

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** BNSF RAILWAY COMPANY, a Delaware Corporation; FERROSAFE, LLC, an Arizona corporation; RUMBLE SPRAY, INC., a Washington corporation; ALLIGARE, LLC, an Alabama corporation; and DOES 1 through 100, inclusive  
**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MULEHEAD GROWERS, LLC, and  
OXFOOT ASSOC., LLC

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER  
(Número del Caso):

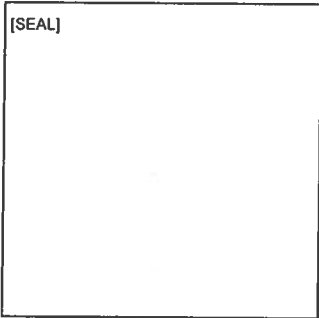
Superior Court of California, County of Contra Costa  
725 Court Street  
Martinez, California 94553

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Stephen C. Snider 099557 SNIDER, DIEHL, SLOUP & RASMUSSEN LLP  
1111 W. Tokay Street / P.O. Box 560 (209) 334-5144  
Lodi, California 95240

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Stephen C. Snider 099557</b> <b>SNIDER, DIEHL, SLOUP &amp; RASMUSSEN LLP</b> <b>1111 W. Tokay Street / P.O. Box 560</b> <b>Lodi, California 95240</b> TELEPHONE NO.: (209) 334-5144    FAX NO.: (209) 333-1034 ATTORNEY FOR (Name): Plaintiffs		<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa</b> STREET ADDRESS: 725 Court Street MAILING ADDRESS: P.O. Box 911 CITY AND ZIP CODE: Martinez, California 94553 BRANCH NAME: Martinez Branch		
<b>CASE NAME: MULEHEAD GROWERS, LLC vs. BNSF RAILWAY COMPANY, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER:  JUDGE:  DEPT.:

*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify):
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 4, 2018.

STEPHEN C. SNIDER

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)-Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice-Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach-Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case-Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ-Administrative Mandamus
  - Writ-Mandamus on Limited Court Case Matter
  - Writ-Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal-Labor
  - Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief from Late Claim
  - Other Civil Petition

1 STEPHEN C. SNIDER, SBN 099557  
2 SNIDER, DIEHL, SLOUP & RASMUSSEN, LLP  
3 Attorneys at Law  
4 P.O. Box 560  
5 1111 W. Tokay Street  
6 Lodi, CA 95240  
7 (209) 334-5144  
8 (209) 333-1034 (fax)

9 Attorneys for Plaintiffs,  
10 MULEHEAD GROWERS, LLC, and  
11 OXFOOT ASSOC., LLC

12 IN THE SUPERIOR COURT OF CALIFORNIA  
13 FOR THE COUNTY OF CONTRA COSTA

14 MULEHEAD GROWERS, LLC. and  
15 OXFOOT ASSOC., LLC,

16 Plaintiffs,

17 vs.

18 BNSF RAILWAY COMPANY, a Delaware  
19 corporation; FERROSAFE, LLC, an Arizona  
20 corporation; RUMBLE SPRAY, INC., a  
21 Washington corporation; ALLIGARE, LLC,  
22 an Alabama corporation; and DOES 1 through  
23 100, inclusive,

24 Defendants.

) Case No.

) **COMPLAINT FOR:**

- ) **1. Negligence**  
) **2. Trespass**  
) **3. Nuisance**  
) **4. Strict Liability – Ultra-Hazardous**  
) **Activity**

25 Plaintiffs, MULEHEAD GROWERS, LLC. and OXFOOT ASSOC., LLC, hereinafter  
26 collectively referred to “Plaintiff” allege as follows:

27 **JURISDICTION, PARTIES AND VENUE**

1. This is an action for damages and other relief arising from the use of herbicides causing harm to farmland and growing crops in Contra Costa County, and is within the original jurisdiction of the Superior Court of California.

2. Plaintiff, MULEHEAD GROWERS, LLC, (“MULEHEAD”) is, and at all time mentioned herein was, a California LLC.

1           3.       Plaintiff, OXFOOT ASSOC., LLC, (“OXFOOT”) is, and at all time mentioned  
2 herein was, a California LLC.

3           4.       Plaintiff is informed and believes, and thereupon alleges, that Defendant BNSF  
4 RAILWAY COMPANY (“BNSF”) is a Delaware corporation whose principal California office  
5 is located in San Bernardino County, California.

6           5.       Plaintiff is informed and believes, and thereupon alleges, that Defendant  
7 FERROSAFE, LLC, (“FERROSAFE”) is an Arizona LLC with its principal California office  
8 located in Modesto, Stanislaus County, California.

9           6.       Plaintiff is informed and believes, and thereupon alleges, that Defendant  
10 RUMBLE SPRAY, INC. (“RUMBLE”), is a Washington corporation.

11           7.       Plaintiff is informed and believes, and thereupon alleges, that Defendant  
12 ALLIGARE, LLC, (“ALLIGARE”) is an Alabama LLC.

13           8.       Plaintiff is unaware of the true names and capacities of Defendants DOES 1  
14 through 100, and therefore sues them under such fictitious names. Plaintiff will amend this  
15 Complaint to allege their true names and capacities, if and when ascertained. Plaintiff is  
16 informed and believes, and thereupon alleges, that each of the fictitiously named Defendants is  
17 responsible in some manner, and to some extent for the occurrences herein alleged, and that  
18 Plaintiff’s damages as herein alleged were proximately caused by them.

19           9.       Plaintiff is informed and believes, and thereupon alleges, that at all times herein  
20 mentioned, each of the Defendants, including those fictitiously named, was the agent or co-  
21 conspirator of each of the remaining Defendants, and in doing the things herein alleged, each of  
22 the Defendants was acting within the course and scope of that agency or conspiracy with the  
23 knowledge, consent, or ratification of each of the remaining Defendants.

24           10.       The venue in Contra Costa County is proper because this action seeks damages  
25 for injury to growing crops cultivated on land in Contra Costa County.

26 ///

27 ///

1 GENERAL ALLEGATIONS

2 11. Plaintiff, MULEHEAD farms real property located at or near 3231 Main Street,  
3 Oakley, Contra Costa County, California, which is owned by the City of Oakley consisting of  
4 approximately 5.67 acres and is designated as Assessor's Parcel 037-141-006, hereinafter "City  
5 Property."

6 12. Plaintiff, MULEHEAD farms real property located at or near Bridgehead Road,  
7 Oakley, Contra Costa County, California, which is owned by Plaintiff OXFOOT consisting of  
8 approximately 88.76 acres and is designated as Assessor's Parcel 037-020-007-3, hereinafter  
9 "Big Break Property."

10 13. Plaintiff, MULEHEAD farms real property located in or near Oakley, Contra  
11 Costa County, California, which is owned by Plaintiff OXFOOT consisting of approximately  
12 6.54 acres and is designated as Assessor's Parcel 037-040-007-9, hereinafter "Bridgehead North  
13 Property."

14 14. Plaintiff, MULEHEAD farms real property located at or near Bridgehead Road,  
15 Oakley, Contra Costa County, California, which is owned by Plaintiff OXFOOT consisting of  
16 approximately 69.86 acres and is designated as Assessor's Parcel 037-040-015-2, hereinafter  
17 "Bridgehead South Property."

18 15. Plaintiff is informed and believes, and thereupon alleges, that BNSF is a railroad  
19 company which, among other things, owns and/or possesses railroad property and rights of way,  
20 one of which abuts or is located near the City Property, Big Break Property, Bridgehead North  
21 Property and Bridgehead South Property.

22 16. Plaintiff is informed and believes, and thereupon alleges, that beginning in early  
23 2016, but within two (2) years of the filing of this Complaint, BNSF purchased a mixture of  
24 herbicides from ALLIGARE and FERROSAFE and hired FERROSAFE to apply them on the  
25 BNSF railroad property and rights of way for the purpose of eradicating virtually all weeds and  
26 vegetation on said BNSF railroad property and rights of way. Plaintiff is informed and believes,  
27 and thereupon alleges, that the actual application was performed by RUMBLE and supervised by

1 BNSF and FERROSAFE. Plaintiff is informed and believes, and thereupon alleges, that  
2 Defendants utilized the services of a licensed pest control advisor, and that said licensed pest  
3 control advisor recommended and sold the herbicides to be used on the railroad properties and  
4 rights of way. Plaintiff is informed and believes, and thereupon alleges, that said pest control  
5 advisors were the agents or employees of Defendants FERROSAFE, RUMBLE and  
6 ALLIGARE. Plaintiff is further informed and believes, and thereupon alleges, that BNSF was  
7 assisted by the remaining Defendants in obtaining permits from Contra Costa County to apply  
8 the herbicides.

9 17. Among the chemicals included in the mixture that was applied to the railroad  
10 properties and rights of way was an herbicide containing the active ingredient "Imazapyr."  
11 Imazapyr is a potent herbicide routinely used to clear away vegetation along roads, levees,  
12 railways, and other places where a barren surface is desired. Imazapyr products are not labeled  
13 for use on or near cropland, and Imazapyr is devastating to growing crops. Also among the  
14 chemicals included in the mixture that was applied to the railroad properties and rights of way  
15 was an herbicide containing the active ingredient "Flumioxazin" ("Payload"). Flumioxazin is  
16 likewise a potent herbicide routinely used to clear away vegetation along roads, levees, railways,  
17 and other places where a barren surface is desired. Flumioxazin products are not labeled for use  
18 on or near cropland, and Flumioxazin is devastating to growing crops. Accordingly, herbicides  
19 containing Imazapyr and/or Flumioxazin should not be applied wherever they may come into  
20 contact with desirable crops.

21 18. Plaintiff is informed and believes, and thereupon alleges, that RUMBLE,  
22 FERROSAFE, and ALLIGARE and Does 20 through 40 recommended, applied, and supervised  
23 the application of an herbicide mixture containing Imazapyr, Flumioxazin and Glyphosate to the  
24 railroad properties and rights of way which in many places were surrounded by cropland.  
25 Predictably, the herbicides were spread over Plaintiff's land and crops. While the full extent of  
26 the resulting damages being evaluated, the observable damages has been widespread. Plaintiff  
27

1 first noticed symptoms of the damage caused by said application in March of 2016, when they  
2 first became observable.

3 19. As a direct and proximate result of the herbicide application described above,  
4 Plaintiff suffered severe losses to its trees and crops being cultivated on the City Property, Big  
5 Break Property, Bridgehead North Property and Bridgehead South Property, including, without  
6 limitation, acreage planted to grapes and almonds. Said losses include, but are not limited to,  
7 damage and destruction of trees and vines, lost yields from said trees and vines, additional  
8 cultural costs incurred to investigate and mitigate the damage, the cost of replacement trees and  
9 vines, lost income and profits, and additional costs of labor and restoration. The losses will be  
10 demonstrated according to proof at trial.

11 20. The use of the herbicides as herein alleged constitutes a violation of Food and  
12 Agricultural Code section 11791, 11792, 12972, 12973, and 3 California Code of Regulations,  
13 sections 6600(b), (c), (d) and (e), 6614 and 6616.

14 21. Plaintiff is informed and believes, and thereupon alleges, that the application of  
15 the herbicides was carried out at the direction, and under the supervision of BNSF,  
16 FERROSAFE, RUMBLE, and ALLIGARE, and Does 21 through 40 planned, knew of,  
17 consented to, supervised or ratified the application.

18 22. Plaintiff is informed and believes, and thereupon alleges, that the herbicides were  
19 selected, recommended, sold and applied despite the fact that Defendants, and Does 1 through  
20 20, knew, or should have known, that the herbicides were not appropriate for application in the  
21 vicinity of cropland; that the herbicides posed an undue risk of severe harm to crops grown in the  
22 vicinity, including those grown by Plaintiff; that some or all of the herbicides were not properly  
23 labeled or permitted for their contemplated use on the railroad property and rights of way, and  
24 despite having warning that the herbicides should not be used adjacent to cropland due to the  
25 high risk of damage to desirable crops. Plaintiff is informed and believes, and thereupon alleges  
26 that the Defendants nevertheless proceeded with the selection, recommendation, sale, and  
27 application of the herbicides with pecuniary motivation (eradicating weeds at the least expense



1 without regard to neighboring crops), and did so in willful and conscious disregard of the rights  
2 and safety of Plaintiff, and others. The Defendants despicable conduct subjected Plaintiff to  
3 cruel and unjust hardship including, without limitation, complete loss of certain field crops and  
4 partial and continuing loss to others.

5 **FIRST CAUSE OF ACTION**

6 **Negligence (Against all Defendants)**

7 23. Plaintiff hereby incorporates and realleges the foregoing paragraphs 1 through 22  
8 as though fully set forth herein. To the extent of any inconsistency, these allegations are pleaded  
9 in the alternative.

10 24. Defendants owed duties of care to Plaintiff, including the duty to exercise care in  
11 recommending, selling, purchasing, application of, planning for the use of, and/or using  
12 herbicides that could come into contact with Plaintiff's farmland, or growing crops, as well as  
13 the duty to avoid exposing Plaintiff's property to herbicides without Plaintiff's consent. In doing  
14 these things herein alleged, Defendants breached their duties of care to Plaintiff, which caused  
15 Plaintiff to suffer harm according to proof at trial.

16 25. The Defendants conduct alleged herein was malicious and oppressive, and in  
17 addition to actual damages, Plaintiff should be awarded exemplary damages pursuant to law.

18 **SECOND CAUSE OF ACTION**

19 **Trespass (Against all Defendants)**

20 26. Plaintiff hereby incorporates and realleges the foregoing paragraphs 1 through 25  
21 as though fully set forth herein. To the extent of any inconsistency, these allegations are pleaded  
22 in the alternative.

23 27. In doing the things herein alleged, Defendants purposefully, recklessly or  
24 negligently intruded upon Plaintiff's farmland which caused Plaintiff to suffer harm according to  
25 proof at trial. Plaintiff did not, at any time, consent to the intrusion.

26 28. The Defendants' conduct alleged herein was malicious and oppressive, and in  
27 addition to actual damages, Plaintiff should be awarded to exemplary damages pursuant to law.

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**THIRD CAUSE OF ACTION**

**Nuisance (Against all Defendants)**

29. Plaintiff hereby incorporates and realleges the foregoing paragraphs 1 through 28 as though fully set forth herein. To the extent of any inconsistency, these allegations are pleaded in the alternative.

30. In doing the things herein alleged, Defendants purposefully, recklessly or negligently, and unreasonably and substantially, interfered with Plaintiff's use and enjoyment of the City Property, Big Break Property, Bridgehead North Property and Bridgehead South Property, and the growing improvements thereon, and has interfered with Plaintiff's right to conduct the lawful commercial enterprise at said properties, which caused Plaintiff to suffer harm according to proof at trial. Plaintiff did not, at any time, consent to the interference.

31. The Defendants' conduct alleged herein was malicious and oppressive and in addition to actual damages, Plaintiff should be awarded exemplary damages pursuant to law.

**FOURTH CAUSE OF ACTION**

**Strict Liability for Harm Arising from Ultra-Hazardous Activities**

**(Against all Defendants)**

32. Plaintiff hereby incorporates and realleges the foregoing paragraphs 1 through 31 as though fully set forth herein. To the extent of any inconsistency, these allegations are pleaded in the alternative.

33. In doing the things herein alleged, Defendants engaged in an ultra-hazardous activity involving a risk of serious harm to others that could not have been eliminated by the exercise of due care, and was not a matter of common usage. The ultra-hazardous activity caused Plaintiff to suffer harm of the type expected of the ultra-hazardous activity, and for which Defendants are strictly liable, according to proof at trial.

34. The Defendants' conduct alleged herein was malicious and oppressive, and in addition to actual damages, Plaintiff should be awarded exemplary damages pursuant to law.

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**PRAYER FOR RELIEF**

Based upon the foregoing allegations, Plaintiff respectfully prays for judgment as follows:

- 1. On the First, Second, Third and Fourth Causes of Action, compensatory damages in an amount according to proof at trial;
- 2. On the First, Second, Third and Fourth Causes of Action, doubled or trebled damages pursuant to Civil Code § 3346 and applicable law;
- 3. On the First, Second, Third and Fourth Causes of Action, exemplary damages pursuant to Civil Code § 3294 and applicable law;
- 4. The costs of suit, including reasonable attorney’s fees pursuant to Code of Civil Procedure § 1021.9; and
- 5. Such other and further relief as the Court deems just and proper.

DATED: January 8, 2018.

SNIDER, DIEHL, SLOUP & RASMUSSEN, LLP

By   
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 STEPHEN C. SNIDER  
 Attorneys for Plaintiffs,  
 MULEHEAD GROWERS, LLC, and  
 OXFOOT ASSOC., LLC