IN THE UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

JANE W, in her individual capacity, and in her capacity as the personal representative of the estates of her relatives, James W, Julie W and Jen W;

JOHN X, in his individual capacity, and in his capacity as the personal representative of the estates of his relatives, Jane X, Julie X, James X and Joseph X;

JOHN Y, in his individual capacity;

AND JOHN Z, in his individual capacity,

Plaintiffs,

v.

MOSES W. THOMAS,

Defendant.

Case No. 2:18-CV-00569-PBT

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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I. Introduction

On July 29, 1990, as civil war intensified around Liberia's capital, Monrovia, Jane W, John X, John Y, and John Z (collectively "**Plaintiffs**") were sheltering at St. Peter's Lutheran Church, which had been converted into a humanitarian shelter by the Red Cross for civilians fleeing the armed conflict. That night, the Government's Armed Forces of Liberia stormed the building and shot and hacked to death approximately 600 unarmed civilians in and around the church (the "**Lutheran Church Massacre**" or the "**Massacre**"). Plaintiffs only survived this assault—one of the largest massacres in Liberia's history—because they hid under piles of dead bodies or in the church's pulpit.

Jane W and John X, in their individual capacities and as representatives of their decedents' estates, and John Y and John Z, in their individual capacities, file this motion for summary judgment against Moses W. Thomas ("**Defendant**"). Defendant was a Colonel in the Armed Forces of Liberia ("**AFL**") and the commander of its Special Anti-Terrorist Unit ("**SATU**"). The attack on St. Peter's Lutheran Church (the "**Lutheran Church**" or the "**Church**") was perpetrated under his orders and command. Plaintiffs bring their claims under the Torture Victim Protection Act (the "**TVPA**"), 28 U.S.C. § 1350 note, and the Alien Tort Statute (the "**ATS**"), 28 U.S.C. § 1350.

Plaintiffs' evidence demonstrates that Defendant was responsible for the Massacre and is liable for extrajudicial killings, attempted extrajudicial killings, torture and cruel, inhuman, or degrading treatment, war crimes, and crimes against humanity. Because there is no issue of material fact in dispute, Plaintiffs respectfully request that the Court grant their motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(c) (Section III). Plaintiffs move for summary judgment on all claims advanced in the Complaint, except for the Fifth,

Seventh, Eighth, Tenth, Eleventh, and Thirteenth Claims for Relief for which Plaintiffs seek dismissal without prejudice.[1]

Should the Court grant Plaintiffs' motion for summary judgment, Plaintiffs also respectfully request that the Court enter an award of compensatory and punitive damages on their behalf (Section IV).

II. Statement of Facts

A. Liberia's Civil Wars

From 1989 to 2003, Liberia was devastated by two civil wars. The first conflict took place between 1989 and 1997 (the "**First Civil War**"), and the second lasted from 1999 to 2003 (the "**Second Civil War**") (collectively, the "**Civil Wars**"). Liberian Country Conditions Expert Report (hereinafter "CC") at 8; Statement of Stipulated Material Facts (hereinafter "Stip. Facts") ¶ 5; Answer ¶ 14. The Civil Wars were a power struggle stemming from long-standing ethnic tensions. Expert Report of Amb. Dennis Jett (hereinafter "Jett") at 6. From the 1820s through most of the nineteenth century, Liberia's government and ruling class were dominated by Americo-Liberians—formerly enslaved Americans who colonized Liberia and their descendants. Liberia's indigenous groups or tribes, which had peacefully co-existed with one another, were subjugated by the Americo-Liberians, resulting in deep ethnic divide. *See* Jett at 6; Jett Exhibit NN, Human Rights Watch, *Liberia: A Human Rights Disaster – Violations of the Laws of War by All Parties to the Conflict*, Oct. 26, 1990 (hereinafter "Jett Ex. NN") at 2.

[1] In addition, in order to streamline this motion, Plaintiffs do not argue the claims of extrajudicial killing, attempted extrajudicial killing, or torture under the ATS, or the liability theories of co-perpetration, conspiracy, aiding and abetting, and incitement and solicitation as pleaded in their Complaint.

Ethnic tensions came to a head in 1980 when Samuel Doe, a master sergeant in the Liberian military and a member of the indigenous Krahn tribe, led a *coup d'état*. Doe murdered the last Americo-Liberian president, President William Tolbert, publicly executed Tolbert's cabinet members, and established a military junta—the first government led by a Liberian of indigenous ethnic descent. Jett at 6–7; CC at 8; Stip. Facts ¶ 4; Answer ¶¶ 11–12. Doe exacerbated tensions among Liberia's ethnic groups by rewarding and favoring members of his own tribe—the Krahns—and discriminating against others—particularly the Manos and Gios in Nimba County. Jett at 810; Jett Ex. NN at 2. By 1985, Doe had used his power to promote members of the Krahn tribe, who comprised about five percent of Liberia's population, to most senior military and government positions. Jett at 810. In 1985, Doe was elected President after winning what was widely regarded as a fraudulent election. Jett at 10; CC at 8. Soon after, General Thomas Quiwonkpa, a Gio from Nimba County who fled Liberia to neighboring Sierra Leone after being accused of treason, attempted another *coup d'état* but was killed before reaching Monrovia. Jett at 10. In retaliation, President Doe sent the AFL to Nimba County, where they targeted and killed members of the Gio tribe and the closely-related Mano tribe. Jett at 10–11.

The First Civil War officially broke out in December 1989 when Charles Taylor, an Americo-Liberian, joined by Gio supporters, assembled a rebel force, the National Patriotic Front of Liberia ("**NPFL**"), which invaded an AFL outpost in Nimba. Stip. Facts ¶ 5; Answer ¶ 14; Declaration of Elizabeth Blunt (hereinafter "Blunt") ¶ 5; Declaration of Mark Huband (hereinafter "Huband") ¶ 5; Jett at 11; CC at 8–9. In response, President Doe deployed AFL forces to Nimba County and elsewhere to fight the NPFL and carry out a large-scale campaign of terror against Manos and Gios, under the presumption that anyone belonging to those tribes—

even civilians not taking part in the hostilities—was affiliated with or sympathetic to the rebel forces. Jett at 12–13, 28–30; Declaration of Andrew Voros (hereinafter "Voros") ¶¶ 11–12; Blunt ¶¶ 8, 9; Declaration of Jane W (hereinafter "Jane W") ¶¶ 7, 11; Declaration of John X (hereinafter "John X") ¶ 6. The AFL also perpetrated ethnically motivated attacks against civilians in Monrovia, often carried out "merely on the suspicion that they were of Mano or Gio ethnicity" by virtue of their origin from Nimba or their ability to understand or speak the language. Jett Ex. NN at 8; s*ee also* Jett at 30; Voros ¶ 8 ("[I]f somebody was speaking the language of the Gios, the AFL would target and kill them."); Blunt ¶¶ 8–10; Jane W ¶ 11; Declaration of John Z (hereinafter "John Z") ¶¶ 4–5; John X ¶¶ 6, 9; Declaration of John Y (hereinafter "John Y") ¶ 4.

After almost seven years of conflict, the First Civil War eventually ended with disarmament and Charles Taylor's election to the presidency in 1997. Jett at 23. By then, approximately 200,000 civilians were killed, 750,000 fled the country, and 1.2 million people were internally displaced. CC Ex. I, U.S. Dep't of State, *Liberia Human Rights Practices 1997*, 22 Ann. Hum. Rts. Rep. Submitted to Cong. By U.S. St. 181 (1997), (hereinafter "CC Ex. I") at 181; Jett at 23. The Second Civil War erupted soon thereafter when opposition groups invaded Liberia from Guinea in 1999. CC at 9. After four years of war, President Taylor resigned and the warring factions signed the Accra Comprehensive Peace Agreement in August 2003, ending the Second Civil War. CC at 9; *see also* Stip. Facts ¶¶ 6–7; Answer ¶¶ 11, 40. In November 2005, after a two-year transitional government, Liberia elected Ellen Johnson Sirleaf president in the country's first democratic election. CC at 9–10; *see also* Stip. Facts ¶ 8; Answer ¶ 40.

B. The Armed Forces of Liberia and Special Anti-Terrorist Unit

At the start of the First Civil War in 1989 and throughout 1990, Defendant was a colonel in the AFL and commanded the Special Anti-Terrorist Unit (**"SATU"**), a specialized unit

stationed at the Executive Mansion in Monrovia loyal to then-President Doe. Declaration of William Z (hereinafter "William Z") ¶¶ 12–13; Mot. Suppl. Protective Order, Nielsen Decl., Exhibit A, Pl.'s Req. for Admission (hereinafter "RFA") ¶¶ 2–3. As Defendant admits, SATU "was a highly-trained, elite special forces unit established by President Samuel Doe after the 1985 election to serve as the President's personal guard." Stip. Facts ¶ 3; *see also* Answer ¶ 16; RFA ¶¶ 2–3; William Z ¶¶ 24–26; Declaration of William Y (hereinafter "William Y") ¶ 5; Voros ¶ 27.

While SATU formally reported to the AFL Chief of Staff in the chain of command, in practice SATU soldiers reported directly to President Doe. Voros ¶ 27; William Y ¶ 5; William Z ¶¶ 12, 26; RFA ¶ 4; *see also* Jett at 41. As SATU's commander, Defendant received his orders directly from President Doe. William Z ¶ 26; RFA ¶ 4. Because of its direct connection to the President, SATU occupied a position of power and privilege within the AFL. William Z ¶ 26. When it provided security for President Doe, for example, only SATU forces could be armed; "all other AFL units had their weapons taken until SATU left." *Id.*

SATU soldiers wore distinctive uniforms. While other AFL soldiers wore green camouflage fatigues for combat troops and khaki or olive-green uniforms for office personnel, SATU members stood out with their red berets, red t-shirts under their fatigues, red tabs on their collars, and special insignia on their left lapels: a symbol similar to an airplane. William Z ¶ 15, 29; William Y ¶ 5; John Z ¶ 9; *see* RFA ¶ 8. Sometimes SATU soldiers wore combat helmets with netting and fragmentation jackets unique to SATU. William Z ¶ 29; John Z ¶ 9; RFA ¶ 8. Their rank, like that of all AFL soldiers, was indicated on their lapels or sleeves. A colonel's rank—like that of Moses Thomas—was designated by the Liberian seal with a palm tree and a boat. *See* William Z ¶ 16, Exhibit A.

Members of the AFL, and especially SATU, received extensive training on the laws of armed conflict, including the principle of distinction between civilian and military targets, and the Geneva Conventions. William Z ¶ 19; *see* RFA ¶ 9. The Red Cross provided training to AFL soldiers on respecting protected emblems like the symbol of the Red Cross and protecting churches and places of worship from attack. William Z ¶ 19; William Y ¶ 8. Each AFL soldier also received a copy of the United States Uniform Code of Military Justice, adopted by Liberia, which outlined the ethical obligations of soldiers and the consequences for violations of this code. William Z ¶¶ 21–22, Exhibit B. Obedience to orders was emphasized throughout a soldier's training and soldiers were taught that if they disobeyed orders, they would be punished and could be court-martialed. William Z ¶ 20. Defendant was a well-trained senior officer who had command over his unit. William Z ¶¶ 30, 34. SATU soldiers only took orders from Defendant or their sub-unit commander and likely would not have taken orders from anyone outside of SATU. William Z ¶¶ 30, 34; RFA ¶¶ 5–7. As a colonel, Defendant could also command lower ranking soldiers in other units of the AFL. William Y ¶ 15.

All SATU soldiers also received specialized combat and anti-terrorism training from the Israeli military or SATU soldiers who were trained in Israel. William Z ¶ 28; RFA ¶ 1. SATU soldiers were typically armed with M16 assault rifles, Uzi submachine guns, and other automatic weapons. *See* William Y ¶ 12. Only senior officers were permitted to carry pistols. William Y ¶ 14; William Z ¶ 17.

C. Monrovia in the Spring and Summer of 1990

As the rebel forces advanced towards Monrovia in the late spring and early summer of 1990, the AFL responded by purging Mano and Gio soldiers from its ranks. At that time, the AFL maintained exclusive control over central Monrovia, but forces from the NPFL and a breakaway group called the Independent National Patriotic Front of Liberia ("**INPFL**") gained

ground in the surrounding areas. Voros ¶¶ 7, 9; Blunt ¶¶ 16–18; Huband ¶¶ 8, 12–13; Jett at 20–21. As its territorial control weakened, the AFL turned on ethnic Mano and Gio soldiers, systematically disarming, arresting, detaining, and ultimately executing them, out of fear that they would join the rebels. Jett at 28–31; Blunt ¶ 14; Jett Exhibit M, *US Embassy Liberian Civil War Chronology*, Cable #06421 at 29 (hereinafter "Jett Ex. M"); s*ee* Jett Exhibit SSS, CIA Cable #C05302156, "Morale Among Senior Officers in the Armed Forces of Liberia," 26 May 1990, at 1 (hereinafter "Jett Ex. SSS"). On June 6, 1990, for instance, approximately 200 Mano and Gio soldiers residing in the Barclay Training Center, the AFL's barracks in Monrovia, were taken to a military prison, reportedly out of concern for their loyalty to the AFL. Blunt ¶ 14; Jett at 28. Most of these soldiers were executed. Jett at 28 (noting that "[w]ithin a few weeks their decapitated and mutilated bodies began appearing on the streets of Monrovia"); Jett Ex. M at 30; RFA ¶ 17; *see also* Jett Ex. SSS ¶ 1. Fearing such reprisals, some Mano and Gio AFL soldiers deserted, laying down their arms to seek refuge with displaced civilians. Jett at 28–29; *see* John X ¶ 16.

Defendant played a role in this purge. Liberia's Truth and Reconciliation Commission documented Defendant's involvement in the June 1990 massacre of 27 Mano and Gio family members of AFL soldiers. Jett Exhibit ZZZ, Liberian Truth and Reconciliation Commission, Vol. II: Consolidated Final Report (June 30, 2009) at 219 (hereinafter "Jett Ex. ZZZ"); RFA ¶¶ 12–14.

As the rebels approached the capital and pressure on the AFL mounted, AFL forces also began targeting Mano and Gio civilians in Monrovia—looting, beating, raping, harassing, arresting, forcibly disappearing, and executing them. Jett at 27–29; Blunt ¶¶ 8, 14, 19, Exhibit F. AFL soldiers—who were by this time mostly Krahn—began to "torture and 'systematically execute[] suspected [rebel] sympathizers,' identified by their membership in either the Mano or Gio

tribe." Jett at 26–27. AFL soldiers established checkpoints and roadblocks, questioning civilians who passed through, demanding their tribal affiliation and arresting those who replied in a language or accent that indicated they could be Mano or Gio. John X ¶¶ 10, 12; *see also* Jett at 29–30. "[R]andom shootings, beheadings, mutilations and other killings" by the AFL became daily occurrences in Monrovia, as did looting and destruction of civilian property. Jett at 25, 27. "No Mano or Gio was safe"—"not even old people." Jett at 29, n.144 (internal citation omitted).

SATU forces were among those in the AFL "primarily responsible" for the targeted killings of Mano and Gio civilians. Jett Exhibit K, *U.S. Dep't of State, Liberia Human Rights Practices 1990*, 15 Ann. Hum. Rts. Rep. Submitted to Cong. by U.S. St. (1990) at 196.; Huband ¶ 10. There was also an unofficial AFL "unit" led by Michael Tilley[2] known as the "Death Squad" due to its notorious civilian killings. William Z ¶ 33. Like SATU, the Death Squad reported directly to President Doe and the President used both units to carry out tactical operations at his direction. *See* William Z ¶¶ 26, 33–34.

The AFL's attacks on civilians created a crisis of internally displaced persons throughout Monrovia and Liberia. Jett at 30; Jett Exhibit EE, U.S. Embassy, *Situation Report as of 1800 on July 19, 1990*, Cable #07157 ¶ 9 (as of July 19, 1990 a "total of about 35,000 displaced persons are currently seeking refuge at 23 identified locations"); Jett at 32–33; Blunt ¶ 19. These internally displaced persons fled to the few safe havens that remained in the country—churches, embassies, and non-governmental and humanitarian institutions—sometimes relocating multiple times to escape the violence. Jett at 30–31; Voros ¶ 12; Blunt ¶¶ 10, 19; Declaration of William W (hereinafter "William W") ¶ 4; John Y ¶ 4.

[2] Michael Tilley was also known as "Marcus Tilley," "Michael Tilly," or "Yonbu Tailay." *See* William Z ¶ 33; Huband ¶ 28; Jett Ex. ZZZ at 330.

As rebels drew closer to Monrovia and displaced persons began to congregate in what they believed were safe places, the AFL grew increasingly brazen and began targeting Manos, Gios, and other civilians at the refuge shelters directly. On May 29, 1990, Government soldiers attacked the United Nations Development Program compound, which was sheltering hundreds of civilians, mostly Manos and Gios. Declaration of William X (hereinafter "William X") ¶ 4; William W ¶ 5; John Y ¶ 6; Jett at 32; *see* RFA ¶¶ 10–11. The soldiers entered the compound, shot at the security guards and abducted around 30 to 40 people, including Gio and Mano employees, women, and children. Jett at 32; Blunt ¶¶ 12–13; Jett Exhibit WWW, CIA National Intelligence Daily, 31 May 1990, at 9 (hereinafter "Jett Ex. WWW"). The captives were taken to an area near the sea, lined up, and "sprayed with gunfire," and at least eight bodies were found mutilated. Blunt ¶ 13; Jett at 32 (citing U.S. Marine Corps., *On Mamba Station U.S. Marines in West Africa, 1990 – 2003* (2004), *available at* https://perma.cc/DP9V-A8KE (hereinafter "U.S. Marine Corps, *On Mamba Station*") at 6). Within 48 hours, the United Nations evacuated its entire staff from Liberia. Jett at 32; Blunt ¶ 15. Survivors of the attack fled to seek safety elsewhere, including at the Lutheran Church. William W ¶ 6; William X ¶ 4; Blunt ¶ 13.

Similarly, on July 25, 1990, a group of AFL soldiers entered the John F. Kennedy Hospital in Monrovia, where many Gios were sheltering. Jett at 32–33; John Y ¶ 11; *see* RFA ¶¶ 18–19. Plaintiff John Y, who had been sheltering at the hospital with his family, watched from a window as AFL soldiers arrived and chased people in the yard. John Y ¶¶ 10–12. The soldiers arrested an estimated 250 civilians and executed them at the James Spriggs-Payne Airfield. Jett Exhibit FF, U.S. Embassy in Liberia, *Situation Report as of 1400 July 25, 1990*, Cable #07365 ¶¶ 1, 8; U.S. Marine Corps., *On Mamba Station*; *see* Jett Exhibit BB, Director of Central Intelligence, National Intelligence Daily, 26 July 1990, at 3; RFA ¶ 20.

Almost daily, newspapers and U.S. government agencies reported on ethnic killings and targeting, by both sides of the conflict, including by the AFL. Jett at 33–34. The AFL's abuses were so brazen and notorious that both the U.S. Embassy in Monrovia and Congress denounced the killings and ethnically motivated violence. Jett at 33–34.

D. The Lutheran Church Massacre

1. The Lutheran Church Served As A Humanitarian Shelter.

In the wake of the attack on the United Nations Development Program compound, the Liberian Council of Churches and the Red Cross set up a shelter at the Lutheran Church, where internally displaced persons were registered, fed, and took refuge. Jett at 35–36; Blunt ¶ 20; William W ¶¶ 7, 9; William X ¶¶ 4–5, 8–10; Voros ¶ 15; Jett Exhibit T, U.S. Embassy in Liberia, *Situation Report as of 1800 June 5, 1990* Cable #05745 (hereinafter "Jett Ex. T") ¶ 16. The Church was located in the Sinkor neighborhood of Monrovia, less than two miles from the Executive Mansion and the Barclay Training Center. Jett at 16, 39; *see also* Jett Exhibit X, Map of Monrovia. From the start of the war through September 1990, the Church compound was firmly in AFL-controlled territory. Blunt ¶ 18; William Z ¶ 37; William W ¶ 31; Jett at 21; Voros ¶ 9.

By late July 1990, more than 2,000 mostly Mano and Gio civilians who had fled ethnic violence were packed into the Church compound. Jett at 35; Blunt ¶¶ 20–21; John Z ¶¶ 6–7; John X ¶ 19; William X ¶¶ 10, 12; John Y ¶¶ 15–16; William W ¶¶ 10–11; *see* RFA ¶ 21; Jett Exhibit S, U.S. Embassy in Liberia, *Situation Report at of 1800 on June 4, 1990*, ¶ 18; Jett Ex. T ¶ 16; Jett Exhibit YY, U.S. Embassy in Liberia, *Situation Report as of 1800 May 31, 1990*, Cable #05543 ¶ 13. At first, men and boys were predominantly housed in the Church's main floor and balcony, while women and children mostly stayed in a schoolhouse on the Church compound. Blunt ¶ 21; William X ¶ 13; John Y ¶ 8. However, as the numbers grew, people took shelter

wherever they could find space, including outside of the buildings, in the compound courtyard, and under the Palava hut near the front entrance of the compound. John Z ¶ 7; Jane W ¶ 12; *see also* William W ¶ 10. A curfew ensured that civilians remained within the fenced compound at night. John Y ¶ 8; Jane W ¶ 12; Stip. Facts ¶ 10; Answer ¶ 24.

The civilians felt safe at the Church because it was plainly marked and widely recognized as a Red Cross shelter. John Y ¶ 7. Red Cross flags and a U.N. flag were hoisted at the Church. Jett at 35–37; Blunt ¶ 20; William W ¶ 7, 13; Huband ¶¶ 19, 25; William X ¶ 7; John Y ¶ 7; John X ¶ 17; *see* William Y ¶ 8; *see* RFA ¶ 23. It was publicly reported that the Church compound served as a Red Cross shelter. Jett at 35–36.

The Church was also viewed as a place of refuge "because it was a sacred place." Jett at 40 (internal citation omitted); Jane W ¶ 16; *see* William Y ¶ 8. The Church continued to hold daily religious services for those staying there and Sunday services for members of the congregation. William W ¶ 14; William X ¶¶ 8, 16. Prayer services were intended to "heal the wounds of the people, to encourage them, and to give them hope that God would stand with them and rescue them from danger." William W ¶ 14.

The Red Cross prohibited weapons inside the Church, which eyewitness reports confirm. John X ¶ 20; Blunt ¶ 22; William Y ¶¶ 8, 13, 17; William X ¶ 12; William W ¶ 12. The Church trained volunteers to keep watch, but they were unarmed. William X ¶ 14; Jane W ¶ 11.

2. Defendant Visited the Lutheran Church to Conduct Reconnaissance before the Massacre.

In late July 1990, Defendant and SATU conducted reconnaissance at the Lutheran Church with other AFL soldiers, and intimidated the civilians who were sheltering there. John Z ¶¶ 8–9, 12; William X ¶ 16.

For example, a few days before the Lutheran Church Massacre, a large group of soldiers—including Defendant, SATU soldiers under his command, and other AFL soldiers—surrounded the Church. Jane W ¶¶ 13–14. Fearful civilians tried to leave the compound when the soldiers arrived, but the soldiers ordered them to stay, telling them to be calm and that they were there to offer protection. *Id*. Defendant spoke to a group of civilians near the Church and later led the soldiers out of the compound. Jane W ¶¶ 15–17; Jane W Exhibit A.

John X also recalled that before the Massacre, a large deployment of armed SATU soldiers surrounded the Church compound and entered the Church grounds. John X ¶ 22. One soldier asked a group—which included a Nimbanian senator seeking refuge at the Church—why the group was standing outside the Church building. *Id.* The senator informed the soldier that the people in the Church were there seeking refuge and that they were not a threat. *Id*.

AFL soldiers also drove past the Church, shouting, "you people have come to group yourself in the church building, but we will come for you and you will see." John Z ¶ 8; *see also* William W ¶ 15. Sometimes the AFL soldiers would shoot into the air and rattle the gates of the compound to intimidate the people seeking refuge there. Huband ¶ 15.

3. Defendant Led SATU and Other Forces in the Lutheran Church Massacre.

On the night of July 29, 1990, Defendant led SATU and other AFL forces in a convoy to the Lutheran Church. They were also supported by members of Tilley's Death Squad. Declaration of Patrick Robert ¶ 14 (hereinafter "Robert"); *see* Jett Ex. ZZZ. Defendant's SATU forces wore their distinctive combat helmets. John Z ¶¶ 9, 11, 14; John Y ¶ 21; William Y ¶ 12.

As the highest-ranking officer and the SATU commander, Defendant was in control of the operation. RFA ¶¶ 24, 28–33; *see also* William Y ¶ 15; William Z ¶¶ 30, 34; John Z ¶ 17. Defendant carried a pistol, a weapon only senior officers like Defendant could carry. William Y

¶ 14; John Z ¶ 17; RFA ¶ 29; William Z ¶ 17 ("Only high-ranking officers such as commanders would carry pistols. Other soldiers would carry long-range weapons"). When they arrived at the Lutheran Church, the AFL forces surrounded the Church just as everyone who had taken refuge inside the Church and adjoining school building settled in for the night. John Z ¶ 14; John Y ¶ 19; Jane W ¶¶ 18-19. The AFL soldiers entered the compound either through the front entrance or by jumping over the fence. John Z ¶ 14; John X ¶ 24. Defendant ordered his troops to attack the Church, knowing full well that the approximately 2,000 men, women, and children sheltering inside were all civilians. RFA ¶¶ 24–33; John Z ¶¶ 19–20; *see also* William Y ¶¶ 12–14; Jett at 37.

John X, who had stayed awake that evening, saw soldiers scale the fence and watched them enter the front door of the Church and open fire. John X ¶¶ 23–25. John Y recalled that a soldier carrying a pistol ordered the killings to start. He heard a soldier speak in Krahn and then shout in English that "you people think that you are rebels but we will prove to you today that we are more rebel than you." John Y ¶ 22. The soldier then fired a pistol into the air and the killing commenced. John Y ¶ 22.

The SATU and other AFL soldiers entered the Church and began shooting into the masses of unarmed civilians, some of whom were just jolted awake by the gunfire. John Y ¶ 22, John X ¶¶ 24–25; William Y ¶¶ 12–13; Jane X ¶¶ 19–20. John Z watched from the courtyard, where he was sheltering, as soldiers in SATU uniforms and combat helmets, some wearing masks, entered the Church compound, filed into the Church and the school building, and opened fire. John Z ¶¶ 14–15. The Massacre spilled out from the Church and adjoining schoolhouse into the compound grounds as men, women, and children tried to flee for their lives. John Y ¶ 22; John Z ¶ 14. The soldiers unloaded rounds of ammunition inside the Church from the front

door and windows, and from all angles, targeting anyone who tried to escape. Jane W ¶ 20; John Y ¶ 22; *see also* RFA ¶¶ 27–35. They also attacked civilians with cutlasses or machetes. RFA ¶ 30. Soldiers also robbed the victims and looted supplies from the Church compound. John Y ¶ 32; RFA ¶ 32.

Defendant commanded the operation from the Church compound, still carrying his pistol. William Y ¶ 14; John Z ¶ 17; RFA ¶ 29. William Y, an AFL soldier, was out on patrol nearby came running to the Church, where his own sister was sheltering, when he heard the sounds of shooting. William Y ¶¶ 7, 11–14. He ran to the Church because he knew it was filled with civilians, who he had been trained to protect and who were now under attack. William Y ¶ 11. He saw Defendant standing at the entrance, watching over the slaughter, and immediately recognized him from prior military exercises and by reading Defendant's name and noting his rank of colonel on Defendant's uniform. William Y ¶¶ 11–14. Defendant was the only commander William Y could see. William Y ¶ 14. William Y also identified other soldiers at the compound as SATU based on their uniforms, combat helmets, and weapons (M16s and Uzis). William Y ¶ 12. Defendant ordered William Y to leave the Church and return to his patrol. William Y ¶ 14. Although he was desperate to check on his sister, William Y nevertheless obeyed the order and left the Church, afraid he would be killed if he refused Defendant's command. William Y ¶ 15.

Some victims, including Plaintiffs, survived by hiding under piles of dead bodies or in the pulpit. Jane W ¶ 20; John X ¶¶ 26, 28; John Z ¶ 15; John Y ¶¶ 20, 22. Jane W, her husband James W, and their two youngest daughters, Julie W and Jen W, were in the main Church building when soldiers began firing into the crowd of sleeping civilians. Jane W ¶¶ 19–20. Jane W survived by hiding under a pile of dead bodies until the shooting ended. Jane W ¶¶ 20–21.

As she lay still, facing down, she felt the bodies of those who had been shot fall on top of her, their blood pooling around her. Jane W ¶ 20. When dawn broke and she finally crawled out from under the pile, she could barely see the floor amidst the dead bodies. Jane W ¶ 21. She later discovered that her husband and two daughters had been killed, as had her aunt, who had been sleeping in the school building. Jane W ¶¶ 19, 26.

John X and his two brothers, James X and Joseph X, were also sleeping in the main Church building, while his wife, Jane X, and young daughter, Julie X, were sleeping in the adjacent school building. John X ¶ 23. As the shooting began, John X covered himself with others' blood, pretending to be dead. John X ¶ 26. As he lay there, he heard a soldier say, "We'll kill every one of you before Taylor comes." John X ¶ 27. Although he survived the assault by hiding among the dead bodies until the morning, his wife, daughter, and two brothers all were murdered. John X ¶¶ 26, 29, 31.

John Y was sitting by the pulpit in the Lutheran Church when he heard the gates to the compound open and watched as soldiers stormed the Church. John Y ¶¶ 20, 22. He hid inside the pulpit, holding a Bible close to his chest. John Y ¶ 20. As he hid, a bullet grazed his leg. John Z ¶ 22. He felt the blood ooze and applied pressure to the wound, whispering his little brother's name to the boy hiding next to him. John Y ¶¶ 22-23. Although he knew that the boy was not in fact his little brother, who was in the school building with their mother, the thought of having his brother by his side gave him hope to survive. John Y ¶ 23. John Y later learned that his little brother also survived, though he sustained a gunshot to his arm. John Y ¶ 32.

John Z was one of a number of civilians staying in the courtyard outside the school building on the Lutheran Church compound. John Z ¶ 13. During the shooting, a heavy body fell on top of him, making it difficult for him to breathe. John Z ¶ 15. John Z was able to shift

the body partially off him and turn on to his back; however, he remained pinned by the body because he was afraid that if he moved too much, he would be shot. John Z ¶ 15. As he lay there, partially covered by dead bodies and pretending to be dead, a soldier stepped onto his shoulder and arm. John Z ¶¶ 15–16.

After over an hour of the assault, Defendant walked through the Church compound, yelling "Ceasefire—all soldiers out" several times, at the front of the Church, by the school building, and in the middle of the courtyard. John Z ¶¶ 17–19; RFA ¶ 34. After soldiers began leaving, he walked to the front of the Church once more and said, "Everyone is dead. All soldiers out." John Z ¶ 20; RFA ¶ 34–35. Following his order, the soldiers all left the compound. John Z ¶ 20; RFA ¶ 35.

In total, Defendant's troops killed approximately 600 civilians in the Lutheran Church Massacre. Jett at 37 (citing United Nations investigation); *see infra* at 18. In the operation's aftermath, bodies blanketed the floors of the Church, hung from windows and off of the school balcony, and were strewn across the lawn of the compound and the pavement. Jane W ¶ 21; Blunt ¶ 24; Huband ¶ 25; William W ¶ 29; RFA ¶ 33.

4. Government Forces Immediately Targeted Survivors of the Lutheran Church Massacre.

The following morning, July 30, 1990, AFL soldiers began a so-called "clean-up" operation, targeting survivors as they sought safety and first aid. Jett at 38; Jett Exhibit PPP, Director of Central Intelligence, National Intelligence Daily, 31 July 1990, at 6.

Wounded survivors who were not able to find their way out of the Church were left to die, as AFL soldiers prevented Red Cross workers from bringing the wounded to hospitals. William X ¶ 20. Soldiers also chased away survivors who tried to return to the site of the Massacre. John Y ¶ 28.

Some of the wounded managed to escape the Church and, desperate for medical attention, sought aid at the nearby United States Agency for International Development ("**USAID**") compound. Voros ¶ 16; Jett at 38; Jett Exhibit XX, CIA Cable #C06769266, 30 July 1990 ¶ 2; RFA ¶ 39. Andrew Voros, an American living in the USAID compound at the time, struggled to help the survivors. Voros ¶¶ 17–20. As Voros treated the wounded, AFL soldiers drove around the neighboring streets, discharging their guns into the air. Voros ¶ 20. The soldiers then attacked the USAID compound. They rounded up the survivors of the Lutheran Church Massacre, including those who Voros had treated, and took them to a nearby beach where they were executed. Voros ¶ 21; Jett at 38; Jett Ex. NN at 8. Defendant knew about the USAID attack. RFA ¶¶ 38–40.

Other survivors of the Lutheran Church Massacre fled to the nearby J.J. Roberts School, joining approximately 1,200 Manos and Gios who had already sought refuge there and who were assisted by Red Cross volunteers. John X ¶ 33; *see also* William X ¶ 11. A soldier came to the school and warned those sheltering there that it would be targeted next. John X ¶ 34. Later that day, a group of AFL soldiers entered the school premises and announced their intention to kill all Nimbanian men and Gios before the rebels reached Monrovia. John X ¶ 36–37. The soldiers proceeded to execute civilians—including a man wearing a Red Cross vest—with guns, axes, and machetes. Jett at 33.

On the evening of July 30, after William Y heard on the radio that AFL soldiers had committed the Massacre, he decided to flee Monrovia, as he thought he would no longer be safe. William Y ¶ 19. As William Y passed by the Executive Mansion, he saw SATU soldiers stationed there drinking and celebrating the Massacre. William Y ¶ 20. He heard one SATU soldier exclaim that they "got rid of those dogs last night." William Y ¶ 20.

5. Government Forces Immediately Continued to Attack Civilians in Central Monrovia Through September 1990.

In the weeks following the Massacre, the AFL continued their reign of terror throughout Monrovia. They looted properties, including the American Cooperative School and the home of a U.S. embassy official, and executed civilians, including a U.S. missionary in Monrovia, while detaining and torturing others. Jett at 25, 28; Jett Exhibit QQ, CIA Cable #C00068500, 7 August 1990 ¶¶ 3–5 (hereinafter "Jett Ex. QQ"); Jett Exhibit HH, U.S. Embassy, *Situation Report as of 1800 on August 4, 1990*, Cable #07743 ¶ 9; Voros ¶¶ 22–26; RFA ¶¶ 41–42. Defendant maintained command over the AFL soldiers patrolling government-controlled areas of Monrovia. Indeed, when Mark Huband, a journalist with The Guardian, tried to visit the Church to report on the Massacre, AFL soldiers took him to Defendant, who admonished him, warning him that crossing the front line into AFL-controlled territory was dangerous. Huband ¶¶ 21–22.

The ongoing violence made it difficult to bury the dead and clean up the Church. Jett at 37. The bodies remained scattered throughout the Church and the compound grounds until October 1990, when members of the community returned during a temporary ceasefire. William X ¶ 22; Huband ¶¶ 25–26; William W ¶ 32. At that point, the bodies were in varying stages of decay. William X ¶ 23. The volunteers cleaned the Church and buried about 400 bodies in six mass graves on the Church compound. William X ¶¶ 25–28; Huband ¶ 26; Declaration of Patrick Robert (hereinafter "Robert") ¶ 31; William W ¶ 33. The bodies that did not fit in the grave were covered with lye , and some were taken to the beach and buried there. Robert ¶¶ 25, 27, 31; William W ¶ 33; Jett Ex. QQ ¶ 7.

International observers and journalists have since concluded that the AFL, not the NPFL or other rebel forces, were responsible for the Massacre. *See* Jett at 38–39 (U.S. Embassy concluded the AFL was responsible based on the location of the front lines, proximity to the

Executive Mansion and AFL barracks, and the fact that by July the AFL was routinely targeting and killing Manos and Gios); Blunt ¶ 25; Huband ¶ 20; *see also* William Z ¶¶ 36–37; William W ¶ 31. The Massacre—characterized by the U.S. State Department as one of the "worst single episodes" of the Civil Wars—marked a turning point in the conflict, cementing the ethnic nature of the war and leading to calls for international intervention. Jett at 39–40.

E. Continuing Impact of the Lutheran Church Massacre

Three decades after the Lutheran Church Massacre, Plaintiffs continue to suffer from the resulting physical, emotional, and psychological pain.

John X still mourns the loss of his wife, daughter, and brothers, and has had to carry the responsibility for caring for his family alone, which has limited his ability to further his education. John X ¶ 46.

John Y experienced trauma for years following the Massacre, haunted by the images of the carnage he witnessed—particularly the images of his slaughtered aunt and her unborn baby, whose remains he discovered the morning after the Massacre. John Y ¶ 35. Now any encounter with police frightens him, bringing back memories of that day. John Y ¶ 35. The gunshot wound on his leg is a physical reminder of this pain and limits his physical activity, for instance, preventing him from playing football. John Y ¶ 36.

John Z suffers from physical pain when he remembers the Massacre, including debilitating headaches, and pain in his shoulder and ear where a soldier stepped on him. John Z ¶ 32. He also experiences emotional trauma from the Massacre and feels terrible whenever he recalls the events, sometimes leaving him entirely drained for the rest of the day, unable to do anything else. *Id*.

Jane W has trouble sleeping when she thinks about the loss of her husband and two daughters in the Massacre. Jane W ¶ 32. She feels "unimaginable" pain, including a severe pain

in her heart, when she thinks about the events of that night, and she still finds it difficult to talk about what happened to her and her family. Jane W ¶ 32.

The Massacre also had a broader effect on Liberian society. The slaughter of civilians in a place of worship "violated the institution of 'sanctuary'" and "threatened the collapse of systems of reliable rules and norms" in Liberia. Jett at 40; Jett Ex. ZZZ at 280–281.

F. Failure of Accountability for the Lutheran Church Massacre

Following the Massacre, immediate justice for the victims, including the Plaintiffs, was impossible. The First Civil War continued until 1997, and the Second Civil War started soon after, lasting from 1999 to 2003. Instability continued between the Civil Wars and in the aftermath of the Second Civil War. Stip. Facts ¶ 5; Answer ¶ 14; CC at 9; CC Exhibit C, Liberian Truth and Reconciliation Commission, Report Volume One: Preliminary Findings and Determinations (hereinafter "CC, Ex. C") at 44. Liberia remained under a transitional government until President Sirleaf's inauguration in January 2006. CC at 9–10; Stip. Facts ¶ 8; Answer ¶ 40.

The military justice system failed to provide any accountability for the Lutheran Church Massacre. Although the Uniform Code of Military Justice and court martial system technically remained in effect under President Doe, military discipline was not enforced consistently or impartially during the First Civil War. William Z ¶¶ 22–23. Senior military leadership regularly afforded Krahn soldiers greater leniency for misconduct. *See* Jett at 41.

In the present case, Defendant himself ever disciplined or punished for leading the Massacre. William Z ¶ 38. To the contrary, he was promoted to the Director of the Defense Intelligence Service. William Z ¶ 31. Likewise, the SATU soldiers under Defendant's command were never disciplined or punished, by Defendant or otherwise, for the horrific abuses committed in the Massacre. *See* William Z ¶ 38; CC at 32–33; RFA ¶¶ 36–37. Indeed, instead

of launching an investigation, then-President Doe led a cover-up of the Massacre. William Z ¶ 38. He denied that the AFL committed the Massacre, blaming the NPFL rebel force for the atrocities and foreclosing any investigation. William Z ¶¶ 37–38.

The civilian court system in Liberia was also unable to provide remedy for the victims of the Massacre. The Liberian judicial system effectively collapsed at the start of the First Civil War and any brief restorations of function were undermined by resurgent fighting. CC at 11. Even as some courts were reestablished in the aftermath of the First Civil War, the judicial system was marred by corruption, and a lack of transparency, due process, and independence. CC at 11; Jett Exhibit WW, U.S. Dep't of State, *Liberia Human Rights Practices 1992*, 17 Ann. Hum. Rts. Rep. Submitted to Cong. by U.S. St. 138 (1992); CC Exhibit G, U.S. Dep't of State, *Liberia Human Rights Practices, 1994* (1995), at 136; CC Exhibit. H at 148.

A 2003 review of the judicial system concluded that corruption influenced case outcomes and the Liberian judiciary lacked the necessary resources to administer justice. CC at 13–14. These constraints continued into the 2000s and 2010s, with few qualified judicial and legal professionals practicing in the country, a lack of fully functional judicial institutions, and corruption that remains pervasive even to this day. CC at 14–17. Moreover, the inadequate physical infrastructure, decimated by years of conflict, created significant practical challenges. CC at 19.

While Liberia established transitional justice mechanisms to address Civil War abuses, they provided no meaningful relief to Plaintiffs, who lived in fear knowing that the perpetrators of the Massacre were still free. John Y ¶ 33; Jane W ¶¶ 29–30. The Truth and Reconciliation Commission created after the end of the Second Civil War created some hope for accountability, but many victims were skeptical and feared reprisal for participating in the process.CC at 24–28,

30; John Y ¶ 34; Jane W ¶ 28; John Z ¶ 28; John X ¶¶ 44–45. Indeed, the promise of the Truth and Reconciliation Commission proved illusory. In 2011, the Liberian Supreme Court ruled that its recommendations were not binding on the Liberian government. CC at 27–28. Since then, there have been no further meaningful steps taken in Liberia towards accountability for the Massacre or any other atrocity committed during the Civil Wars. CC at 27–29; William W ¶ 37.

Today, impunity for wartime atrocities persists in Liberia. CC at 30–31. Liberia has not prosecuted a single case involving abuses committed during the Civil Wars, and several notorious alleged perpetrators hold senior political office. Mot. Suppl. Protective Order at 5–8; Dkt. 15 at 4; CC at 31, 33. Meanwhile, survivors confront substantial obstacles in their pursuit of justice. *First*, victims and advocates for accountability who speak out face intimidation and reprisals, including from members of the Liberian security forces. William Z ¶ 39; John Y ¶ 33; Jane W ¶ 28; John Z ¶¶ 27–28, 30; John X ¶¶ 43–45; CC at 21–23; Werner Supp. Decl. ¶ 16. *Second*, there is no political will to seek accountability for crimes committed during the Civil Wars. CC at 28–29. Third, much of the population lacks internet access to collect evidence and information to substantiate a prospective claim. CC at 19. *Finally*, the legal and judicial infrastructure remains limited. CC at 15. *See generally* CC.

Defendant's immigration to the United States in or around 2000 further prevented any possibility of accountability in Liberia. Stip. Facts ¶ 14; Answer ¶ 8. Defendant never disclosed his involvement in the Massacre to U.S. immigration officials. RFA ¶ 43. Instead, he relied on immigration relief intended to provide a "safe haven for Liberians" escaping the "armed conflict and widespread civil strife" he played an active role in perpetrating. *See* Press Release, White House, Reinstating Deferred Enforced Departure for Liberians, (Jan. 20, 2021); RFA ¶¶ 43–45. Despite an outstanding order for his removal, Defendant enjoyed residency in Sharon Hill,

Pennsylvania until at least 2019. Stip. Facts ¶ 16; Answer ¶ 8; Ex. A. Accordingly, Plaintiffs were unable to locate Defendant for many years; for instance, John Z thought that Defendant was living in the Ivory Coast and Jane W only recently learned that Defendant was living in the United States. John Z ¶ 31; Jane W ¶ 31.

G. Procedural History of this Case

Plaintiffs filed the Complaint on February 12, 2018. On April 26, 2018, Defendant filed a Motion to Dismiss, which this Court denied. Dkt. 26. Defendant filed his Answer to the Complaint on January 4, 2019. Dkt. 28.

Plaintiffs also filed a Motion to Proceed Anonymously, which the Court granted on December 17, 2018. Dkt. 27. On February 4, 2019, the Court also granted the parties' stipulated protective order providing for the designation of documents as Confidential or Highly Confidential/Attorneys' Eyes Only. Dkt. 33.

Throughout 2019 and 2020, Plaintiffs sought discovery from Defendant. Although Defendant initially participated in discovery—serving Initial Disclosures on January 31, 2019 and Amended Initial Disclosures on August 7, 2019,—Defendant has since failed to respond to or otherwise engage in the present proceedings. Dkt. 44, Ex. A at 2, B at 2. After serving requests for production of documents and interrogatories, which went unanswered, on February 7, 2020, Plaintiffs served their First Set of Requests for Admission, which Defendant was obliged to respond to by March 9, 2020. Dkt. 49. That deadline passed without responses, objections, an extension request, or a request for a meet-and-confer from Defendant. *See* Dkt. 49.

On May 6, 2020 and again on September 29, 2020, Plaintiffs requested extensions of the discovery schedule in light of the extraordinary circumstances imposed by the COVID-19 pandemic. Dkts. 49, 51. In the May 6, 2020 letter, Plaintiffs summarized their efforts up to that point to take discovery from Defendant, noting that the April 27, 2020 deadline imposed by the

Court had passed and Defendant had "neither served Plaintiffs with responses or objections to Plaintiffs' discovery requests, requested an extension, nor otherwise sought to meet and confer regarding these requests." Dkt. 49. The Court granted Plaintiffs' extension requests, extending the close of discovery to February 16, 2021. Dkt. 52.

Despite this additional time, Defendant never engaged with Plaintiffs' discovery requests. Rather, at some point after amending his initial disclosures, Defendant fled this jurisdiction for Liberia and has since failed to meaningfully participate in defending the action. Mot. Suppl. Protective Order at 5 (citing Werner Suppl. Decl. ¶¶ 11–12).[3]

III. The Court Should Grant Summary Judgment in Favor of Plaintiffs.

A. The Legal Standard for Summary Judgment

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)); *see also United States v. Donovan*, 661 F.3d 174, 185 (3d Cir. 2011) (finding that the district court properly relied on two unrebutted expert reports to find that movant met its burden at summary judgment); *Mina v. Hotel on the Cay Timesharing Ass'n*, 410 F. App'x 450, 452 (3d Cir. 2010) (affirming summary judgment in proceedings where the appellants filed a motion to dismiss and answer, determining that "even had the [appellants] provided specific facts beyond the statements in their pleadings, under Rule 36, [their] failure to respond to the [appellee's] requests for admission prevents them from contesting [the facts in those requests.]").

[3] Should Defendant's failure to defend this case continue, Plaintiffs reserve the right to move for a finding that he is in default and for default judgment.

In particular, "[m]atters deemed admitted due to a party's failure to respond to request for admission are 'conclusively established' under Federal Rule of Civil Procedure 36(b), and may support a summary judgment motion." *Sec'y U.S. Dep't of Labor v. Kwasny*, 853 F.3d 87, 91 (3d Cir. 2017).

A genuine issue of material fact exists for trial only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 857 (1986) (internal citation omitted).

When the movant does not bear the burden of proof on an issue at trial, as with an affirmative defense, "the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which [they] will bear the burden of proof at trial." *Penn. Gen. Energy Co. v. Grant Twp.*, C.A. No. 13-209ERIE, 2017 WL 1215444, at *2 (W.D. Pa. Mar. 31, 2017) (citing *Celotex Corp.*, 477 U.S. at 323-24); *Jara v. Núñez*, No. 613CV1426ORL37GJK, 2016 WL 2348658, at *3 (M.D. Fla. May 4, 2016) (quoting *United States. v. Four Parcels of Real Prop. in Green & Tuscaloosa Cntys. in State of Ala.*, 941 F.2d 1428, 1438 (11th Cir. 1991)); *see also United States. v. One Palmetto State Armory PA-15 Machinegun Receiver/Frame Unknown Caliber, Serial No. LW001804*, 115 F. Supp. 3d 544, 552 (E.D. Pa. 2015) (a movant that does not bear the burden of proof on an issue at trial "has no obligation to produce evidence negating its opponent's case" at summary judgment, "[t]he movant need only point to the lack of evidence supporting the non-movant's claim" (quotations omitted)).

B. Undisputed Facts Establish That Defendant Is Liable to Plaintiffs for Wrongful Acts Committed During the Lutheran Church Massacre.

Based on the record taken as a whole—including the Statement of Stipulated Material Facts, established admissions in Plaintiffs' Requests for Admission, and the witness declarations and expert reports appended herein—no rational trier of fact could find a genuine issue of material fact. Rather, the undisputed record proves that Defendant is responsible for extrajudicial killing, attempted extrajudicial killing, and torture under the TVPA and cruel, inhuman, or degrading treatment, war crimes, and crimes against humanity under the ATS—as enumerated in Plaintiffs' First through Fourth, Sixth, Ninth, Twelfth, and Fourteenth Claims for Relief in the Complaint.

1. Defendant Is Liable Under the TVPA for Extrajudicial Killing, Attempted Extrajudicial Killing, and Torture.

The TVPA "establish[es] an unambiguous and modern basis" for civil liability for extrajudicial killing and torture. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004) (citing H.R. Rep. No. 102–367, at 3 (1991)). As detailed below, the record plainly establishes that as the SATU commander, Defendant subjected Jane W's and John X's decedents to extrajudicial killing and Plaintiffs to attempted extrajudicial killing and torture in violation of the TVPA.

a. Defendant Acted Under the Color of Law of the Government of Liberia.

To be liable for any claim under the TVPA, Defendant must have acted "under actual or apparent authority, or color of law." 28 U.S.C. § 1350 note § 2(a). To meet this standard, "plaintiff[s] must show 'some governmental involvement.'" *Doe v. Saravia*, 348 F. Supp. 2d 1112, 1150 (E.D. Cal. 2004) (citing *Kadic v. Karadažić*, 70 F.3d 232, 245 (2d Cir. 1995) (quoting H. R. Rep. No. 102–367 at 5 (1991)). The requirement is met when the acts are "inflicted by or at the instigation of a public official," *Kadic*, 70 F.3d at 243, or when the

individual "acts together with state officials or with significant state aid." *Chowdhury v. Worldtel Bangladesh Holding, Ltd.*, 746 F.3d 42, 52–53 (2d Cir. 2014).

Here, the undisputed record demonstrates that the Massacre was perpetrated under color of law. In July 1990, the Lutheran Church and surrounding area of Monrovia were in the exclusive control of governmental forces. *Supra* at 10. In the days and weeks leading up to the Massacre, AFL soldiers, including Defendant and other SATU soldiers, performed reconnaissance and intimidated civilians sheltering at the Church. *Supra* at 11–12. Then on July 29, 1990, SATU soldiers, identifiable by their uniform, perpetrated the Massacre. *Supra* at 12–16. The mere presence of uniformed government soldiers at the Massacre demonstrates the requisite color of law under the TVPA. *Chavez v. Carranza*, 413 F. Supp. 2d 891, 902 (W.D. Tenn. 2005) (finding the requirement met where the victim observed uniformed members of the national police with government-issued weapons).

Moreover, as SATU commander—with the "authority to give and compel orders to SATU soldiers" (RFA ¶ 6)—Defendant's conduct readily meets this requirement. Defendant joined the reconnaissance missions, directed and watched over the Massacre, and after over an hour of slaughter, called a ceasefire. *Supra* at 11, 12–14, 16. Any of these facts on its own demonstrates the requisite color of law. *See Bowoto v. Chevron Corp*., 557 F.Supp.2d 1080, 1092 (N.D. Cal. 2008) (reasoning that all that was necessary to prove torture was for the plaintiffs to "show that the torture was committed by an official or under color of law").

b. Plaintiffs' Decedents Were Subjected to Extrajudicial Killing under the TVPA.

The killings of Jane W's and John X's decedents readily meet the requirements of unlawful "extrajudicial killings" under the TVPA as (*i*) killings that were (*ii*) "deliberate" and (*iii*) "not authorized by a previous judgment pronounced by a regularly constituted court affording all

the judicial guarantees which are recognized as indispensable by civilized peoples." 28 U.S.C. § 1350 note § 3(a); *see also Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 17 (D.D.C. 1998) (observing how courts have found "that a course of indiscriminate brutality, known to result in deaths, rises to the level of 'extrajudicial killings'"), *abrogated on other grounds*.

First, it is undisputed that Jane W's and John X's decedents were among the 600 unarmed civilians brutally murdered in the Massacre. *Supra* at 15, 16; Jett at 37. Jane W was sheltering at the back of the Church with her husband and two daughters when soldiers began firing into the Church. *Supra* at 14; Jane W ¶ 19. As she hid for her life, Jane W lost sight of her family but later discovered that her husband, two youngest daughters, and aunt had all been killed during the Massacre. *Supra* at 15; Jane W ¶ 26. John X's family was likewise brutally killed. After surviving the Massacre by hiding among dead bodies until morning, John X found his wife, daughter, and two brothers had all been murdered. *Supra* at 15; John X ¶¶ 26, 31.

Second, these killings were plainly "deliberate"—ordered by Defendant and carried out by men under his command in accordance with the AFL's *modus operandi* for attacking Mano and Gio civilians. A "deliberate" killing is one "undertaken with studied consideration and purpose." *Kafutwa v. Solicitor General*, No. 13–147, 2013 WL 193233, at *2 (E.D. Pa. 2013) (internal citation omitted); *see also* Black's Law Dictionary (11th ed. 2019) (defining "deliberate" as "intentional; premediated; fully considered"). The killings of Jane W's and John X's decedents were undertaken with purpose, as part of a targeted and premediated plan to kill every person sheltering at the Lutheran Church. Among the indicators of the requisite deliberation are the pattern of ethnically-motivated civilian attacks by SATU forces and Defendant earlier that summer (*supra* at 6–10); the reconnaissance missions at the Church (*supra* at 11–12); Defendant's conduct throughout the Massacre—including overseeing the attack (*supra* at 14)

and ordering the ceasefire only after declaring that everyone had died (*supra* at 16); that SATU soldiers were following orders—the slaughter began after a pistol was fired and ended when Defendant ordered a ceasefire (*supra* at 13–16); and the celebratory revelry by SATU men at the Executive Mansion the day after the Massacre (*supra* at 17).

Third, the killings were not previously authorized by a judgment pronounced by a regularly constituted court affording judicial guarantees—the sole exception to liability under the TVPA. 28 U.S.C. § 1350 note § 3(a). As Defendant concedes, "no court authorized the actions taken . . . during the Lutheran Church Massacre." RFA ¶ 37. In fact, no "regularly constituted court" could have authorized the Massacre under Liberian law. CC at 32–33.

c. Plaintiffs Were Subjected to Attempted Extrajudicial Killing Under the TVPA.

Defendant is also liable for the attempted extrajudicial killing of Plaintiffs. Federal courts recognize that under the TVPA, the "definition of an extrajudicial killing . . . includes liability for an attempted extrajudicial killing," "even if no one died as a result." *Gill v. Islamic Republic of Iran*, 249 F. Supp. 3d 88, 99 (D.D.C. 2017) (citing *Warfaa v. Ali*, 33 F. Supp. 3d 653, 653, 666 (E.D. Va. 2014) *aff'd*, 811 F.3d 653 (4th Cir. 2016); *see also Doe v. Constant*, Case No. 08-4827-cv, 2006 WL 3490503 (S.D.N.Y. Oct. 24, 2006), *aff'd* 354 Fed. App'x 543 (2d Cir. 2009) (affirming default judgment finding the defendant liable for attempted extrajudicial killing under the TVPA); *Boniface v. Viliena*, 338 F. Supp. 3d 50, 68 (D. Mass. 2018) (permitting plaintiffs' attempted extrajudicial killing claims under the TVPA to proceed).

The law of attempt requires that Defendant intended to commit the act and took a "substantial step toward commission of the crime" that "strongly corroborat[es] the firmness of a defendant's criminal purpose." *Martinez v. Attorney General*, 906 F.3d 281, 284 (3d Cir. 2018) (citing *U.S. v. Cicco*, 10 F.3d 980, 985 (3d Cir. 1993)). Here, not only did Defendant intend to

kill everyone at the Church—for the same reasons that the extrajudicial killings described above were "deliberate" (*supra* at 28–29)—but he took substantial steps to do so, including surveilling the Church and directing and watching over the entire mission. *Supra* at 11–14.

Further, it is undisputed that each Plaintiff was sheltering at the Church and part of the crowd shot at by Defendant's soldiers. Jane W, John X, and John Z only survived by hiding among the piles of dead bodies and pretending to be dead, and John Y only survived by hiding in the pulpit, though he was still grazed by a bullet. *Supra* at 14–16. Defendant's soldiers shot at every moving body and some soldiers stepped on the bodies, including on John Z's shoulder, to ensure they were dead. *See supra* at 15–16; John Z ¶ 16. Defendant only called a ceasefire after over an hour passed, declaring "Everyone is dead. All soldiers out." *Supra* at 16; John Z ¶¶ 17–20; RFA ¶ 34. Plaintiffs were plainly victims of "attempts to kill them" and "[a]s such, liability has been clearly established for attempted extrajudicial killing." *Gill*, 249 F. Supp. 3d at 99 (citing *Constant*, 2006 WL 3490503 at 9 n.3).

d. Plaintiffs Were Subjected to Torture under the TVPA.

The TVPA defines torture as: (*i*) any act "directed against an individual in the offender's custody or physical control" (*ii*) "by which severe pain or suffering . . ., whether physical or mental," (*iii*) "is intentionally inflicted . . . for such purposes as . . . punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind." 28 U.S.C. §1350 note 3(b). Each of these elements is met.

First, Plaintiffs were in Defendant's custody or physical control. The requisite control under the TVPA extends to circumstances where an individual's freedom of movement is restrained by a concrete threat. *Jaramillo v. Naranjo*, No. 10-21951-CIV, 2014 WL 4898210, at *14 (S.D. Fla. Sept. 30, 2014); *see also Boniface*, 338 F. Supp. 3d at 56, 58 (D. Mass. 2018)

(finding this element was met at motion to dismiss where the plaintiffs were beaten, chased, and shot at on a public street). Here, the Lutheran Church was surrounded by armed SATU soldiers who fired from all angles, targeting anyone who tried to escape. *Supra* at 14; Jane W ¶ 20; John Y ¶ 22; RFA ¶ 28. To survive, Plaintiffs were forced to stay put and hide amongst the dead bodies, believing that if they did move, they would be shot. John Z ¶ 15; Jane W ¶¶ 20–21; John X ¶¶ 26–29. The threat constraining Plaintiffs' movements did not subside until well after the soldiers stopped firing and left the Church compound. John X ¶¶ 29–30 (remaining hidden after the soldiers left, until the morning, out of a fear they would return); Jane W ¶ 21 (remaining under fallen bodies until the soldiers had left and daylight was approaching); John Y ¶ 25 (remaining in his hiding spot until dawn and fearing that soldiers would come back).

Second, Plaintiffs suffered severe and lasting physical and psychological injuries from the Massacre. Severe physical pain or suffering under the TVPA may result from shooting, beating, and other modes of physical pain. *See, e.g.*, *Boniface v. Viliena*, 338 F. Supp. 3d 50, 69 (D. Mass. 2018) (finding the requisite pain where victims suffered gunshot wounds); *Jara*, 2014 WL 12623015, at *3 (same, where defendant "brutally beat" plaintiff); *Nikbin v. Islamic Republic of Iran*, 517 F. Supp. 2d 416, 427 (D.D.C. 2007) (same, where extreme pain made it difficult to breathe). Severe mental pain or suffering includes "prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of severe physical pain or suffering"; "the threat of imminent death"; or "the threat that another individual will imminently be subjected to death, [or] severe physical pain or suffering." 28 U.S.C. §1350 note § 3(b)(2); *see also Aldana v. Del Monte Fresh Produce*, 416 F.3d 1242, 1252–53 (E.D. Va. 2017) (finding threats of imminent death, including collective threats, can result in severe mental suffering under the TVPA); *Doe v. Qi*, 349 F. Supp. 2d 1258, 1318 (N.D. Cal. 2008) (finding

psychological torture after being forced to "witness the guards' severe mistreatment of a close friend"). In the present case, Plaintiffs suffered the "threat of imminent death" as soon as SATU soldiers began their assault. Plaintiffs hid for their lives, fearful that they would be killed. John Y was shot and John Z was stepped on; Jane W hid under bodies as her family was killed around her; and John Y and John X later found their family among those killed at the Church. *Supra* at 14–16. Plaintiffs have and continue to suffer prolonged physical and mental harms as a result of the Massacre. John Y's bullet wound has left him scarred and physically compromised and John Z suffers from debilitating headaches, as well as pain in his shoulder and ear where a soldier stepped on him. *Supra* at 19; John Y ¶ 36; John Z ¶ 32. The Plaintiffs' psychological suffering resulting from the attack cannot be overstated. John Y "can't escape the trauma" and has been haunted by the images of the Massacre and its aftermath replaying in his mind, particularly the image of his murdered aunt and her unborn baby. John Y ¶ 35. John X must constantly live with the "emptiness" caused by the violent deaths of his wife, daughter, and brothers. John X ¶ 46. He was also denied the opportunity of raising his daughter and watching her grow up. John X ¶ 46. Jane W has trouble sleeping and experiences a severe and "unimaginable" pain in her heart when thinking about her husband and daughters who were killed in the Massacre. Jane W ¶ 32. John Z lives with the unending cloud of post-traumatic stress, finding it difficult to think about and talk about the Massacre. John Z ¶ 32; *see also supra* at 19. And now, seeking justice for these horrendous acts, Plaintiffs live in fear of their safety. *See* John Z ¶ 25; John X ¶ 44; Jane W ¶ 28; John Y ¶ 35; Dkt. 15; *see generally* Mot. Suppl. Protect. Order.

Third, Defendant intentionally inflicted such pain on Plaintiffs for the purpose of discrimination, intimidation, or punishment. This purpose requirement is met where victims are targeted on the basis of their suspected membership in an identifiable group. *See Qi*, 349 F.

Supp. 2d at 1318–19 (finding the "requisite intent to intimidate, punish and discriminate" where the victims were targeted "*because* of their [suspected] support of the Falun Gong practice") (emphasis in original); *see also Lizarbe v. Hurtado*, Case No. 07-21783-CIV-JORDAN, 2007 WL 9702177, at *1 (S.D. Fl. 2007) (finding torture where "ethnic, racist and cultural differences played a significant role in the mistreatment of the plaintiffs"). The reason for the purpose element under the TVPA is to "eliminate claims based on 'haphazard' acts." *Qi*, 349 F. Supp. 2d at 1318 (citing *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002)). No such haphazardness exists here—Plaintiffs' torture was deliberate and directed at everyone sheltering at the Lutheran Church *on the basis of* their predominately Mano and Gio ethnic identities. *Supra* at 6–10, 12, 28–29; RFA ¶¶ 21-26. Throughout the First Civil War, attacks against civilians were often carried out by the AFL "merely on the suspicion that they were of Mano or Gio ethnicity." Jett at 30 n. 136 (citing Jett Ex. NN). The Lutheran Church Massacre further "cemented the ethnic nature of the conflict, making it clear that members of the Mano and Gio tribe were considered the enemy by the government and the AFL" and that "[t]hey could not be protected, even by the Red Cross." Jett at 39. These facts are more than sufficient to establish the requisite purpose under the TVPA.

2. Defendant Is Liable Under the ATS for Cruel, Inhuman, or Degrading Treatment, War Crimes, and Crimes Against Humanity.

The ATS provides a substantive right of action "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. For purposes of the ATS, a variety of sources can be used to determine the content of international law, including "international conventions, international customs, 'the general principles of law recognized by civilized nations,' 'judicial decisions,' and the works of scholars." *Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1019–20 (9th Cir. 2014) (quoting *Khulumani v. Barclay Nat. Bank*

Ltd., 504 F.3d 254, 267 (2d Cir. 2007) (Katzmann, J., concurring)) (citing Restatement (Third) of Foreign Relations Law § 102 (1987)).

It is well-settled that cruel, inhuman, or degrading treatment, war crimes, and crimes against humanity are actionable violations under the ATS. *Kadic*, 70 F.3d at n.3 (citing Restatement (Third) of Foreign Relations Law § 702 (1987)); *see, e.g.*, *Tachiona v. Mugabe*, 234 F.Supp.2d 401, 437–38 (S.D.N.Y. 2002) (finding cruel, inhuman, or degrading treatment to be actionable under the ATS); *Kadic*, 70 F.3d at 236 (same, for war crimes); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 256 (2d Cir. 2009) (same, for war crimes and crimes against humanity); *Sosa*, 542 U.S. at 762 (Breyer, J., concurring) (same, for crimes against humanity).

As detailed below, the record establishes without genuine factual dispute that Defendant is liable for cruel, inhuman, or degrading treatment, the war crimes of intentionally directing attacks against civilians and intentionally directing attacks against a building dedicated to religion, and the crimes against humanity of persecution and extermination.

a. Defendant Is Liable for Cruel, Inhuman, or Degrading Treatment under the ATS.

"[C]ruel, inhuman, or degrading treatment includes acts which inflict mental or physical suffering, anguish, humiliation, fear and debasement, which do not rise to the level of 'torture' or do not have the same purposes as 'torture.'" *Tachiona v. Mugabe*, 216 F. Supp. 2d 262, 281 (S.D.N.Y. 2002), *aff'd in part, rev'd on other grounds*, 386 F.3d 205 (2d Cir. 2004). In other words, the primary difference between torture and cruel, inhuman, or degrading treatment "derives principally from a difference in the intensity of the suffering inflicted." *In re South African Apartheid Litigation*, 617 F. Supp. 2d 228, 254 (S.D.N.Y. 2009) (citing Restatement (Third) of Foreign Relations Law § 702 Reporter's Note 5 (1987)). Because the elements of

cruel, inhuman, or degrading treatment under the ATS mirror those of torture under the TVPA—with the only difference being the degree of suffering—the violations committed at the Lutheran Church Massacre constitute cruel, inhuman, or degrading treatment for the same reasons they constitute torture. *Supra at* 30–33. In fact, the treatment inflicted by Defendant and his soldiers exceeds the treatment that other courts have found to constitute cruel, inhuman, or degrading treatment. *Compare supra at* 12–16, *with, e.g.*, *Wiwa v. Royal Dutch Petroleum Co*., No. 96 CIV. 8386(KMW), 2002 WL 319887, at *9 (S.D.N.Y. 2002) (finding the defendant's attempt to bribe the plaintiff to gain his brother's freedom constituted cruel, inhuman, or degrading treatment); *Xuncax v. Gramajo*, 886 F. Supp. 162, 187 (D. Mass. 1995) (finding cruel, inhuman, or degrading treatment where soldiers forced the plaintiff to witness the "severe mistreatment . . . of an immediate relative").

b. Defendant Is Liable for the War Crimes of Intentionally Directing Attacks Against Civilians and Against a Building Dedicated to Religion or a Charitable Purpose under the ATS.

War crimes are serious violations of the law of armed conflict, found in customary international law and codified in the four Geneva Conventions, which have been ratified by the United States and Liberia, and their Additional Protocols, which have been ratified by Liberia. ICRC Treaty Database, Geneva Conventions (with Protocols); *see also Kadic*, 70 F.3d at 242, n.8, 243 (citing Geneva Conventions, including Common Article 3, which sets out the obligations of parties to non-international armed conflicts, to determine what constitute war crimes actionable under the ATS)); *In re XE Services Alien Tort Litigation*, 665 F. Supp. 2d 569, 588 (E.D. Va. 2009) (same).

In addition to the elements specific to each crime set out below, war crimes must be committed "in the course of an armed conflict." *Kadic*, 70 F.3d at 244; *Talisman Energy*, 582 F.3d at 257. Here, the Lutheran Church Massacre was perpetrated in the course of the First Civil

War between the AFL government forces and NPFL and INPFL non-governmental forces. *Supra* at 2–4. Due to the "legal status of the entities opposing each other," the war constitutes a non-international armed conflict to which Common Article 3 of the Geneva Conventions and the laws of armed conflict apply. *Hamdan v. Rumsfeld*, 548 U.S. 557, 630–31 (2006) (citing Int'l Comm. of Red Cross, Commentary on the Additional Protocols to the Geneva Conventions of 12 August 1949, p. 1351 (1987)).

(a) *Intentionally Directing Attacks Against the Civilian Population and Civilians Taking No Direct Part in the Hostilities*

Defendant is liable for the war crime of "intentionally directing attacks against the civilian population or against individual civilians not taking a direct part in hostilities." Rome Statute, Art. 8(2)(e)(i). This crime comprises three elements: (*i*) the perpetrator directed the attack; (*ii*) the victims were civilians; and (*ii*) the perpetrator intended to attack civilians taking no direct part in the hostilities. INTERNATIONAL CRIMINAL COURT, Elements of Crimes, Art. 8(2)(b)(i) (hereinafter "Elements of Crimes"); *see In re XE Services Alien Tort Litigation*, 665 F. Supp. 2d at 588 (requiring that the conduct be directed "upon innocent civilians"); *Presbyterian Church of Sudan v. Talisman*, 453 F. Supp. 2d 633, 671, 677 (S.D.N.Y. 2006) (requiring that the alleged conduct "targeted civilians or was undertaken to displace citizens").

First, Defendant directed the attack against the civilians taking shelter at the Lutheran Church, as discussed above. *Supra* at 14, 16. Defendant performed reconnaissance in advance of the Massacre and then personally oversaw the entire military operation, only ordering the ceasefire after declaring that everyone had died. *Supra* at 11–14,16. Defendant therefore directed the attack for purposes of the ATS. In accordance with the modes of liability common to all claims, as set out in Section III.C, Defendant is liable for directly perpetrating this crime.

Second, Defendant admits that the 2,000 victims of the Lutheran Church Massacre were unarmed civilians. Stip. Facts ¶ 9; Answer ¶ 1; RFA ¶¶ 21, 25. The Lutheran Church Massacre was one of the largest civilian massacres perpetrated during the First Civil War, and none of the victims of the Massacre was taking part in the hostilities. *Supra* at 12, 14–15; Jett at 39–40. Indeed, the Red Cross prohibited weapons from being brought inside the Lutheran Church, and eyewitness reports confirm that the people sheltering at the Church were unarmed civilians. Jane W ¶ 9; John X ¶ 17; Blunt ¶ 22; William Y ¶¶ 8, 11; William X ¶ 12; William W ¶ 12.

Third, the record proves that Defendant *intended* to attack civilians taking no part in the hostilities. Defendant and his soldiers visited the Lutheran Church in late July 1990 and spoke directly with the civilians seeking refuge there. Jane W ¶¶ 13–17. This visit and the other documented visits to the Lutheran Church by AFL and SATU soldiers would have readily shown that the Lutheran Church was being used to shelter internally displaced persons, not rebel forces. *See supra* at 11–12; RFA ¶¶ 21–23; Jett at 35–37; Blunt ¶ 20; Huband ¶ 15; William X ¶¶ 5–14; John Y ¶ 7; John X ¶ 22; William W ¶¶ 7, 9, 13. Indeed, on at least one visit, SATU forces were explicitly told that everyone at the Church was a civilian seeking refuge. John X ¶ 2. Throughout the Massacre itself, Defendant oversaw the slaughter so the non-combatant makeup of the target population was plainly apparent; nobody shot back or could even defend themselves against the brutal onslaught. *See supra* 13–16. Defendant's intention to kill every civilian at the Church is also evidenced by the very content of his ceasefire statement: "Everyone is dead." John Z ¶¶ 17–20.

(b) *Intentionally Directing Attacks Against a Building Dedicated to Religion or a Charitable Purpose Which Was Not a Military Objective at the Time of the Attack*

Defendant is also liable for the war crime of "[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes." Rome Statute,

Art. 8(2)(e)(iv). To be held liable for such a crime, (*i*) the perpetrator must direct the attack; (*ii*) the object of the attack must be "one or more buildings dedicated to religion, education, art, science or charitable purposes . . . which were not military objectives"; and (*iii*) the perpetrator directing the attack must have "intended such building or buildings . . . to be the object of the attack." Elements of Crimes, Art. 2(e)(iv).

First, Defendant directed the attack against the Lutheran Church as discussed above. *Supra* at 36. Defendant is therefore liable for directly perpetrating this crime.

Second, it is well-documented that the Lutheran Church was used for both religious and charitable purposes: it was a church, where religious services were held, and a civilian shelter where internally displaced persons were registered, fed, and sheltered. *Supra* at II.D.1; Jett at 35–36; Voros ¶ 15; Blunt ¶ 20; William X ¶¶ 6, 8, 9; William W ¶¶ 7, 9. Part of the reason that the Church was perceived as a safe place for protection in the first place was because it was dedicated to religion, "sanctified by God as a place of worship and protection"—a "sacred place." Jett Ex. ZZZ; *see also* CC at 25–26 ("Churches had been chosen as a place of refuge and protection by civilians because they were sacred places."); Jane W ¶ 9 (considering the Church safe from AFL attacks "because the Church was a place of worship"). Even in late July 1990 as the war intensified, clergy continued to lead daily religious services at the Church, both for the internally displaced persons sheltering there and the broader congregation. William W ¶ 14; William X ¶ 15. Further, the building was flanked with Red Cross and U.N. flags, and there was also a screening table with a Red Cross insignia. *Supra* at 11; *see also* Blunt Ex. F (observing that the only real protections that the internally displaced persons had were "the moral force of the clergy and the Red Cross flag").

The Lutheran Church clearly was not a legitimate military target at the time of the attack. Military objects are limited to those which, due to their "nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." Additional Protocol I, Art. 52(2). Nothing about the Lutheran Church's nature, location, purpose, or use would have made it an "effective contribution to military action" to justify an attack by the AFL for a purported military advantage. The Church was in an area already under AFL control at the time of the Massacre, so its destruction, capture, or neutralization would have offered no military advantage. *Supra* at 10. Its nature, purpose, and use were purely civilian and obviously so. *Supra* at 10–11.

Third, for the same reasons that Defendant intentionally and directly perpetrated the attack against a civilian population, Defendant knew that the Church was not a legitimate military target and intentionally directed an attack against it anyway. *See supra* at 36–37. Defendant and his soldiers had previously scouted the Church and therefore knew its use for charitable and religious purposes. *Supra* at 11–12. Indeed, the Red Cross protection of the Church compound was "clear to see for passersby" and all AFL soldiers received training on such distinctive humanitarian emblems. *See* Jett at 36; William Z ¶ 19; William Y ¶ 8; *see also* Additional Protocol II, art. 12, https://www.ohchr.org/en/professionalinterest/pages/protocolii.aspx. Further, throughout the attack, Defendant was personally present at the Church and therefore would have seen the building's intended use and clear humanitarian markers firsthand. *Supra* at 12–16.

c. Defendant Is Liable for Crimes Against Humanity of Persecution and Extermination under the ATS.

Crimes against humanity are certain grave violations of fundamental human rights—including "murder enslavement, deportation or forcible transfer, torture, rape or other inhumane acts"—recognized under customary international law and "committed as part of widespread [or] systematic attacks directed against a civilian population." *Talisman Energy*, 582 F.3d at 257; *see also In re Chiquita Brands Int'l., Inc. Alien Tort Statute and S'holder Derivative Litig.*, 792 F. Supp. 2d 1301, 1334 (S.D. Fla. 2011) (adopting the same definition of crimes against humanity); Elements of Crimes, Art. 7 (same). Persecution and extermination in particular are recognized crimes against humanity and actionable under the ATS. *See, e.g.*, *Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254, 286–287, n.1 (2d Cir. 2007) (Hall, J., concurring) (recognizing extermination as a crime against humanity cognizable under the ATS); *Sexual Minorities Uganda v. Lively,* 960 F. Supp. 2d 304, 316–17 (D. Mass. 2013) ("persecution that rises to the level of a crime against humanity has repeatedly been held to be actionable under the ATS").

In addition to the elements specific to persecution and extermination, to establish crimes against humanity, Plaintiffs must demonstrate that (*i*) the crimes were committed as part of a widespread or systematic attack against civilians; and (*ii*) Defendant "intended to further such an attack." Elements of Crimes, Art. 7. These elements are readily met here.

First, the Lutheran Church Massacre was part of a widespread and systematic, ethnically-motivated attack against Mano and Gio civilians. To determine whether an attack is "widespread," courts look to the "large-scale" nature of the attack and the "number of targeted persons." *Presbyterian Church of Sudan v. Talisman Energy Inc.*, 226 F.R.D. 456, 481 (S.D.N.Y. 2005); *see also Prosecutor v. Blaškič*, No. IT-95-14-T, ¶ 206 (Trial Chamber, ICTY, March 3, 2000) ("A crime may be widespread or committed on a large-scale by the 'cumulative

effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude." (internal citation omitted)). Here, the Massacre was part of a widespread attack dating back months, during which AFL forces repeatedly attacked, threatened, detained, killed, and displaced Mano and Gio civilians at a massive scale. *Supra* at 7–10. As the First Civil War intensified in the summer of 1990, so did the ethnic killings. "No Mano or Gio was safe: 'Liberians of all ages were killed on the basis of ethnic identity.'" Jett at 29 (citing Ex. K at 195). The widespread attack included large-scale massacres at the United Nations Development Program Compound and John F. Kennedy Hospital—not to mention daily disappearances and executions. *Supra* at 6–10; Jett 24–33; *see also* Jett Ex. M (setting out a chronology of the civil war put together by the U.S. Embassy, highlighting civilian attacks carried out by the AFL).

The Massacre was also part of a "systematic" attack against Mano and Gio civilians. "[T]he phrase 'systematic' refers to the organi[z]ed nature of the acts of violence and the improbability of their random occurrence." *Talisman*, 226 F.R.D. 456 at 481 (internal citation omitted); *see also Prosecutor v. Kordić*, Case No. IT–95–14/2–A, Appeals Judgment, ¶ 94 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004) ("Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence."). The atrocities documented during the First Civil War were "part of an overall policy or a consistent pattern of inhumanity"—as opposed to "isolated or sporadic acts of cruelty or wickedness." *Saravia*, 348 F. Supp. 2d at 1156. Indeed, the attack stemmed from a government policy that systematically targeted Mano and Gio civilians on the basis of their ethnic identity and perceived support of the rebel forces. *Supra* at 3–4, 6–10; RFA ¶ 26. As part of this systematic attack, the mere suspicion by AFL soldiers that

a civilian was from the Mano or Gio tribe was considered sufficient justification for their execution. Jett at 30.

The Massacre was committed *as part of* this widespread and systematic attack against Mano and Gio civilians because it was committed in the same manner as the other attacks—targeting members of the same ethnic groups, on the basis of the same motives, and deploying the same military forces and overlapping perpetrators, including Defendant. *Supra* at 6–10, 12, 16–19; Jett Ex. ZZZ at 219. Moreover, the Massacre targeted survivors of prior attacks, who had fled to the Church seeking shelter and protection. *Supra* at 9. Furthermore, survivors of the Massacre were targeted again after fleeing the Church, when they sought shelter and medical care at the USAID compound and the J.J. Roberts School. *Supra* at 16–17. The Massacre was thus part of a continuing course of violence against civilians throughout the First Civil War.

Second, Defendant demonstrated the requisite mental element for crimes against humanity as he knew of the broader attack against civilians and "intended to further such an attack" when directing the Lutheran Church Massacre. Elements of Crimes, Art. 7 (clarifying that the "requisite participation in and knowledge of" the attack "should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization"; the requirement "is satisfied if the perpetrator intended to further such an attack").

As a high-ranking member of the AFL, Defendant not only intended to commit the Lutheran Church Massacre, but he also directed another attack of civilians: the massacre of 27 Mano and Gio family members of AFL soldiers earlier in the First Civil War. *Supra* at 7; RFA ¶¶ 12–14. The attacks against and persecution of Mano and Gio civilians in Monrovia was widely reported and known throughout Monrovia. *Supra* at 10. Thus, his prior attacks on Mano

and Gio civilians, his position as SATU commander and a colonel in the AFL, and his reconnaissance at the Church all show that "Defendant's actions were consistent with the pattern and practice of abuses against [Mano and Gio civilians] and demonstrate that he was well aware of being part of a campaign of ethnic cleansing that was both widespread and systematic." *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1353–54 (N.D. Ga. 2002); *see also Saravia*, 348 F. Supp. 2d at 1157 (finding knowledge requirement met where defendant knew he was part of a death squad assassinating an important civilian figure, on grounds that that assassination took place within context of widespread and systematic state-sponsored attacks against civilians during the time period).

(a) *Persecution*

Defendant is liable for the crime against humanity of persecution under the ATS, which requires *(i)* the "denial of fundamental rights" contrary to international law and (*ii*) "the intentional targeting of an identifiable group." *Lively,* 960 F. Supp. 2d at 317; *see also* Elements of Crimes, Arts. 7(1)(h), 7(2)(g).

First, the evidence establishes that the Massacre deprived Plaintiffs and their decedents of their fundamental rights. The requisite deprivation of rights may encompass a wide range of affected rights, including the right to life and right to be free from torture, and cruel, inhuman and degrading treatment. *See, e.g.*, *Lively*, 960 F. Supp. 2d at 317 (persecution "encompasses a variety of acts, including, *inter alia*, those of a physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights"); *id.* (noting that courts look to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to determine what constitutes a fundamental right (quoting *Prosecutor v. Tadić*, Trial Judgment, Case No. IT–94–1–T ¶¶ 703, 710 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997)); *Prosecutor v. Kordić*, Appeals Judgment, Case No. IT-95-14/2-A, ¶ 106 (Int'l Crim. Trib.

for the Former Yugoslavia Dec. 17, 2004) (recognizing that the right to life and the right to be free from cruel, inhuman and degrading treatment are "inherent" rights "recognised in customary international law"). The Massacre infringed on Plaintiffs' and their decedents' fundamental rights, including their rights to life and freedom from torture and cruel, inhuman, or degrading treatment, as discussed above. *Supra* at 27–29, 30–33, 34–35.

Second, Defendant intentionally targeted these civilians *because of* their assumed ethnic identity, *i.e.*, with the requisite discriminatory intent. When assessing the crime of persecution, the requisite intent "may be inferred from an accused's knowing participation in a system or enterprise that discriminated on political, racial or religious grounds"—including "knowledge of [a] common plan and [] willing participation in it." *Prosecutor v. Popović*, Case No. IT-05-88-A, Appeals Judgment, ¶¶ 711–712 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 30, 2015). "[T]he circumstances to be taken into consideration include the systematic nature of the crimes committed against a targeted group and the general attitude of the accused as demonstrated by his behavior." *Id.* at 711.

Here, Plaintiffs' evidence demonstrates that the Liberian government and the AFL had a well-known policy to target civilians "merely on the suspicion that they were of Mano or Gio ethnicity," and as discussed, the Massacre was part of this discriminatory policy. *Supra* at 41–42. The civilians sheltering at the Church were targeted because of their presumed Mano and Gio identity, including John Z, who is Mandingo. The evidence further establishes that in addition to the modes of liability common to all claims, Defendant directly perpetrated this crime: he and the AFL soldiers under his command implemented the government's policy by carrying out the Massacre and at least one other attack targeting civilians on the basis of their assumed ethnic affiliation. *Supra* at 7, 12–16. Indeed, "[a]s the most senior officer of the [AFL present at the

Massacre], he 'had perhaps the clearest overall picture of the massive scale and scope of the killing operation." *Popović*, Appeals Judgment ¶ 712 (finding most senior officer's presence as indicative of discriminatory intent of persecution).

(b) Extermination

Defendant is also liable for the crime against humanity of extermination, which requires that (*i*) one or more persons were killed (*ii*) as part of a mass killing of members of a civilian population, and (*iii*) the perpetrator knew that the conduct was part of a widespread or systematic attack. Elements of Crimes, Art. 7(1)(b).

First, there is no dispute that Plaintiffs' decedents and others sheltering at the Church were killed in the Massacre. *Supra* at 14–16; RFA ¶ 33.

Second, there is also no dispute that the Massacre comprised killing on a large scale and took place as part of a broader mass killing of civilians. The large-scale nature of the requisite act of extermination is measured on a case-by-case basis, considering several factors, including the "(i) time and place of the killings, (ii) the selection of the victims and the manner in which they were targeted, [and] (iii) whether the killings were aimed at the collective group rather than victims in their individual capacity." *Prosecutor v. Stanišić & Župljanin*, Case No. IT-08-91-A, Appeals Judgment, ¶ 1022 (Int'l Crim. Trib. for the Former Yugoslavia June 30, 2016); *see also Prosecutor v. Lukic*, Case No. IT-98-32/1-A, Appeals Judgment, ¶¶ 536—538 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 4, 2012) (clarifying that it is the element of "massiveness" that distinguishes the crime from murder, and that the collective of victims need not share any common characteristics). Here, not only were Plaintiffs' decedents and 600 others killed during the Massacre—itself a mass killing—but those extrajudicial killings were also part of a systematic assault on civilian members of the Mano and Gio tribes, and a mass killing of

members of a civilian population during the First Civil War. *Supra* at 6–10, 14–16, 18–20, 41–42; Jett Ex. ZZZ at 219. This requirement is thus easily met.

Third, as described above, the evidence establishes that Defendant knew that the Massacre was part of a widespread or systematic attack. *Supra* at 41–43.

C. Defendant Is Liable Under Primary and Secondary Modes of Liability.

On each of the foregoing claims, Defendant is liable to Plaintiffs under one or more of the following forms of liability: (1) direct perpetration, (2) directing or ordering, (3) command responsibility, and (4) joint criminal enterprise. Specifically, Defendant is liable for directly perpetrating the war crimes of intentionally directing an attack against civilians and intentionally directing an attack on a building dedicated to religion or a charitable purpose, which was not a military objective, and the crime against humanity of persecution. He is also responsible for his own conduct and that of his SATU soldiers under theories of directing or ordering, command responsibility—and in the alternative, joint criminal enterprise—for each claim put forward in Section III.B above.

It is well-established that claims based on both primary and secondary liability are cognizable under the ATS and TVPA. *See, e.g.*, TVPA, S. Rep. No. 102-249, at 8–9 (1991) (explaining that "[a] higher official need not have personally performed or ordered the abuses in order to be held liable"); *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 457 (2012) (recognizing liability for directing an order under the TVPA); *Hilao v. Estate of Marcos*, 103 F.3d 767, 777 (9th Cir. 1996) (recognizing command responsibility under the TVPA and ATS, and citing the TVPA Senate Report in support); *Yousuf v. Samantar*, No. 1:04CV1360 (LMB/JFA), 2012 WL 3730617, at *10–11 (E.D. Va. Aug. 28, 2012) (recognizing command responsibility and joint criminal enterprise liability under the TVPA and ATS); *Abebe-Jiri v. Negewo*, No. 1:90-cv-2010-GET, 1993 WL 814304, at *4 (N.D. Ga. Aug. 20, 1993), *aff'd sub nom. Abebe-Jira v.*

Negewo, 72 F.3d 844 (11th Cir. 1996) (finding the defendant responsible for torture under the TVPA and ATS "for his own acts, for acts which he directed, ordered, aided and abetted or participated in, and for acts committed by forces under his command").

1. Defendant Directly Perpetrated War Crimes and the Crime Against Humanity of Persecution.

Defendant directly perpetrated wrongful acts during the Massacre, including the acts of intentionally directing an attack against civilians, intentionally directing an attack on a building dedicated to religion, and persecution, as described in connection with each of those claims in Sections III.B.2.b–c above.

2. Defendant Directed and/or Ordered the Massacre.

Liability for directing or ordering requires (*i*) a superior-subordinate relationship pursuant to which (*ii*) Defendant issues an order, (*iii*) with knowledge of the substantial likelihood that human rights abuses will follow. Trial Transcript (Jury Instructions) at 211, *Warfaa v. Ali*, 33 F. Supp. 3d 653 (E.D. Va. May 19, 2019) (Dkt. 294); *see also Hilao*, 103 F.3d at 779 (upholding jury instructions setting out corresponding elements). Each of these elements is readily met here.

First, to prove the existence of a superior-subordinate relationship, Plaintiffs must show by a preponderance of the evidence that Defendant was in a position of authority that would compel another to commit human rights abuses following Defendant's direction or order. Trial Transcript (Jury Instructions) at 212, *Warfaa*, 33 F. Supp. 3d 653; *see Abebe-Jiri*, 1993 WL 814304, at *2–4 (recognizing liability for directing and ordering where defendant enjoyed "position of authority" including supervisory role over interrogation and torture). The requisite authority may be gleaned by the specific circumstances and viewpoint of the person receiving the direction. Trial Transcript (Jury Instructions), *Warfaa v. Ali*, No. 1:05-cv-00701, at 212 (E.D.Va. May 19, 2019) (Dkt. 294); *see Gacumbitsi v. Prosecutor*, Case No. ICTR-2001-64-A, Appeals

Chamber Judgment ¶ 182 (July 7, 2006) ("Ordering . . . requires merely authority to order, a more subjective criterion that depends on the circumstances and the perceptions of the listener.").

The present circumstances—in which Defendant has conceded his role as SATU commander and conceded that "as commander of the SATU, a superior-subordinate relationship existed between [him] and the SATU soldiers" (RFA ¶¶ 3, 5)—plainly meet the requirements. *See, e.g., Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Appeals Chamber Judgment, ¶¶ 361–63 (May 20, 2005) (finding on the facts of the case "no reasonable trier of fact could hold otherwise than that the attackers to whom the Appellant gave directions regarded him as speaking with authority"). Indeed, SATU was an organized military unit that normally followed a command structure with Defendant at the top. Defendant was the only individual other than the President who could issue orders to SATU troops, and other AFL troops also followed his command. *Supra* at 5–6.

Second, Defendant gave the instruction to attack the Lutheran Church. The order need not be in a particular form, such as in writing, but rather can be inferred and shown by circumstantial evidence. Trial Transcript (Jury Instructions) at 213, *Warfaa*, 33 F. Supp. 3d 653; *Kamuhanda v. Prosecutor*, Case No. ICTR-99-54A-A, Appeals Chamber Judgement, ¶ 76 (Sept. 19, 2005); *see also Prosecutor v. Galić*, Appeals Chamber Judgement, ICTY-98-29-A (Nov. 30, 2006) ¶ 239 (finding "circumstantial evidence of [defendant's] knowledge of the crimes committed by his forces, the high degree of discipline he had over his subordinates, and his failure to act upon his knowledge of the commission of crimes" sufficient to establish ordering liability). Here, the Massacre was committed by SATU, a highly trained, organized AFL unit solely under Defendant's command. *See supra* at 5, 12–14. The evidence shows that SATU soldiers were following orders: the soldiers arrived together and began the slaughter only after a

pistol was fired signaling the start of the attack (*supra* at 13) and ended when Defendant declared that "Everyone is dead. All soldiers out." *Supra* at 16. Defendant was the highest-ranking AFL officer at the Church that night and Defendant personally oversaw the entire Massacre operation—performing reconnaissance of the Church a few days beforehand, standing at the entrance of the Church compound to watch over the killing, and ordering the ceasefire, at which point the soldiers followed his command and departed the Church compound. *Supra* at II.B.2–3. These acts indicate that the Massacre was perpetrated under Defendant's orders and direction.

Third, Defendant intended that human rights abuses result from his orders or directions. Plaintiffs may prove this mental element by demonstrating that, in light of the circumstances at the time, Defendant was aware of "the substantial likelihood that a crime w[ould] be committed in the execution of [his] order." *Kordić*, Appeals Chamber Judgment ¶¶ 29–30; Trial Transcript (Jury Instructions) at 213–14, *Warfaa*, 33 F. Supp. 3d 653. Here, at minimum, Defendant knew his orders were likely to both be followed and result in horrific atrocities. In fact, his ceasefire command recognized the completed objective to kill everybody at the Church—thus contemplating the perpetration of extrajudicial killings and extermination at the very least. *Supra* at 16. Further, Defendant and SATU troops under his command perpetrated prior atrocities so he knew that his troops were willing to, and capable of, following orders to commit atrocities. *Supra* at 7; *see* RFA ¶¶ 10–20. He also knew that the soldiers ordinarily followed his orders and could be punished if they did not. *Supra* at 5–6.

3. Defendant Is Likewise Liable on Each Claim on the Basis of Command Responsibility.

Even if Defendant had not directly perpetrated or ordered the Massacre, the evidence readily establishes that Defendant is liable for any of the Claims under the doctrine of command responsibility, which requires (*i*) a "superior-subordinate relationship between the

defendant/military commander and the person or persons who committed human rights abuses"; (*ii*) defendant's knowledge "that subordinates had committed, were committing, or were about to commit human rights abuses"; and (*iii*) failure on the part of the defendant "to take all necessary and reasonable measures to prevent rights abuses and punish human rights abusers." *Samantar*, 2012 WL 3730617, at *11 (citing *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009)); *Ford v. Garcia*, 289 F.3d 1283, 1288 (11th Cir. 2002) (adopting the same requirements).

First, as established above, a superior-subordinate relationship existed between Defendant and the soldiers who committed the offenses. *Supra* at 47–48. Not only did Defendant exercise legal authority as SATU commander, but he also exercised "effective control" over his subordinates, *i.e.*, the practical ability to exert control over them. *See Ford*, 289 F.3d at 1291, 1297–98 (11th Cir. 2002); *Qi*, 349 F. Supp. 2d at 1331–32 (determining that a superior-subordinate relationship was established for purposes of command responsibility where a defendant "played a major policy-making and supervisory role in the policies and practices that were carried out"). Defendant exercised supervisory authority over the perpetrators as they killed civilians at the Church while he stood at the compound entrance, directly overseeing the Massacre. *Supra* at 14. Moreover, Defendant's practical ability to control his subordinates is evidenced by the fact that they followed his ceasefire command. *Supra* at 16. The SATU soldiers began slaughtering civilians only after a pistol shot was fired indicating the start of the Massacre and stopped when Defendant issued his ceasefire order. *Supra* at 13, 16. Finally, when a journalist attempted to investigate the attack a few weeks later, he was arrested by AFL soldiers and brought to Defendant to be admonished. *Supra* at 18. Even then, Defendant maintained effective control over the soldiers operating in the area around the Lutheran Church.

Second, the record establishes that Defendant "*knew, or should have known*, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit human rights abuses." *Samantar*, 2012 WL 3730617, at *11 (emphasis added) (citing *Chavez*, 559 F.3d at 499; S. Rep. No. 102-249, at 9 (1991)). This element is easily met—Defendant commanded previous atrocities and oversaw the entire Lutheran Church Massacre, during which he directed his soldiers under his command to deliberately kill civilians. *Supra* at 7, II.D.3; RFA ¶¶ 27–35. *See Xuncax*, 886 F. Supp. at 172 (finding defendant liable under the theory of "command responsibility" where "plaintiffs [] convincingly demonstrated that, at a minimum, [the defendant] was aware of and supported widespread acts of brutality committed by personnel under his command").

Third, Defendant failed to take necessary and reasonable measures to prevent the human rights abuses and failed to punish his subordinates after the Massacre. A commander is under an ongoing obligation to investigate and punish all perpetrators of each and every instance of human rights abuses. *See* International Committee of the Red Cross, *Study on Customary International Humanitarian Law*, Rule 153 (iv) (2005), https://ihl-databases.icrc.org/customary-ihl/eng/docs/home. Failure to punish may be established by proof that Defendant failed to properly investigate reliable allegations of human rights abuses committed by subordinates or failed to submit these matters to appropriate authorities for investigation and prosecution. *Ford*, 289 F.3d at 1287 n.3, 1293 (11th Cir. 2002). Ultimate and final authority, responsibility, and accountability rest entirely with the commander. *In re Yamashita*, 327 U.S. at 1416 (1946) (holding the commander of Japanese forces responsible for numerous violations of the laws of war committed by service members under his command because he had an affirmative duty to

control the troops under his command, prevent them from committing violations and protect prisoners of war and the civilian population).

There is no dispute of material fact that Defendant failed to take *any* steps to prevent human rights abuses from occurring or to punish his subordinates when they engaged in such abuse. Instead, after conducting reconnaissance at the Church, Defendant ordered the Massacre, encouraged the commission of the horrific offenses, and only ordered a ceasefire after pronouncing that all of the civilians sheltering at the Church were dead. *Supra* at II.D.2–3. Although a court martial system existed, Defendant did not refer any subordinates for punishment. *Supra* at 20.

4. Defendant Is Liable on Each Claim for his Participation in a Joint Criminal Enterprise to Commit the Lutheran Church Massacre.

In the alternative, the Court may also find Defendant liable for each claim under the doctrine of joint criminal enterprise—"the international law analog to a conspiracy" under the TVPA and ATS. *Samantar*, 2012 WL 3730617, at *11. Joint criminal enterprise requires four elements: (*i*) the existence of an agreement or common plan or purpose between a group of two persons; (*ii*) commission of an act directly or indirectly contributing to the common plan; (*iii*) the intention to participate in and further the common plan; and (*iv*) resultant harm to the plaintiffs. Liability for joint criminal enterprise holds each member of an organized criminal group individually responsible for crimes committed by the group. *U.S. v. Hamdan*, 801 F. Supp. 2d 1247, 1285–86 (U.S.C.M.C.R. 2011), *rev'd on other grounds*, 696 F.3d 1238 (D.C. Cir. 2012); *see also Prosecutor v. Dorđević,* No. IT-05-87/1-A, Appeals Chamber Judgment, ¶ 141 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 27, 2014) (confirming that the persons belonging to the joint criminal enterprise "can be sufficiently identified by referring to 'categories or groups of persons,' and it is not necessary to name each of the individuals involved."); *Prosecutor v.*

Brdanin, IT-99-36-A, Appeals Chamber Judgment, ¶ 430 (Int'l Crim. Trib. for the Former Yugoslavia April 4, 2007) (same); *Prosecutor v. Vasiljević*, No. IT-98-32-A, Appeals Chamber Judgment, ¶¶ 130, 142-43 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 25, 2004) (same, finding that a group of three individuals formed a joint criminal enterprise to commit persecution, even though defendant was the only identified individual and the other two in the group remained unidentified).

These elements are readily met. *First*, Defendant perpetrated the Massacre together with members of SATU, other AFL soldiers, and Michael Tilley and his Death Squad—thus reflecting an agreement of at least two people to murder the Mano and Gio civilians sheltering in the Church. *Supra* at 12–13; *see also Prosecutor v. Martic*, IT-95-11-A, Appeals Chamber Judgment, ¶¶ 195–96 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 8, 2008) (categorizing general "Serb paramilitary units" as members of a joint criminal enterprise when they acted in concert with another armed group). Defendant also never disciplined his men for the Massacre, nor was he himself disciplined. Rather, he was promoted to the Director of the Defense Intelligence Service and President Doe led attempts to cover-up and deny any responsibility for the attack. *Supra* at 20–21. Even if there were no prearranged agreement, the materialization of the Massacre is sufficient. *See, e.g.*, *Prosecutor v. Tadić*, No. IT-94-1-A, Appeals Chamber Judgment, ¶ 227(ii) (Int'l Crim. Trib. for the Former Yugoslavia Jul. 15, 1999) (noting that the requisite "common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put [the plan] into effect").

Second, any of Defendant's actions at the Church on the night of the Massacre comprise furtherance of the agreement. *Supra* at II.D.3. A commander can be held responsible for crimes committed by his subordinates under joint criminal enterprise liability, even if his participation is

limited to being physically present during the attack and providing moral support. *See, e.g.*, *Prosecutor v. Ndahimana*, ICTR-01-68-A, Appeals Chamber Judgment, ¶¶ 192-200 (Dec. 16, 2013) (finding accused responsible for crimes committed by subordinates under joint criminal enterprise when he was voluntarily present during part of the attack, it could be inferred that he shared the intent to further the common criminal purpose, and he provided moral support to the physical perpetrators).

Third, Defendant's reconnaissance and conduct throughout the Massacre—including overseeing the operation and then ordering the ceasefire after declaring "everyone is dead"—establish his intention to further the planned Massacre. *Supra* at II.D.2–3.

Finally, Plaintiffs were indisputably harmed both physically and psychologically, with enduring injuries to this day. *Supra* at II.E.

D. Defendant Has Advanced No Evidence to Support Affirmative Defenses, and Undisputed Facts Establish They Are Not Viable.

Based on the record before this Court, none of these purported defenses raised by Defendant in his Motion to Dismiss is viable. *See generally* Mem. Den. Def.'s Mot. Dismiss, Dkt. 25. The defenses raised by Defendant are all affirmative defenses. *See, e.g.*, *Iwanowa v. Ford Motor Co*., 67 F. Supp. 2d 424, 461–62 (D.N.J. 1999) (determining that defenses based on the statute of limitations are affirmative defenses) (citing Fed. R. Civ. P. 8(c)); *Jean v. Dorelien*, 431 F.3d 776, 781 (11th Cir. 2005) (concluding that the TVPA's "exhaustion requirement is an affirmative defense"); *Doe v. Constant*, 354 F. App'x 543, 545 (2d Cir. 2009) (same). The burden thus falls on Defendant to demonstrate facts in support. To date, Defendant has advanced no facts to meet his burden, whereas Plaintiffs have provided sufficient evidence precluding the viability of these defenses. *See Celotex*, 477 U.S. at 325 (with respect to an issue on which the nonmoving party bears the burden of proof, "the burden on the moving party [on summary

judgment] may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case"); *One Palmetto State Armory,* 115 F. Supp. 3d at 552. Specifically, as set out below, the undisputed facts establish that Plaintiffs are entitled to equitable tolling of their claims and Defendant cannot meet his burden to show that Plaintiffs failed to exhaust local remedies. Undisputed facts also establish that this Court's continued jurisdiction over Plaintiffs' ATS claims is proper.

1. Plaintiffs Are Entitled to Equitable Tolling of Their Claims.

While the TVPA requires that claims be brought within ten years of when the cause of action arose, 28 U.S.C. § 1350 note § 2(c), Congress has directed courts to "consider[] all equitable tolling principles in calculating this period with a view towards giving justice to plaintiff's rights." S. Rep. No. 102-249, at 10–11 (1991). Courts have consistently held that where, as here, extraordinary circumstances exist beyond the plaintiffs' control, and those circumstances are unavoidable even with diligence, plaintiffs are entitled to equitable tolling. *See, e.g.*, *Oshiver v. Levin*, 38 F.3d at 1380, 1387 (3d Cir. 1994), *abrogated on other grounds by Rotkiske v. Klemm*, 890 F.3d 422, 428 (3d Cir. 2018), *aff'd*, 140 S. Ct. 355 (2019); *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006); *Chavez*, 559 F.3d at 493; *Warfaa*, 33 F. Supp. 3d at 664–65; *Samantar*, 2012 WL 3730617, at *4–5; *see also* Dkt. 25 at 3–7.

As this Court previously held, the TVPA analysis of the statute of limitations applies to ATS claims, and so if Plaintiffs establish a right to equitable tolling of their TVPA claims, they are entitled to equitable tolling of their ATS claims for the same reasons and to the same extent. Dkt. 25 at 7–8; *see also*, *Chavez*, 559 F.3d at 493 (applying the TVPA's ten-year statute of limitations and tolling provisions to the ATS and TVPA); *Arce*, 434 F.3d at 1261–62 (11th Cir. 2006) (same); *Hilao,* 103 F.3d at 773 (same).

The facts of this case constitute extraordinary circumstances entitling Plaintiffs to equitable tolling of their claims. As this Court previously found, several allegations of extraordinary circumstances are sufficient to toll the statute of limitations until the time that Plaintiffs filed the Complaint, or at least until 2011: "(1) Liberia's two civil wars and its unstable government—which has consistently equivocated over the handling of allegations of war crimes; (2) Plaintiffs' justifiable fear of violent reprisal were they to speak out in Liberia about the Lutheran Church Massacre; (3) Defendant's absence from the United States, which has hampered the Plaintiffs' ability to investigate their claims; and (4) Defendant's alleged concealment of his identity and his involvement in the perpetration of war crimes and human rights abuses." Dkt. 25 at 5. Plaintiffs have established each of these allegations.

First, Plaintiffs had no meaningful access to remedies during the consecutive civil wars. *Supra* at II.F. After the Second Civil War, the establishment of the Truth and Reconciliation Commission created false hope until 2011, when the Liberian Supreme Court ruled that the Commission recommendations were non-binding and it became clear that the Liberian government did not intend to provide a domestic system for accountability. *Supra* at 22. Federal courts have routinely found that civil war may constitute "extraordinary circumstances" for purposes of tolling under the ATS and TVPA. *See, e.g.*, *Jean*, 431 F.3d at 780–81 (identifying consensus among "every court that has considered the question" that civil war and the continued existence of a repressive regime constitute "extraordinary circumstances" for purposes of tolling the TVPA's limitations period). Courts have also recognized that a Truth and Reconciliation Commission process may justify equitable tolling because it provides victims with the hope that there will be accountability for the abuses committed against them, thus making it unnecessary to independently investigate their own claims. *See, e.g.*, *In re S. African Apartheid Litig.*, 617 F.

Supp. 2d at 291 (tolling the limitation period during the Truth and Reconciliation Commission process because "[a] reasonable plaintiff may have assumed that defendants would participate in the [Commission] process, in which case plaintiffs would have had no need to conduct an independent investigation into defendants' conduct").

Second, Plaintiffs faced fear of reprisals for bringing claims. Witnesses speaking out against civil wars-era human rights abuses in Liberia are routinely threatened and face the real risk of violent reprisal. *Supra* at 21–22; CC at 20–23; *see generally* Mot. Suppl. Protective Order at 5–8. Plaintiffs were unable to independently investigate the Massacre and were legitimately fearful of bringing claims, especially in Liberia. *Supra* at 21–22; John Y ¶ 34; Jane W ¶ 28; John Z ¶¶ 28, 30; John X ¶¶ 44–45. Federal courts have regularly found that such well-founded fears of retaliation and reprisals meet the "extraordinary circumstances" requirement of equitable tolling. *See, e.g.*, *Saravia*, 348 F. Supp. 2d at 1147–48 (tolling ATS and TVPA claims until the complaint was filed on the basis of the plaintiffs' continued fears of reprisals by former death squad members); *Jean*, 431 F.3d at 780 (tolling the statute of limitations until "the plaintiff can investigate and compile evidence without fear of reprisals against him, his family and witnesses").

Third, Plaintiffs lacked knowledge about Defendant's whereabouts. They did not know, and had no way of discovering, where he was in Liberia, that he left for the United States, or where in the United States he was living. *Supra* at 22–23. Courts have recognized that this inability to locate or otherwise identify a defendant entitles plaintiffs to equitable tolling. *See, e.g.*, *Samantar*, 2012 WL 3730617, at *5 ("In addition to the turmoil within Somali[a], defendant's absence—and plaintiffs' lack of knowledge about his whereabouts in the years

following his departure from Somalia—prevented the commencement of [plaintiffs' ATS and TVPA claims].").

Fourth, Plaintiffs were further prevented from locating Defendant by his own actions, including entering the United States on a program designed for *victims* of the very same human rights abuses that Defendant perpetrated and concealing his identity, whereabouts, and involvement in the Massacre. *Supra* at 22. Such facts justify equitable tolling. *See, e.g.*, *Cabello Barrueto v. Fernández Larios*, 402 F.3d 1148, 1155–56 (11th Cir. 2005) (finding equitable tolling where defendant conspired to conceal the victim's manner of death and place of burial).

2. Efforts to Exhaust Local Remedies Would Be Patently Futile and Ineffective.

Defendant cannot meet his "burden to demonstrate that plaintiffs had adequate legal remedies which they did not pursue in the country where the alleged abuses occurred" if Plaintiffs demonstrate that local remedies were "ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile." *See Hilao*, 103 F.3d at 778 n. 5 (describing the Defendant's burden to prove that plaintiffs failed to exhaust local remedies under the TVPA (28 U.S.C. § 1350 note § 2(e))); *Xuncax*, 886 F. Supp. at 178 (D. Mass. 1995); *Saravia*, 348 F. Supp. 2d at 1151. "[I]n most instances the initiation of litigation under [the TVPA] will be virtually prima facie case evidence that the claimant has exhausted his or her remedies." S. Rep. No. 102-249 at 9–10. Here, Defendant has presented no evidence that there are available and adequate domestic remedies, rather, the record is clear that any attempt to exhaust local remedies in Liberia would be futile and ineffective.

This Court previously recognized that local remedies would be futile pursuant to the following factual allegations: "(1) the fact that Liberia has never prosecuted a single war crime

arising from the civil wars; (2) the fact that Plaintiffs live under a persistent threat of retaliation and would likely face retaliation if they were to seek redress in Liberia; and (3) the fact that the Liberian judiciary appears unable or unwilling to provide an adequate forum for the pursuit of claims rooted in the civil wars." *See* Dkt. 21 at 9–10 (internal citations omitted). The following undisputed facts now support this conclusion.

First, because the Liberian Government has resisted holding human rights violators accountable, local redress is futile. *See, e.g.*, *Saravia*, 348 F. Supp. 2d at 1152–53 (excusing exhaustion requirement where "there has never been a successful criminal prosecution . . . and the opportunity to do so has been effectively abrogated" by the local government). Liberia has never prosecuted human rights violations or war crimes arising from the Civil Wars, despite well-documented violations during that period. *Supra* at 22; CC at 28–29. Instead, the Government has repeatedly thwarted accountability efforts, including by refusing to implement the Truth and Reconciliation Commission recommendations to establish an Extraordinary Criminal Court to prosecute international crimes and to prosecute those responsible for civil wars-era human rights abuses within its own courts. *Supra* at 21–22; CC at 27–32. Plaintiffs thus have little hope of *any* local remedy, let alone an adequate one.

Second, because Plaintiffs are subject to an ongoing risk of retaliation in Liberia, local remedies are futile. *See In re Chiquita Brands*, 190 F. Supp. 3d 1100, 1113 n. 16 (S.D. Fla. 2016) (excusing exhaustion requirement because "human rights activists in Colombia have long been targets of violent retaliation" and any judgment against the defendant would be unenforceable); *Jean*, 431 F.3d at 782–83 (finding defendant's showing of local court disposition insufficient where plaintiff presented evidence that individuals who had prosecuted former regime officials were attacked and killed, and those members of former regime hold positions of power).

Plaintiffs live under persistent threat of retaliation and have legitimate fears that they would face violence if they sought redress in Liberia. John Y ¶ 34; Jane W ¶ 28; John Z ¶¶ 28, 30; John X ¶¶ 44–45; *see also* CC at 20–23; *see generally* Werner Decl.; Mot. Suppl. Protective Order.

Third, the fact of Liberia's corrupt and dysfunctional judiciary makes attempts to exhaust local remedies obviously futile. *See, e.g.*, *Enahoro v. Abubakar*, 408 F.3d 877, 89192 (7th Cir. 2005) (finding local remedies futile where judiciary was "under-funded, corrupt, subject to political influence and generally unable or unwilling to compensate victims of past human rights abuses"); *Ahmed v. Magan*, No. 2:10-CV-342, 2011 WL 13160129, at *4 (S.D. Ohio Nov. 7, 2011) (same, where judiciary had insufficient training and other "problems in the administration of justice"); *Mushikiwabo v. Barayagwiza*, No. 94 CIV. 3627 (JSM), 1996 WL 164496, at *2 (S.D.N.Y. Apr. 9, 1996) (same, where judiciary was "virtually inoperative"). Liberia's Civil Wars decimated its legal institutions. CC at 14–17. While there has been progress in restoring the rule of law, corruption and a lack of resources mean the judiciary and other state institutions do not have the "capacity to administer justice for gross human rights abuses." *Supra* at 21; CC at 14–19. Impunity also persists, creating a lack of institutional willpower for addressing Plaintiffs' claims. *Supra* at 21–22; CC at 28–32.

3. This Court Has Jurisdiction Over Plaintiffs' ATS Claims, Which Touch and Concern the United States.

Finally, although Defendant did not raise extraterritorial jurisdiction as a defense, Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss addressed this Court's jurisdiction over their extraterritorial ATS claims in light of *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), and the cases that followed. Dkt. 21 at 15–22. In *Kiobel*, the Supreme Court held that there is a presumption against jurisdiction over ATS claims involving only extraterritorial conduct, and limited ATS claims to those that "touch and concern the territory of

the United States . . . with sufficient force to displace the presumption against extraterritorial application" of U.S. statutes. 569 U.S. at 124–25. *See also, e.g.*, *Al Shimari v. CACI Premier Tech., Inc.*, 758 F.3d 516, 521, 528–29 (4th Cir. 2014) (finding that extraterritorial conduct "touch[ed] and concern[ed]" the United States where the plaintiffs' claims had substantial connections to U.S. individuals and interests).[4]

This Court previously noted that, based on the pleadings, "Plaintiffs' ATS claims touch and concern the United States with sufficient force to displace the general presumption against jurisdiction over extraterritorial claims." Dkt. 25 at 11. Factors this Court found persuasive were "Defendant's alleged involvement in the violent raid of a USAID compound under the control of a United States agency, Compl. ¶ 39; Defendant's residence in the United States, Compl. ¶ 8; and Defendant's allegedly fraudulent participation in a U.S. visa and immigration program designed to benefit the victims of the crimes that Defendant himself allegedly perpetrated. Compl. ¶ 51." Dkt. 25 at 11.

Plaintiffs' evidence, including Defendant's own admissions, show these facts are undisputed. *First,* AFL forces under Defendant's command were involved in a violent raid of a USAID compound targeting survivors of the Lutheran Church Massacre. Voros ¶ 21; *see also* Jett at 38. *Second,* Defendant admits that he was a long-time resident of the United States at the time the Complaint was filed. Stip. Facts ¶¶ 14–16; Answer ¶¶ 8, 50. *Third,* Defendant—who fraudulently relied on the Deferred Enforced Departure program and / or Temporary Protected Status programs designed to benefit the victims of the war crimes in Liberia—failing to disclose his personal involvement in the Massacre to U.S. immigration officials, in direct contravention of the United States's interest in providing safe harbor to perpetrators like Defendant. *Supra* at 22;

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[44] The presumption against extraterritoriality does not apply to TVPA claims, for which there is statutory extraterritorial jurisdiction. *See* 28 U.S.C. § 1350 note.

RFA ¶¶ 43, 45, 50. This Court therefore continues to properly exercise jurisdiction over Plaintiffs' ATS claims.

IV. The Court Should Award Plaintiffs Compensatory and Punitive Damages.

If this Court grants summary judgment, it should award damages to Plaintiffs and their decedents under the TVPA and ATS. 28 U.S.C. § 1350 note § 2(a)(2) (stipulating that Defendant is "liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death"). All Plaintiffs in their individual capacities, and Plaintiffs Jane W and John X as the personal representatives of the estates of their decedents, are entitled to significant compensatory and punitive damages.

A. Plaintiffs Are Entitled to Compensatory Damages Reflecting the Emotional and Physical Harms Caused by Defendant's Conduct.

It is well-established that plaintiffs under the ATS and TVPA may recover compensatory damages. *See, e.g.*, *Tachiona v. Mugabe*, 216 F. Supp. 2d 262, 267, 280 (S.D.N.Y. 2002) ("[F]ederal courts are free to and should create federal common law to provide justice for any injury contemplated by the Alien Tort Statute and the TVPA or treaties dealing with the protection of human rights." (quoting *In re Estate of Marcos Human Rights Litig.*, 910 F. Supp. 1460, 1469 (D. Haw. 1995)) (awarding compensatory damages for pain and suffering), *aff'd*, 234 F. Supp. 2d 401 (S.D.N.Y. 2002))); *Samantar*, 2012 WL 3730617, at *14–15 (awarding compensatory and punitive damages based on plaintiffs' "credible and compelling testimony of cognizable [physical and psychological] injuries" from torture and extrajudicial killing under the ATS and TVPA).

When calculating compensatory damages, the Court may consider a wide range of factors. For extrajudicial killing, for example, such factors include "(1) [the presence or absence of] torture prior to death or disappearance; (2) the actual killing or disappearance; (3) the victim's

family's mental anguish[;] and (4) lost earnings"; and for torture, "(1) physical torture, including what methods were used and/or abuses were suffered; (2) mental abuse, including fright and anguish; (3) amount of time torture lasted; (4) length of detention, if any; (5) physical and/or mental injuries; (6) victim's age; and (7) actual losses, including medical bills." *Hilao*, 103 F.3d at 783.

Given the severity of the crimes that underlie TVPA and ATS claims, courts have generally awarded significant compensatory damages. *See, e.g.*, *Ahmed v. Magan*, No. 2:10-CV-00342, 2013 WL 4479077, at *7 (S.D. Ohio Aug. 20, 2013) (awarding $5,000,000 after summary judgment, 2012 WL 12929560, under TVPA and ATS); *Samantar*, 2012 WL 3730617, at *16 (entering default judgment for $7,000,000 under TVPA and ATS); Order on Damages at 5, *Lizarbe v. Hurtado*, No. 07-21-21783-CIV-JORDAN (S.D. Fla. Mar. 4, 2008) (hereinafter "Lizarbe Order") (entering default judgment from $1,000,000 to $2,500,000 per plaintiff under TVPA and ATS); Findings of Fact and Conclusions of Law, at 13, *Doe v. Constant*, 04 Civ. 10108 (SHS) (S.D.N.Y. Oct. 24, 2006) (2d Cir. 2009) (hereinafter "Constant Findings of Fact") (entering default judgment of $1,000,000 to $1,500,000 per plaintiff under TVPA and ATS), *aff'd*, 354 F. App'x 543, 547; Final Judgment, *Arce v. Garcia*, No 99-8364 CIV-HURLEY (S.D. Fla. July 31, 2002), *aff'd*, 434 F.3d 1254, 1265 (11th Cir. 2006) (hereinafter "Arce Judgment") (awarding $5,000,000 after jury verdict on TVPA and ATS); Judgment, *Cabello Barrueto v. Fernández-Larios*, No. 99-0528-CIV-LENARD (S.D. Fla. Oct. 31, 2003), *aff'd*, 402 F.3d 1148 (11th Cir. 2005) (hereinafter "Cabello Judgment") (awarding $2,000,000 after jury verdict under TVPA and ATS); *Saravia*, 348 F. Supp. 2d at 1159 (entering default judgment of $5,000,000 under TVPA and ATS); *Mehinovic*, 198 F. Supp. 2d at 1359 (entering default judgment of $10,000,000 under TVPA and ATS); Final Judgment at 2–3, *Reyes v. López Grijalba*, No. 02-

22046-CIV-LENARD/KLEIN (S.D. Fla. Mar. 31, 2006) (hereinafter "Reyes Judgment") (entering default judgment of $21,000,000 under TVPA and ATS); Judgment in a Civil Case, *Jara v. Núñez*, No. 6:13-cv-1426-Orl-37GJK (M.D. Fla. June 29, 2016) (hereinafter "Jara Judgment") (awarding $2,000,000 to $6,000,000 per plaintiff following jury verdict on TVPA).

As discussed above, Defendant's acts caused extreme physical and emotional loss and injury to Plaintiffs. *Supra* at II.E. They were subjected to terror, prolonged fright and anguish, and fear of death—forced to hide under the bodies of the deceased. Jane W, John X, and John Y suffered sudden and extreme losses with the deaths of their loved ones, including spouses, young children, and an unborn baby. *Supra* at 14, 19. All Plaintiffs witnessed the deaths of their neighbors and community members and continue to live with that trauma. *Supra* at II.E. For years after the Massacre, Plaintiffs lived in paralyzing fear, some of them unable to return to Monrovia. *See* Jane W ¶ 27; John Y ¶¶ 33, 35; John X ¶ 42. To this day, John Y and John Z continue to suffer from physical pain, and none of the Plaintiffs can shake the horrific memory of that night. *Supra* at II.E., 30–32.

B. The Court Should Also Award Punitive Damages Given Defendant's Reprehensible Conduct and the Need for Deterrence as Evidenced by the Enormous Impact on the Community.

Punitive damages are generally awarded in civil actions "not merely to teach a defendant not to repeat his conduct but to deter others from following his example." *Filártiga v. Peña-Irala*, 577 F. Supp. 860, 866 (E.D.N.Y. 1984). The Supreme Court has advised courts to balance due process concerns toward a defendant with a reasonable estimation of harms suffered by the plaintiff, noting that courts may consider factors including the reprehensibility of the conduct, the disparity between the punitive award and the potential or actual harm to plaintiffs, and whether there is a "reasonable relationship" to the compensatory damages. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575, 580, 583 (1996); *see also State Farm Mut. Auto Ins. Co. v. Campbell*,

538 U.S. 408, 419 (2003) ("[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." (internal citation omitted)). The Third Circuit has held that punitive damages are appropriate to penalize and deter aggravated violations of another's interests or willful or malicious conduct. *See Medvecz v. Choi*, 569 F.2d 1221, 1227 (3d Cir. 1977); *Allah v. Al-Hafeez*, 226 F.3d 247, 252 (3d Cir. 2000).

Courts routinely award punitive damages in ATS and TVPA claims, reflecting the reprehensible nature of the crimes that underlie these types of claims. *See, e.g.*, *Ahmed*, 2013 WL 4479077, at *7 (awarding punitive damages of $10,000,000 after summary judgment under the TVPA and ATS); *see also Samantar*, 2012 WL 3730617, at *16 (entering default judgment of $14 million in punitive damages under TVPA and ATS); Lizarbe Order at 5 (entering default judgment of $25,000,000 in punitive damages under TVPA); Constant Findings of Fact at 13 (entering default judgment of $15,000,000 in punitive damages under TVPA and ATS); Arce Judgment (awarding $15,000,000 in punitive damages following jury verdict on TVPA and ATS); Cabello Judgment (awarding $1,000,000 in punitive damages after jury verdict under TVPA and ATS); *Saravia*, 348 F. Supp. 2d at 1159 (entering default judgment of $5,000,000 in punitive damages under TVPA and ATS); *Mehinovic*, 198 F. Supp. 2d at 1345–47, 1360 (entering default judgment for $25,000,000 in punitive damages to each plaintiff under TVPA and ATS); Reyes Judgment at 2–3 (entering default judgment of $26,000,000 in punitive damages under TVPA and ATS); Jara Judgment (awarding $20,000,000 in punitive damages following jury verdict under the TVPA); *Mugabe*, 234 F. Supp. 2d at 422–23, 441 (entering default judgment of $5,000,000 in punitive damages to each plaintiff for extrajudicial killing and $5,000,000 to each plaintiff for torture under the TVPA).

The sheer brutality of the Massacre—comprising crimes directed at unarmed civilians sheltering at a church and carried out with underlying ethnic and political animus—points to the reprehensibility of Defendant's conduct. *Supra* at III.B.2.b–c; Jett at 39–40. Defendant intended to, and did in fact, traumatize civilian populations as part of his military strategy in the Liberian Civil Wars. The Massacre marked one of the worst civilian massacres during the Civil Wars and a turning point in the conflict, signaling to civilians that they would not be safe, even in sacred spaces and places with Red Cross protection, and eventually leading to the intervention of the Economic Community of West African States. Jett at 39–40. The deliberate targeting of the Lutheran Church "intentionally violated the institution of 'sanctuary'" and "threatened the collapse of systems of reliable rules and norm upon which religious and traditional communities depended on a daily basis." Jett Ex. ZZZ at 280–281 (cited in Jett at 40; CC at 26). This resultant community trauma and loss of a sense of security cement the reprehensible nature of Defendant's conduct.

Punitive damages will serve to punish Defendant, make an example of him, deter others from committing similar offenses, and protect both the community in Liberia and communities that might fall victim to human rights abusers in the future. The reprehensibility of Defendant's conduct, the enormous impact of the Massacre, and the extreme harms that Plaintiffs suffered, both individually and as members of a terrorized community, more than warrant punitive damages.

V. Conclusion

For thirty years, Plaintiffs have suffered the lasting effects of the Massacre. They each sought shelter and safety in the Lutheran Church on the night of July 29, 1990. Instead, they endured horrors as over 600 civilians were murdered while they hid in terror from Defendant and his soldiers. Jane W, John X, and John Y lost family members in the brutal slaughter. Plaintiffs

and their decedents suffered atrocious human rights violations committed by Defendant and troops acting on his orders and under his command. And at every turn, Plaintiffs have been denied justice—by institutions that failed them and systems of power that continue to shield human rights violators and war criminals.

Meanwhile, for nearly two decades, Defendant availed himself of the protections of this jurisdiction, leaving only when the justice he evaded for so long threatened to catch up with him. Congress has made it clear: Defendant cannot enjoy the benefits of his presence in the United States and then evade its justice. To do otherwise would allow the United States to become a safe haven for human rights abusers, when Congress's clear intent in the TVPA and the ATS is the opposite: to allow survivors and victims to seek justice in U.S. courts.

Although Defendant's flight has denied Plaintiffs their opportunity to fully litigate this case, they should not be denied this Court's judgment affirming Defendant's liability as a matter of fact and law. No amount of money can compensate Plaintiffs for the atrocities they suffered, but a judgment in their favor and damages equivalent to those awarded in other cases will be an acknowledgment of the harms that they suffered and a recognition that they are deserving of justice.

In light of the foregoing, Plaintiffs respectfully request the Court grant their motion for summary judgment or, in the alternative, default judgment, and award compensatory and punitive damages reflecting the serious harms Plaintiffs suffered as well as the grievous nature of Defendant's conduct.

Dated: March 16, 2021

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