Discovery Orders, Plaintiffs' Counsel have submitted under seal certain discovery documents touching upon the issue of fact witness payments as to which work-product or attorney-client privilege has been claimed for *in camera* review by the Court. Conrad & Scherer has submitted a number of documents falling into four

general categories: (1) expense account reimbursement requests by Terrence Collingsworth, a former partner at Conrad & Scherer’s Washington D.C. office; (2) cost ledgers reflecting, *inter alia*, a number of petty cash disbursements and wire transfers to various individuals in Colombia; (3) internal office emails and memos concerning travel itineraries and expense reimbursements for various individuals in Colombia; (4) emails and memos concerning IT email recovery efforts and replacement and “wiping” of Attorney Terry Collingsworth’s laptop [DE 1116 – 1120].<sup>1</sup>

Attorney Collingsworth, under the auspices of “International Rights Advocates,” has submitted documents pertaining to Conrad & Scherer cost reimbursements; cost ledgers; emails between Collingsworth and various individuals at “yourlawyer.com” relating to Raul Hasbun (AUC commander) money demands; Attorney Eric Hager email comment on Hasbun issue; emails relating to a proposed “Case Investigation Agreement” between Attorneys Collingsworth, Witzer and Colombian Attorney “Jarley Maya Sanchez” as “Investigator,” and subsequent counterproposals and exchanges between the relevant parties regarding the Jarley Agreement; various email exchanges with Lorraine Leete, Brian Witzer and Darren Schultz regarding Jarley and Ivan Otero as witness conduits [Case No. 08-80465 -- DE 316-1 through 316-29].

Upon careful review of the documents submitted for *in camera* inspection, and briefing of the parties, the Court does not find justification for the assertion of work product or attorney-client privilege as a shield against disclosure of these documents, with the narrow exception of the following entries filed under Case No. 08-80465:

- (1) **DE 316-17** [6-8-20 email Collingsworth to Witzer re: Jarley demands] – Counsel may make a limited redaction of paragraph three of this email regarding Dole investigation

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<sup>1</sup> The documents submitted under seal also include a state court hearing transcript (from an open court proceeding) in the matter of *Conrad & Scherer v. Wichmann*, Case No. 09-11600, Broward County Circuit Court, Seventeenth Judicial Circuit in and for Broward County, Florida.

*only*; the balance of this email shall be produced in its entirety with no other redactions;

(2) **DE 316-18** [2-27-13 email chain between Leete, Collingsworth, Emma Walker and Eric Hager] Counsel may make a limited redaction of that portion of this email chain consisting of the Lorraine Leete 2-27-13 correspondence to Emma Walker, Terrence Collingsworth and Eric Hager, captioned “Cerrejón prisoner names,” and the first two sentences of the 2-27-13 Collingsworth response email to Lorraine Leete *only*; the balance of this email chain shall be produced in its entirety with no other redactions;

(3) **DE 316-25** -- [6-20-13 email chain between Mary Westmacott (Leighday), Lorraine Leete and Collingsworth regarding prospective witness interview dates and “security funds” demanded by a prior interviewee] Counsel may make a limited redaction of the *names* of the prospective (three) prisoner witnesses referenced *only*; the balance of this email chain shall be produced in its entirety with no other redactions;

(4) **DE 316-29** [8-18-09 email from Terrence Collingsworth to “Bill,” at WRS@conradscherer.com, with cc. to Roxanna Aldama, re: “Colombia issues”] Counsel may make a limited redaction of paragraph number two *only* (re: Collingsworth interview with former AUC personnel in Colombian prison); the balance of email shall be produced in its entirety with no other reactions.

With the exception of the docket entries specified above, Plaintiffs’ Counsel assertion of work product and attorney client privilege over the witness payment discovery documents in question is overruled, and Conrad & Scherer and Attorney Collingsworth shall forthwith produce all other documents to Chiquita in complete, unredacted form.

It is further **ORDERED AND ADJUDGED**:

1. Plaintiffs' counsel shall produce complete unredacted copies of all documents previously submitted to the Court under seal in conjunction with the subject witness payment discovery, with the limited exception of the specific redactions authorized above, within **FIVE (5) DAYS** of the date of entry of this Order.
2. As to Chiquita's second motion to compel, and specific request for production of documents regarding payments offered, considered or requested by Colombian attorney Ivan Otero Mendoza, the motion to compel is **GRANTED**, and to the extent not included in the production required under the foregoing paragraph, all responsive documents shall be separately produced to Chiquita within **FIVE (5) DAYS** from the date of entry of this Order.
3. As to Chiquita's second motion to compel, and specific request for production of documents improperly redacted on the basis of "non-responsiveness," the motion to compel is **GRANTED** and to the extent not included in the production required under paragraph no 1, all documents shall be produced, in unredacted form, within **FIVE (5) DAYS** of the date of entry of this Order.
4. As to Chiquita's second motion to compel, and specific request for production of a complete unredacted copy of the June 15, 2012 Leete memorandum, the motion to compel is **GRANTED** and a complete and unredacted copy of this document shall be separately produced to Chiquita within **FIVE (5) DAYS** of the date of entry of this Order.

5. Plaintiffs' counsel is further ordered to preserve all documents and records which relate to witness payments contemplated, offered, considered, demanded or made as to any potential fact witness and his or her representatives, associates or relatives.
6. Based on the historical dilatory and obstructionist discovery misconduct of Plaintiffs' Counsel catalogued in Chiquita's motion to compel [DE 1080], and Plaintiffs' Counsel patent lack of good faith in the assertion of privilege as purported ground for withholding the vast majority of responsive documents on the witness payment issue, the Court **GRANTS** the Defendant's request for attorney's fees and costs incurred in the litigation of this motion. Chiquita shall submit supporting attorney fee and cost affidavits and any other relevant documents in support of its fee request within **TEN (10) DAYS** of the date of entry of this Order. Plaintiffs' Counsel shall thereafter submit their response in opposition, if any, within **FIVE (5) DAYS** of service of the fee request, and Chiquita may serve its reply within **THREE (3) DAYS** of service of Plaintiffs' Counsels' response.
7. The Clerk of Court is directed to terminate the previously filed sealed second motion to compel [DE 1072] (duplicate of 1080) as **MOOT**.

**DONE AND ORDERED** in Chambers at West Palm Beach, Florida this 20<sup>th</sup> day of December, 2017.

  
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KENNETH A. MARRA  
United States District Judge

cc. All counsel