

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

245634

CENTRAL VALLEY AG GRINDING, INC.)
AND CENTRAL VALLEY AG TRANSPORT)
INC.)
5509 Langworth Road)
Oakdale, CA 95361)

Complainants)

v.)

MODESTO AND EMPIRE TRACTION)
COMPANY)
530 11th Street)
Modesto, CA 95354)

Defendant.)

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Docket No. NOR 42159

**EX PARTE APPLICATION FOR SECTION 11123(a) SERVICE ORDER AND
SECTION 11701 INVESTIGATION**

PETITION FOR PRELIMINARY INJUNCTION AND INVESTIGATION

FILED
May 1, 2018
SURFACE
TRANSPORTATION BOARD

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TRANSPORTATION BOARD

By:

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Dated: May 1, 2018

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COUNSEL’S EXHIBITS

VERIFIED STATEMENT OF PAUL KONZEN

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PETITION FOR PRELIMINARY INJUNCTION AND INVESTIGATION

Pursuant to 49 U.S.C. § 11123(a), 49 U.S.C. § 11701, 49 U.S.C. § 1321, 49 C.F.R. § 1117.1, and 49 C.F.R. § 1122, Central Valley Ag Grinding, Inc. and Central Valley Ag Transport, Inc. (individually and collectively, “CVAG”) hereby applies for and petitions the Surface Transportation Board (“Board” or “STB”) for immediate emergency relief directing that Modesto and Empire Traction Company (“MET”) restore reasonable railroad service for transportation of essential agricultural commodities to

CVAG's Modesto, California transload facility ("Modesto Facility"), a matter of significant regional and national importance.

CVAG's Application and Petition, and the underlying facts, are further supported and verified by the testimony of Paul Konzen, the Vice President and one of two owners of CVAG. It is also supported and verified by consumers, shippers, and a dairy nutritionist expert, including through the testimony of three individual California dairy farmers, Eldred Pires of Pires Dairy Farms, Michael Borba of Borba Dairy Farms, LP., and Sean Kelley of James J. Stevinson Corp.; through the testimony of Jed Asmus of January Innovation, Inc. a dairy nutritionist expert; through a letter from the Western United Dairymen, a grass-roots organization headquartered in Modesto, California, representing California's dairy farmers producing approximately 50 percent of the State's milk; and through a letter from Gavilon Ingredients, LLC, a major global agricultural commodities supplier that ships significant volumes of livestock feed product to CVAG's Modesto Facility.

Specifically, CVAG seeks two forms of relief:

First, the Board should, pursuant to 49 U.S.C. § 11123(a), immediately order MET to restore interchange service to connecting carriers for service to CVAG's Modesto Facility, free of any prepay demands, for an initial period of 30 days, to be extended until the Complaint proceeding is decided, or until the statutory limit of 270 days is reached, whichever occurs first.

Second, the Board should use its broad injunctive power under 49 U.S.C. § 1321 to order MET to: (a) establish and adhere to reasonable service delivery plans for

service to CVAG; and (b) maintain reasonable service delivery arrangements (with CVAG using its own rail car movers to conduct train unloading) and cease various “self-help” initiatives to reduce service and otherwise interfere with the reasonable interchange, delivery, and return of CVAG trains. In connection with its injunctive relief, the Board should: (a) assign appropriate Board staff to ensure compliance with its orders and to conduct reasonable service delivery oversight during the pendency of the Complaint proceeding; and (b) initiate a separate formal investigation of regional service disruptions of animal feed commodities to help ensure that the essential service needs of the shippers and receivers that supply the California dairy industry are met.

CVAG respectfully submits that each of these remedies are appropriate and necessary here under the unique circumstances where a carrier has ceased both service and reasonable interchange of an essential commodity, rejecting all reasonable proposals to keep the trains running, when the carrier has been performing such services for over 13 years, almost a decade on loop track that the carrier designed and built for CVAG’s unit train service.

MET has taken actions that have threatened and disrupted rail service to CVAG. Specifically, MET has refused to enter into reasonable operating plans, instead purposefully placing trains such that they obstruct and impede unloading operations and create unsafe conditions; engaged in multiple “self-help” actions to curtail railroad service; required improper prepayment of properly disputed charges and unknown possible future charges and assessments as a precondition for service, refusing all valid protests and disputes of its demands; refused to negotiate and has rejected payment of

reasonable security deposits; constantly shifted and escalated its demands; threatened line embargoes; and otherwise interfered and blocked the provision of service to CVAG.

MET's actions are made more egregious by the fact that the parties have a history of over 13 years of good business relations and of safe and efficient delivery of essential livestock feed commodities to CVAG's Modesto facility, incurring multi-millions of dollars in facility investments. The actions underlying this Petition all stem from MET's sudden, very recent efforts to evict CVAG from its Modesto facilities, presumably, so that MET can put them to another preferred purpose.

CVAG requests that the service order and related injunctive relief remain in effect during the pendency of the Complaint proceeding. This action is necessary to ensure that the dairy farms can continue to receive the feed that their livestock requires which is delivered through CVAG, and to prevent irreparable business harm to CVAG and the dairy industry that it serves, as well as agricultural shippers, all of which will suffer absent such relief.

I. INTRODUCTION AND SUMMARY

The immediate service order, related injunctive relief, and Board investigation are required because MET has recently ceased unit train delivery and blocked interchange with its connecting Class I carriers to CVAG, an essential transloading business serving California's North Central Valley, in blatant violation of MET's fundamental common carrier and continuous carriage of freight obligations. MET has also threatened and then promised to impose service embargoes and additional

line-haul interchange and delivery blockages on CVAG's traffic should CVAG not accede to its full demands that are patently unreasonable. Even MET admits these demands are intended to be unaffordable, and that CVAG cannot possibly pay and hope to survive as a business at Modesto.

If that were not enough, for the few trains that it has accepted into interchange, MET departs from a nine-year history of safe and reasonable delivery and insisted on purposely delivering trains in a manner that "fouls" the unloading facility's tracks, prevents unloading, and creates unsafe operating conditions for CVAG employees. MET then refuses to remedy the situation without prepay of unprecedented, patently unreasonable "accessorial charges" never previously utilized in the short line industry and that are specifically targeted at CVAG alone.

Even more, MET now claims that CVAG's unit train unloading track, that *MET* itself designed and constructed to receive up to 110 cars of up to 7,800 feet for CVAG's exclusive use, that the Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF") have previously certified, and that MET has utilized to successfully deliver unit trains to CVAG for almost a decade, can no longer accommodate the same trains for which the facilities were specifically designed by MET. MET has also taken improper self-help actions in violation of CVAG's lease in order to hinder CVAG's use of track, further "squeezing" CVAG's ability to safely unload trains. MET then has indiscriminately assessed new and ever-escalating charges, some under tariff, and some not even linked to its tariff, and has demanded prepayment of CVAG for safe train delivery, removal of empties, and train return to UP and BNSF, its line-haul

interchange carriers. At the same time, MET has not taken any actions to ease its substantial minimum volume contractual commitments placed on CVAG amounting to over 9,300 cars per year, with substantial per car shortfall penalties.

Faced with MET's unreasonable, exorbitant prepayment demands, CVAG has, as a means of "keeping the trains running" as the parties negotiated, mediated, or litigated MET's practices, attempted to engage MET in discussions over reasonable security payments. However, after first insisting on accepting an excessive \$10,000 per train prepayment as a form of security, MET turned around and has flatly refused CVAG's reasonable security agreement offer to continue on that basis. As a means of last resort, CVAG has attempted to prepay MET \$10,000 per train by hand-delivery of checks to MET as a form of security for MET's accessorial charge claims. MET has refused such prepayment and rejected the checks, refusing service absent prepayment of all of its demands in full.

The reason behind all this? After a cooperative and successful partnership of 13 years built on growth, with CVAG now the largest and most efficient animal feed transload business in the State of California north of Fresno, MET wants CVAG to leave. MET apparently has its sights on the CVAG property for other alternative third party uses or perhaps its own use, or MET has oversold its capacity and has chosen to jettison CVAG over its other customers. MET apparently has been restructured through new management that desperately wants to be rid of CVAG. However, all of MET's eviction and detainer initiatives, based largely on contrived and untrue allegations of unsafe

business practices of CVAG, have, to date, been wholly unsuccessful in shutting down CVAG's operations in the timeframe MET desired.

Having failed with "Plan A" – a speedy, forced eviction, MET has recently turned to "Plan B" – forced business destruction by service cessation. It is doing so by unilaterally changing and revising longstanding operations and tariffs purposely directed solely at CVAG in as harmful a way as possible. Essentially, MET is attempting to use its expansive powers as a common carrier to unilaterally initiate rates and practices as a sword to inflict as much business pain on CVAG as possible in order to evict and dispossess CVAG of its property rights. MET's tactics include double-dipping on its delivery handling fees and charging switching fees of \$100 per minute or over \$5,000 per hour for services. When its initial efforts failed to curb CVAG's ability to serve its customers, MET quickly moved to revise and change its tariffs several times in a manner clearly intended to cause mortal business harm and the complete business destruction of CVAG at Modesto.

Such practices are patently unreasonable and in derogation of MET's obligations as a common carrier, and should be immediately enjoined. MET's practices significantly endanger the nearby 500 dairies in California's Central Valley and North Valley that rely on CVAG to provide livestock feed through its transloading activities. MET's practices also harm the shippers of this product and their ability to supply and meet the essential needs of dairy farm consumers. Additionally, if left unrestrained during the pendency of this Complaint proceeding, MET's practices will quickly destroy

CVAG's business at Modesto, the \$7,000,000 in investments it has made in the Modesto Facilities over the past 13 years, and the jobs of its 25 employees.

Additionally, MET's conduct, if not enjoined, sets a very dangerous precedent by emboldening MET to continue its unreasonable conduct, perhaps engage in similar activities elsewhere with any other of its dozens of customers in the Beard Industrial District as a similar means of business coercion. The threat of this dangerous conduct extends beyond MET, to other short line carriers who might also be emboldened by MET's unrestrained conduct, and that may be looking for similar unrestricted ways to raise revenues, evict unwanted tenants, or to leverage their bargaining power with connecting Class I railroads by holding hostage line-haul deliveries as a means of increasing contractual haulage fee payments that they believe are too low.

Remarkably, MET's "Plan B" to destroy CVAG's business by ceasing service comes immediately in the face of a previous state court Preliminary Injunction and Temporary Restraining Order application, where MET avoided having the matter heard by the California Superior Court for Stanislaus County, Case No. 2028642 ("State Court Action"), by promising CVAG on January 29, 2018 that it "has no intention of taking any extra-judicial action that would 'interfere with interstate rail service to CVAG's Modesto Facility'" and that it "will instead file an unlawful detainer action and enforce and protect its rights through the judicial process." MET has immediately and repeatedly broken its promise. Because MET's new tactics violate fundamental federal common carrier obligations, CVAG now turns to the STB for relief.

Finally, CVAG files this Application and Petition as a means of last resort. It has attempted over several weeks to utilize the assistance of the STB's Rail Customer and Public Assistance Program to informally resolve the situation. While MET did participate in discussions with Program staff, and staff's efforts led to some temporary progress, ultimately those discussions resulted in no resolution as MET remained firm that it would not relent on any of its practices and demands and has instead escalated them.

Enough is enough. CVAG respectfully requests that the Board issue appropriate orders as outlined above directing MET to reasonably serve CVAG's Modesto Facilities and undertake appropriate Board oversight and investigation until the critical service situation is resolved and the Board is able to rule on the full merits of CVAG's Complaint.

Expedited action is requested under these extreme circumstances.

II. FACTUAL BACKGROUND

A. CVAG-MODESTO, ITS CUSTOMERS, AND ITS TRANSPORTATION ARRANGEMENTS

Complainant CVAG is a California Central Valley full service transloading company that has operated a large regional agricultural feed commodities transloading business at Modesto, California since 2004.¹ The vast majority of CVAG's business at Modesto consists of receiving, storing, and transloading agricultural feed ingredients and

¹ Verified Statement of Paul Konzen ("Konzen V.S.") ¶¶ 1, 6-8.

commodities supplied to nearly 500 dairies in the Central and North San Joaquin Valleys of California.² CVAG receives over 9,300 railcars per year, and transloads over 800,000 tons of commodities through its Modesto Facility annually.³

CVAG maintains safe conditions and operations at its Modesto facility.⁴ In its over 13 years of conducting transload operations at Modesto, it has an exemplary safety record, and has received only one citation from the State of California in 2015, which resulted in a minor fine.⁵

Much of CVAG's animal feed traffic originates 1,500 miles away in the Midwest and Western Canada.⁶ The traffic is originated on the Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF"), or otherwise connects with UP and BNSF.⁷ At destination, CVAG's Modesto Facility is exclusively served by the Defendant, MET.⁸ MET serves CVAG and other customers in the Beard Industrial District, a 2000-acre industrial park long owned and operated by MET.⁹ MET is a short line handling carrier for BNSF and UP line-haul shipments.¹⁰

² *Id.*, ¶¶ 7, 100.

³ *Id.*, ¶¶ 10-11.

⁴ *Id.*, ¶¶ 31-33.

⁵ *Id.*

⁶ *Id.*, ¶ 10.

⁷ *Id.*, ¶ 9.

⁸ *Id.*, ¶¶ 7, 9, 13

⁹ *Id.*, ¶¶ 9, 26, 63.

¹⁰ *Id.*, ¶¶ 9, 16.

CVAG is a railroad receiver at Modesto.¹¹ The shippers that arrange for the transportation and pay the freight bills are mainly large regional and national agribusinesses, including Gaviola, Archer Daniels Midland Company, JD Heiskell, and A.L. Gilbert Company.¹² They ship the animal feed commodities received by CVAG under UP and BNSF unit train freight tariffs and pricing authorities.¹³

MET is not included in the applicable line-haul rate authorities, as it is only the handling line carrier for UP and BNSF for these deliveries.¹⁴ As MET itself has confirmed, MET serves as an agent and is not an independent connecting carrier for freight transported by UP moving to CVAG's Modesto Facility.¹⁵ MET is not eligible to establish its own independent rates for deliveries on through freight service with the UP and BNSF. Instead, it receives a per car fee for delivery from UP and BNSF that appears

¹¹ *Id.*, ¶¶ 15, 20.

¹² *Id.*, ¶ 15.

¹³ *Id.*, ¶¶ 15-17.

¹⁴ *Id.* The governing Open and Prepay Station List (OPSL 6000-Series) ("OPSL") lists Modesto and other nearby MET terminal delivery stations as UP and BNSF served stations. The UP's OPSL listing for these stations references note 3500, which states that, for "[t]raffic moving in connection with UP to or from stations referring to this note should be routed only via UP;" "Carriers shown in Column 1 [meaning MET for present purposes] should not be shown in the route;" and "[t]hese stations are not physically served by the UP but are considered as UP stations for the purpose of simplifying routing and assessing transportation charges." BNSF's OPSL listing for these Modesto stations references note 3200, which has the same restrictive routing and transportation charge language.

¹⁵ *Konzen V.S.*, ¶ 16.

to be over \$20,000 per unit train delivered to CVAG's Modesto facility.¹⁶ CVAG is not privy to MET's haulage carrier agreements with UP and BNSF and does not know its specific haulage fees, operating requirements, and interchange arrangements.¹⁷

Most of the animal feed ingredients received at the Modesto Facility is comprised of Canola Pellets ("Canola"), Gluten Feed Pellets ("Gluten"), and Dried Distillers Grains with soluble ("DDGs").¹⁸ These commodities are shipped in 100-car unit train service, and shipments of such livestock feed must be shipped in between 90-110 railcars because of the high volume demands, the low margins, and because of the rate incentives provided for such service.¹⁹ Therefore, virtually all of the agricultural feed commodities received at CVAG Modesto are transported in this size unit train service.²⁰ Additionally, the governing UP and BNSF tariffs require trains of this size.²¹ Without 100-car unit train service availability, a transloader such as CVAG will immediately become uncompetitive and forced out of that line of business.

¹⁶ *Id.*, ¶ 18.

¹⁷ *Id.*, ¶ 16.

¹⁸ *Id.*, ¶¶ 11, 42.

¹⁹ *Id.*, ¶¶ 12-14

²⁰ *Id.*

²¹ *Id.*

B. THE CALIFORNIA DAIRY INDUSTRY AND FEED SUPPLIER RELIANCE ON CVAG-MODESTO

The dairy industry represents a crucial part of California's economy, and the dairy farms of the region served by CVAG "are the backbone of the dairy economy."²² Local and regional dairy farmers rely heavily on CVAG to receive and transload these commodities to meet their livestock feed requirements.²³ Over 40 percent of all of California dairies are located in the Northern and Central California regions, and the over 500 dairies in the area served by CVAG have no other economically viable or feasible options available for their livestock feed.²⁴

Animal feed costs are "[t]he most significant cost component of [a] dairy farm," and can often constitute well over one-half of a dairy farm's monthly operating

²² Letter from Western United Dairymen to STB dated April 30, 2018 ("WUD Letter") (appended at Counsel's Exh. 1) at 2.

²³ Decl. of Jed Asmus in Support of Plaintiffs' *Ex Parte* Application for Order to Show Cause for Prelim. Inj. & TRO, filed in the State Court Action, Jan. 30, 2018 ("Asmus Declaration") (copy appended at Counsel's Exh. 2), ¶¶ 25-34; Decl. of Eldred Pires, Pires Dairy Farms, in Support of Plaintiffs' *Ex Parte* Application for Order to Show Cause for Prelim. Inj. & TRO, filed in the State Court Action, Jan. 30, 2018 ("Pires Declaration") (copy appended at Counsel's Exh. 3), ¶¶ 8-13; *see also* Decl. of Michael Borba, Borba Dairy Farms, LP and B6 Dairy, LP, in Support of Plaintiffs' *Ex Parte* Application for Order to Show Cause for Prelim. Inj. & TRO, filed in the State Court Action, Jan. 30, 2018 ("Borba Declaration") (copy appended at Counsel's Exh. 4), ¶¶ 9-14; Decl. of Sean Kelley, James J. Stevinson Corp., in Support of Plaintiffs' *Ex Parte* Application for Order to Show Cause for Prelim. Inj. & TRO, filed in the State Court Action, Jan. 30, 2018 ("Kelley Declaration") (copy appended at Counsel's Exh. 5), ¶¶ 9-14.

²⁴ Asmus Declaration, ¶¶ 25-34.

expenses.²⁵ Without CVAG-Modesto's ability to serve the livestock feed needs of the region, individual dairy farmers would need to go long distances to receive product.²⁶ Shortages of the feed commodities can and do occur as a result of unit train delivery delays to CVAG-Modesto. In fact, animal feed shortages are occurring right now with respect to Gluten feed, as the dairies are awaiting their needed feed supplies until the delivery of an inbound 105-car unit train to the Modesto Facility.²⁷

In addition to dairy farms, large agribusiness shippers such as Gavilon have "long relied on CVAG's services to help serve its customers" and have "shipp[ed] hundreds of unit trains to CVAG-Modesto over the past 8-9 years, without any serious incident or delay," until recently.²⁸ As Gavilon confirms, "CVAG-Modesto is one of the only transloaders in the region capable of receiving unit train service, and neither Gavilon nor the Northern Central San Joaquin Valley dairy industry can afford to lose its essential services."²⁹

²⁵ Pires Declaration, ¶ 6; *see also* Borba Declaration, ¶ 6; Kelley Declaration, ¶ 6; WUD Letter at 2.

²⁶ Borba Declaration, ¶¶ 13-22; Kelly Declaration, ¶¶ 14-21; Pires Declaration, ¶¶ 14-20; Asmus Declaration ¶¶ 31-34.

²⁷ *See* Counsel's Exh. 6.

²⁸ *See* Gavilon Letter to STB (Apr. 28, 2018) ("Gavilon letter"), copy appended at Counsel's Exh. 7.

²⁹ *Id.*

C. MET/CVAG COMBINED MODESTO FACILITY GROWTH INITIATIVES

CVAG's possession of the Modesto Facility and its operations are governed by a Transload Agreement and long-term Lease, first entered into with MET in December of 2003, and subsequently have been extended and amended many times.³⁰ CVAG has grown its business with the active encouragement of MET.³¹ After initial success with its manifest train transloading business, MET designed and built for CVAG's exclusive use loop track to receive 100+ car unit trains almost a decade ago.³² This track was designed and built to grow CVAG's (and MET's) business by enabling it to receive 110-car trains. CVAG's Modesto Facility loop track is in full compliance with UP and BNSF's unit train unloading facility requirements.³³

In return for its property investments, MET demanded and obtained from CVAG escalating minimum volume contractual requirements obtained through Lease amendments that more than tripled CVAG receipt requirements, from 240 railcars per month in 2008 to 780 railcars per month in 2015.³⁴ MET also obtained from CVAG significant rents, amounting to close to \$1,000,000 per year. Additionally, in order to meet its growth requirements, improve its facilities, and to meet its customers' needs,

³⁰ Konzen V.S., ¶ 22.

³¹ *Id.*, ¶¶ 22-27, 37-40.

³² *Id.*

³³ *Id.*, ¶¶ 37-40.

³⁴ *Id.*

CVAG has itself invested over \$7,000,000 in improvements in its Modesto Facilities.³⁵

With the encouragement of MET, and its significant growth initiatives, CVAG is now the largest transload facility in the State of California north of Fresno.³⁶

For over 90 straight months from June 2009 through February 2018, MET exclusively conducted all train activities in support of train unloading for CVAG at its Modesto Facility, supplying two to three locomotives, and dedicating a full time crew member, for 3-4 straight days.³⁷ For two types of trains, DDGs and Gluten, MET also cut the trains on the empty side of the unloading pit, because the CVAG trackage only included 6,700 feet before reaching a roadway intersection.³⁸ During this period, MET never sought to impose any extra service assessment for any train for its train delivery services. In total, MET has delivered to CVAG over 6,000,000 total tons, or over 60,000 railcars, all at no cost or expense to CVAG, and without any prepay demands for its services.³⁹ In fact, rather than send invoices and demand service prepayments for its services, MET worked extra hours and weekends, used additional locomotive power, thanked CVAG for its business, and encouraged the delivery of longer trains, up to the 110-car loop track capacity.⁴⁰

³⁵ *Id.*, ¶¶ 4, 24, 99.

³⁶ *Id.*, ¶¶ 22-27, 37-40, 100.

³⁷ *Id.*, ¶¶ 41-49.

³⁸ *Id.*

³⁹ *Id.*, ¶¶ 21, 41-49.

⁴⁰ *Id.*, ¶¶ 48-49

D. MET’S EVICTION ACTIONS AND FURTHER ASSURANCES OF CONTINUOUS RAILROAD SERVICE

Beginning in late 2016, MET and CVAG began discussing additional joint venture opportunities.⁴¹ However, MET ended those discussions abruptly at the beginning of 2017, when one of two lease extension options CVAG held became exercisable. At the same time, MET began taking affirmative steps specifically designed to deprive CVAG of its ability to exercise its lease extension option, and/or apply pressure on CVAG in Lease renegotiations. In June 2017, CVAG exercised its option to extend the lease, but MET did not accept the exercise.⁴² Since that time, MET has sought to evict and dispossess CVAG of its right to operate the Modesto Facility, and the property rights matter now remains in active litigation in the California courts in three consolidated lawsuits (one brought by CVAG and two by MET).⁴³ As part of these actions, CVAG seeks specific performance, damages and injunctive relief for MET’s breach of contract.

In the face of MET’s threats to terminate rail service during the pendency of the parties’ property rights dispute, CVAG in late January filed with the California courts an application for preliminary injunctive relief pending resolution of the parties’ property rights dispute.⁴⁴ However, the matter was removed from the court’s calendar

⁴¹ *Id.*, ¶ 28.

⁴² *Id.*, ¶ 30.

⁴³ *Id.*, ¶ 30.

⁴⁴ *Id.*, ¶ 35.

after MET provided CVAG with assurances of continuing service. It assured CVAG that “MET has no intention of taking any extra-judicial action that would ‘interfere with interstate rail service to CVAG’s Modesto Facility.’ To the contrary, MET intends to continue common carrier service . . . [and] will continue to work . . . to coordinate inbound train scheduling.”⁴⁵ Rather than interfere with rail delivery service to CVAG’s Modesto Facilities, MET promised that it “will instead file an unlawful detainer action and enforce and protect its rights through the judicial process.”⁴⁶

E. MET’S TEN-STEP INITIATIVE TO RESTRICT AND BLOCK CVAG DELIVERIES

In the face of its failed efforts to summarily evict CVAG, and immediately after providing assurances of continuing rail service, MET began targeting CVAG with a battery of rapidly escalating service cessation schemes over a two-month period. These initiatives are designed to force CVAG to abandon its Modesto Facility. For present purposes, it is useful to divide MET’s cessation program into ten overlapping steps:

Step One: Significantly Reduce CVAG’s Service.

With no notice, in February 2018 MET released new CVAG-targeted “Service Bulletins” never seen before by CVAG in its decade-plus history of transloading service at Modesto.⁴⁷ Those bulletins demanded that CVAG perform its own train services in support of unit train unloading within 10 days, ending 90+ months where

⁴⁵ *Id.*, ¶ 36.

⁴⁶ *Id.*

⁴⁷ *Id.*, ¶¶ 50-51.

MET willingly provided unloading support activities.⁴⁸ Even with the extremely short notice, CVAG fully and timely met MET's demands.⁴⁹

Step Two: Restrict CVAG's Access to Property/Trackage.

Shortly after its Reduce Service initiative, MET significantly restricted CVAG's access to the receiving loop tracks.⁵⁰ MET first placed restrictive "derails" on three tracks designated for CVAG's use in the receipt of trains. Second, MET declared that important supporting trackage for CVAG's service (Track 1043) was no longer available for CVAG's benefit or use.⁵¹ This trackage had long been used to support CVAG's service, and CVAG has disputed MET's right to take away the use of these important supporting facilities on its leased property.⁵² However, even in its restricted state, CVAG's railcar unloading loop track still remains large, at approximately 10,000 feet, and easily able to accommodate even the longest of 7,800 foot, 110-car animal feed unit trains.⁵³ However, the longer DDG and Gluten trains can no longer be brought into the CVAG loop tracks and placed in one cut/consignment without positioning the train across the unloading facilities, and thus "fouling" the unloading pit.⁵⁴ While strenuously

⁴⁸ *Id.*

⁴⁹ *Id.*, ¶ 52.

⁵⁰ *Id.*, ¶¶ 53-57.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*, ¶ 59.

⁵⁴ *Id.*

objecting to MET's unwarranted practices, CVAG has worked hard to adjust its operations and engage in outreach with MET to fully and adequately respond to MET's Restrict Access initiative.

Step Three: Gridlock CVAG's Unloading Tracks.

MET next began its "[i]t came in as a grain train and we will spot it as a grain train" initiative.⁵⁵ Through this new initiative, MET insists on flooding CVAG's tracks and causing gridlock, by spotting trains only in one consignment/cut, and removing trains only in one consignment/cut.⁵⁶ The result is that MET purposely fouls CVAG's unloading pit, so that trains cannot be unloaded and returned safely or at all. This practice is a complete reversal of how MET had previously spotted trains for reasonable unloading.⁵⁷ This strategy also has resulted in further delays in train processing, and actually increases the work for MET's crews as they have had more work to fix the train spotting problems.⁵⁸

MET spots trains in this unsafe and inefficient manner as a means to support its claims that CVAG's trackage, which MET designed and built to accommodate the largest 7,800-foot animal feed trains of up to 110 cars, somehow is now inadequate to accommodate what it now refers to as "oversize unit trains."⁵⁹ While objecting to these

⁵⁵ *Id.*, ¶¶ 58-60.

⁵⁶ *Id.*, ¶¶ 58-60, 87.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*, ¶ 60.

additional MET practices, CVAG also fully and adequately responded to MET's Track Gridlock initiative by developing reasonable train delivery operating plans and attempting to reasonably work with MET to fix the situation with each improperly delivered train.⁶⁰

Step Four: Implement Unprecedented, New Tariff Charges Targeted at CVAG

In combination with Steps One Through Three, MET adopted/imposed extensive new Tariff Accessorial and Demurrage Tariff revisions targeted at CVAG's Modesto Facility under Freight Tariff M&ET 8000, and Freight Tariff 9500, first effective April 9, 2018. MET's new accessorial tariff-type items include, but are not limited to, demurrage, train storage fees, switch fees, train re-assembly fees, security deposits, "intra-terminal" and "intra-plant" switch charges, and various other chargeable items targeted specifically at CVAG. To reasonably deliver a train, MET now calls each individual delivery and empty car release a chargeable "accessorial fee" event, amounting to upwards of \$275 per car, plus additional demurrage, "train reassembly" and other charge demands.⁶¹ These new tariff programs were implemented in the face of considerable resource and cost savings MET has experienced since turning over all train unloading activities to CVAG in mid-February.⁶²

⁶⁰ *Id.*, ¶¶ 68-69.

⁶¹ *Id.*, ¶¶ 70-73. A full discussion of the dates and specific tariff changes made by MET are included in CVAG's Complaint.

⁶² *Id.*

Step Five: Hammer CVAG with New Charges

Beginning March 2018, even before MET's Tariff revisions, MET has issued to CVAG a series of escalating bills, invoices, "Required Charges Prepayment," "modified mandatory prepayment requirement," "Accessorial Service Estimate and Required Charges Prepayment," "final and non-negotiable" demands, and other "demands" and "estimates." These demands seek payment, and in all instances since approximately March 26, 2018, prepayment, of up to \$53,900 per train for new accessorial tariff-type items, likely well over double the amount MET already receives for its haulage services from UP and BNSF that are paid for in the line-haul rates. Some demands are tariff-based, some are not, and include, but are not limited to, demurrage, train storage fees, switch fees, train re-assembly fees, security deposits, "intra-terminal" and "intra-plant" switch charges, and various other chargeable items described above.⁶³ In addition to being unreasonable, many of these individual assessments and demands are incorrect and involve substantial invoicing errors, with some of them corrected and revised multiple times, but still with erroneous and improper charges and demands.⁶⁴ CVAG has reasonably and timely objected to and protested each invoice and pay demand made by MET.⁶⁵

⁶³ *Id.*, ¶¶ 70-76.

⁶⁴ *Id.*

⁶⁵ *Id.*

Step Six: Further Revise Tariff and Demand Full Prepay from CVAG for Reasonable Train Delivery

MET next further revised its Tariffs, effective April 23, 2018, to include new “Special Unit Train Charges” items. Under this revised Tariff Item 270, pursuant to the “Special Unit Train Charges Security Deposit” provision, MET purports to endow itself with broad discretion to charge a security deposit, “in the form of advance payment of the fees contemplated in Item 270 to ensure payment of the Inbound Placement Fees, Outbound Reassembly Fees, and/or the Unit Train In-Transit Storage Fees that may accrue due to customer’s inability to handle the entire unit train at its receiving tracks or a secondary unit train due to failure to complete release of the first.” Under this new revised Tariff, MET seeks and demands full prepayment of between \$40,000 and \$50,000 for most trains as a condition of delivery.

In response, CVAG has reasonably and timely objected to and protested each MET prepay demand.⁶⁶ It has also attempted to negotiate with MET reasonable security provisions, but MET has refused to budge from its full prepayment demands.⁶⁷ MET has also refused to accept CVAG’s attempts to pay it \$10,000 per train for train delivery as a form of security and as a last ditch means of keeping the trains running.⁶⁸ When CVAG’s customers offered to pay, under protest, the difference between \$10,000 and the amount MET was demanding, MET refused to take their money insisting that

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*, ¶ 80.; *see also* Counsel’s Exh. 7.

CVAG was the only party who could pay. Then, MET refused to accept payment via wire transfer and insisted that payment could only be made via a hand-delivered check

Step Seven: Threaten CVAG Line Embargoes

As another step, MET has threatened line embargoes targeted at CVAG alone in the absence of CVAG acceding to its unprecedented delivery prepayment demands.⁶⁹

Step Eight: Threaten Refusal of Train Interchange to CVAG

As a further step, MET has threatened the refusal to interchange traffic with UP and BNSF for CVAG in the absence of CVAG acceding to its unprecedented delivery prepayment demands.⁷⁰

Step Nine: Carry out Threatened Refusal of Train Interchange to CVAG

In order to force CVAG's to accede to a recent delivery charge of \$42,050, MET last week made good on its threat to block train interchange. Ignoring governing pricing authorities governing the shipment, its statutory interchange requirements, or the need to issue and to attempt to invoke the provisions of any published tariff, MET unilaterally blocked receipt of a CVAG-destined train. The involved train is a Gavilon cotton seed train connecting through the BNSF scheduled for delivery over a week ago, and which still has not been delivered.⁷¹

⁶⁹ *Id.*, ¶ 75.

⁷⁰ *Id.*

⁷¹ *Id.*, ¶¶ 83-86.

The message it conveyed to Gavilon, through BNSF, was that “MET IS REFUSING TRAIN DUE TO CONTRACTUAL AGREEMENTS WITH THE CUSTOMER. THE MET IS NOT GETTING PAID TO SWITCH THE UNIT TRAINS INTO THE CUSTOMERS FACILITY.” Neither statement is true, and they both contradict MET’s commitment to CVAG that “we will continue to deliver and pick up traffic destined to and from CVAG’s Transload Area as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently.”⁷² After the Gavilon train sat on hold for over two days, and knowing that CVAG could not meet MET’s demands, Gavilon finally stepped in and offered to pay, and did finally pay, MET’s full prepay demands.⁷³

Step Ten: Terminate All Future Canola and Cotton Seed Unit Train Service to CVAG

In what appears to be close to the final step (so far) in its ten-step service cessation program, MET late Friday, April 27, 2018, sent CVAG another prepay demand.⁷⁴ MET acknowledged that its recent demands and practices had produced “uncertainty, congestion, and instability on the MET rail system. We cannot allow this to

⁷² *Id.*, ¶¶ 84-85.

⁷³ *Id.*, ¶ 86. MET refused Gavilon’s payment by wire, and required CVAG to cut it the \$42,050 check, and hand deliver it prior to agreeing to receive the train in interchange, and deliver the train. *Id.*

⁷⁴ V.S. Konzen, ¶ 90.

continue.”⁷⁵ Ignoring pricing authorities governing the shipment, its statutory interchange requirements, and the need to issue and to attempt to invoke the provisions of any published tariff, MET simply declared that it would no longer interchange or deliver canola and cotton seed unit trains.⁷⁶ MET said it would possibly accept smaller trains of up to 25 cars for cotton seed trains, and up to 77 cars for canola trains, but only on the condition that “MET has been able to confirm that [the CVAG delivery] Tracks . . . are free to accept such a shipment.”⁷⁷

MET has not yet announced the cessation of unit train delivery service of Gluten/DDGs, but the omission appears to be an inadvertent and temporary oversight inasmuch as the Gluten/DDGs trains are of larger size (70-foot cars) than the canola trains (60-foot cars) on trains with the same number of cars (100+). CVAG assumes that the cessation of service of Gluten/DDGs trains will be the final step of MET’s service cessation program for the delivery of animal feed to CVAG’s Modesto Facility.

III. ARGUMENT

A. A SECTION 11123(a) SERVICE ORDER SHOULD BE GRANTED

The Board has the statutory authority under 49 U.S.C. § 11123 to address “situations requiring immediate action to serve the public.” *Id.* MET has created such a situation here. CVAG respectfully requests that the Board exercise its § 11123 authority

⁷⁵ *Id.*

⁷⁶ *Id.* ¶¶ 90-92.

⁷⁷ *Id.*

by issuing an order directing MET to immediately comply with its common carrier service obligations.

49 U.S.C. § 11123 authorizes the Board to issue emergency service orders on an ex parte basis for 30 days, subject to extensions of up to 240 days:

(a) [w]hen the Board determines that . . . [a] failure of traffic movement exists which creases an emergency situation of such magnitude as to have substantial adverse effects on shippers . . . the Board may, to promote commerce and service to the public, for a period not to exceed 30 days -- (1) direct the handling, routing, and movement of traffic and its distribution over its own or other railroad lines;....

(b) (1). . . the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(c)(1) The Board may extend any action taken under subsection (a) . . . beyond 30 days if the Board finds that a transportation emergency . . . continues to exist. Action by the Board . . . may not remain in effect for more than 240 days beyond the initial 30-day period.

Accordingly, the Board may order MET, a rail carrier providing transportation subject to the Board's jurisdiction, see 49 U.S.C. § 10102(5), to reasonably interchange and deliver CVAG's livestock feed ingredients and commodity deliveries. In the Board's rulemaking proceeding on expedited service relief, the Board noted that Section 11123 gives the Board wide "latitude to craft a variety of measures to remedy any particular service situation." Ex Parte No. 628, *Expedited Relief for Service*

Inadequacies, Notice of Proposed Rulemaking, (STB served May 12, 1998) at 2.⁷⁸ This MET designed service failure, which was not caused by CVAG or by UP or BNSF, MET's connecting line-haul carriers, is inflicting significant harm not just to CVAG, but to the California dairy industry and to shippers. MET's service has not merely deteriorated, but has outright ceased for most of CVAG's unit train livestock feed deliveries.

As referenced, dairy farmers in California are experiencing shortages right now at CVAG's Modesto Facility with respect to Gluten feed.⁷⁹ The California dairy farmers have confirmed, "[t]he impact of a shortage of delivery of feed products through CVAG cannot be overstated."⁸⁰ Even if it the issue were just prepay, the unprecedented charges sought by MET meet or exceed what MET receives for its transloading

⁷⁸ The ICCTA combined in Section 11123 three separate provisions of the Interstate Commerce Act that gave the ICC authority to take action to remedy service failures: the authority under 49 U.S.C. § 11123 (originally Section 1(15)) to take action, including the compulsory joint use of facilities, to remedy emergency situations; the authority under 49 U.S.C. § 11124 (originally Section 1(16)) to direct the handling, routing and movement of traffic to promote commerce when a rail carrier cannot transport traffic offered to it in a manner that properly serves the public; and the authority under 49 U.S.C. § 11125 (enacted as part of the 1978 recodification) to direct the movement of traffic when a carrier cannot transport traffic offered to it because transportation has been discontinued under court order or for other reasons. See Pub Law No. 104-88, 92 Stat. 1422. This change gave the Board broader and more flexible authority to remedy service failures than had existed under the old framework. See Ex Parte No. 628, *Expedited Relief for Service Inadequacies*, Notice of Proposed Rulemaking (STB served May 12, 1998) at 2 (describing breadth of statutory authority).

⁷⁹ See J.D. Heiskell email dated Apr. 25, 2018, Counsel's Exh. 7.

⁸⁰ WUD Letter, Counsel's Exh. 1, at 2.

services.⁸¹ CVAG simply cannot afford to accede to MET's payment demands because "MET's rate demands do not just adversely affect the economic competitiveness of the Modesto Facility, they make the Facility completely unfeasible." Additionally, MET is not just threatening MET with prepay, it has announced that it has ceased service for most, if not all of CVAG's unit train service.⁸²

CVAG provides livestock feed to nearly 500 dairies in the Central and North San Joaquin Valley of California, and there is no other facility in Northern California with the capability or capacity to provide immediate substitute service.⁸³ As the result of this cessation of service to CVAG's Modesto facility, the delivery costs of feed will likely double, resulting in many thousands of dollars of increases in operating expenses and other losses to each affected dairy, and will cause negative effects on dairy cattle production and health that cannot be immediately reversed.⁸⁴ Dairy farm margins are thin and have been negative for several years, in part because "farmers cannot pass along rising costs of production to milk buyers."⁸⁵ As further confirmed by the Western United Dairymen ("WUD"), the trade association representing a large number of California's dairy farms:

⁸¹ V.S. Konzen, ¶¶ 94-98

⁸² *Id.*, ¶¶ 90-92.

⁸³ *Id.*, ¶ 100.

⁸⁴ Borba Decl., Counsel's Exh. 7, ¶¶ 13-22; Kelly Decl., Counsel's Exh. 5, ¶¶ 14-21; Pires Decl., Counsel's Exh. 3, ¶¶ 14-20; Asmus Decl., Counsel's Exh. 2, ¶¶ 17-34; WUD Letter, Counsel's Exh. 1, at 2-3.

⁸⁵ WUD Letter, Counsel's Exh. 1, at 2.

CVAG's transloading facility in Modesto, California, on the Modesto & Empire Traction Company (MET) rail road/line is a critical feed receiving facility, particularly for dairy farmers in the Northern and Central San Joaquin Valley region of California. Its unavailability, even for a short period of time, would be devastating to regional dairy farmers who comprise our membership.

* * *

Many if not most of our members have forward-contracted to receive specific products through CVAG at its Modesto facility, and there are no local options and few other more distant options other than CVAG to meet their transload requirements. Longer-haul trucking from transloaders that are more distant is cost-prohibitive, especially with the large feed volume requirements of dairy farmers. If product is shipped to other locations or not shipped in at all, the farmers must bear that additional cost or forego use of the product completely. Local dairy farmers simply cannot afford to absorb the inevitable increased feed costs that will result. Higher market prices can be expected as well from any constriction in supply of the products typically shipped in through CVAG.⁸⁶

Economic analysis shows that longer-term suspensions or shutdowns of CVAG's Modesto Facility will produce grave business harm, and "will very likely cause substantial constriction of feed and commodities markets."⁸⁷ "Local dairy farmers simply cannot afford to absorb the inevitable increased feed costs that will result," and indeed, rising costs of production, coupled with longstanding unfavorable market conditions, has caused the state to lose 139 dairies in the past three years alone.⁸⁸

⁸⁶ *Id.* at 1-2.

⁸⁷ Asmus Decl., Counsel's Exh. 2, ¶ 35.

⁸⁸ WUD letter, Counsel's Exh. 1, at 3.

If CVAG's Modesto Facility is forced to abandon operations, individual dairies "would suffer great and irreparable harm."⁸⁹ Many CVAG sourced dairy farmers "have described CVAG ceasing to do business at its Modesto facility as 'catastrophic' for their business and the California dairy industry."⁹⁰

Animal feed suppliers such as Gavilon "need[] to know that when it ships product and is in full compliance with valid tariffs that its trains will not be unreasonably delayed or suspended from delivery" through actions of handling rail carriers such as MET.⁹¹ MET's recent actions to refuse interchange of a Gavilon animal feed train and demand \$42,050 in prepayments as a condition of interchange acceptance and delivery "have caused Gavilon significant business disruption and additional costs, and have subjected Gavilon to tens of thousands of dollars in potential BNSF demurrage and storage fees. Additionally, these actions stranded significant product and railcar resources."⁹²

The Board construed and applied §11123 in similar, albeit less egregious circumstances, in *Canexus*.⁹³ In that case, a chlorine shipper (Canexus) faced loss of rail service when BNSF proposed to cancel Canexus' existing common carrier rates and

⁸⁹ Kelley Decl., Counsel's Exh. 5, ¶ 22; Borba Decl., Counsel's Exh. 4, ¶ 23; Pires Decl., Counsel's Exh. 3, ¶ 21-22.

⁹⁰ WUD letter, Counsel's Exh. 1, at 3.

⁹¹ Gavilon letter, Counsel's Exh. 7, at 2.

⁹² *Id.*

⁹³ *Canexus Chems. Canada L.P. v. BNSF Ry. – Emergency Service Order*, NOR 42131 (STB served Oct. 14, 2011) ("Canexus").

service terms, block interchange, and stop the service that BNSF had been providing under these terms. The Board, on its own motion, quickly responded to BNSF's actions by issuing an emergency service order under § 11123 directing BNSF to continue to provide service to Canexus pursuant to BNSF's existing common carrier rates and service terms for a 30-day period, subject to potential extension for another 240 days. The Board made two principal § 11123 statutory findings in support of its rulings.

First, the Board held BNSF's actions (along with those of connecting carriers) constituted a "failure of movement" under 49 U.S.C. § 11123 because the Canexus needed service "urgently" and had no practical non-rail service options:

The lack of any readily available alternative service coupled with the carriers' refusal to provide through service cooperatively after October 15, 2011, constitutes a "failure of movement" under 49 U.S.C. § 11123. The record supports a finding that the cessation of service will have substantial adverse effect on a shipper and its customers. Canexus has stated that service from BNSF is "urgently needed." . . . It would be neither safe nor practical for Canexus to seek a non-rail alternative for the movement of this chlorine. Thus, the requirements for exercising our authority under 49 U.S.C. § 11123 have been met.⁹⁴

Second, the Board held that ordering BNSF to continue to provide service complied with the § 11123 requirement that directed service "promote[s] commerce and service to the public" because "safe and efficient shipment of chlorine is in the public interest."⁹⁵

⁹⁴ *Id.*, slip op. at 3.

⁹⁵ *Id.*, slip op. at 4.

MET's actions here constitute a no less serious "failure of movement." CVAG urgently needs this service to survive as a business at Modesto, and to provide essential services of benefit to the California dairy industry, and there are no feasible non-rail alternatives. Similarly, directing MET to provide service here also "promotes commerce and service to the public." This is the sort of serious, localized, service problem for which Congress enacted Section 11123. Ex Parte No. 628, *Expedited Relief for Service Inadequacies*, (STB served Dec. 18, 1998). MET's actions (and inactions) have created a failure-of-service emergency, just as BNSF's actions did in *Canexus*. The Board responded in *Canexus* by issuing a § 11123 order directing BNSF to provide service. The Board should enter a similar order directing MET to restore service absent its prepay demands⁹⁶ as soon as possible.⁹⁷

B. A PRELIMINARY INJUNCTION AND RELATED RELIEF SHOULD BE GRANTED

Under 49 U.S.C. § 721(b)(4), the Board has the authority to issue an injunction that enjoins MET from implementing its punitive "prepay" demands and from implementing and continuing its programs to refuse CVAG train interchange and cease

⁹⁶ *R.R. Salvage & Restoration, Inc.—Pet. for Investigation & for Emergency Relief Under 49 U.S.C. 721(b)(4)—Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R.*, NOR 42107 (STB served June 30, 2008) ("*Railroad Salvage*") (enjoining the Missouri & Northern Arkansas Railroad Company, Inc. from instituting provisions of its tariff relating to credit and payment of security deposits, until the Board was able to rule on whether these provisions represented an unreasonable practice).

⁹⁷ Because CVAG is not seeking directed service over the lines of another carrier, the reply and rebuttal filings called for by 49 C.F.R. § 1146.1(b)(2) & (3), are not necessary.

providing reasonable service to CVAG, to require MET to provide reasonable service to CVAG during the pendency of the Complaint proceeding, and to provide appropriate additional equitable relief. The Board exercises this authority where a party meets the four criteria under *Holiday Tours*⁹⁸ criteria and shows: (1) it is likely to prevail on the merits; (2) it will be irreparably harmed absent an injunction; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest.⁹⁹

Here, CVAG independently satisfies each element of the *Holiday Tours* criteria.¹⁰⁰ CVAG's case on the merits is compelling as common carriers cannot refuse to provide service, cannot refuse interchange traffic with other carriers, and cannot impose unprecedented, targeted, and punitive prepay demands that have no cost justification and that are clearly designed as a penalty and for improper purposes. CVAG, the California dairy industry, and suppliers who ship the product also stand to suffer irreparable injury if the regional dairy industry is unable to obtain feed commodities by rail because of MET's refusal to serve CVAG's Modesto Facility.

⁹⁸ *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (citing *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

⁹⁹ See, e.g., *Stagecoach Group PLC & Coach USA, Inc. et al. – Acquisition of Control, Twin America, LLC*, STB Docket No. MC-F-21035 (STB served Mar. 9, 2011) at 2 (“Stagecoach Group”); *Railroad Salvage*.

¹⁰⁰ *League of Women Voters of U.S. v. Newby*, No. 16-5196, 2016 WL 5349779, at *3 (D.C. Cir. Sept. 26, 2016) (“*League of Women Voters*”).

Issuance of the injunction will not cause the MET any cognizable hardship. To the contrary, MET will still receive substantial revenues – the revenues that it negotiated with UP and BNSF, its connecting carriers – for delivering the essential commodities. A stay will benefit the public interest by ensuring California dairy farmers have access to nearby, vital livestock feed. These matters are addressed below.

1. CVAG is Likely to Succeed on the Merits of Its Claims Against MET for Refusal to Interchange, Service Cessation, and Forced Prepay

The first element of the preliminary injunction test is to demonstrate a “substantial” likelihood of success on the merits.¹⁰¹ Here, there is a “substantial (perhaps overwhelming) likelihood”¹⁰² that CVAG will prevail on its refusal to interchange, service cessation, and forced prepay demand claims. MET’s refusal to interchange and refusal to serve actions are completely unjustified and in blatant violation of the law. MET’s forced prepay demands impose a targeted, substantial penalty that applies only to CVAG, that CVAG cannot afford to pay and survive as a business at Modesto. There is no possible cost justification for such excessive charges, and MET has articulated none. MET’s prepay demands are purposely designed to put CVAG out of business at Modesto and to further, if not effectively accomplish, MET’s state law eviction actions.

Furthermore, MET has denied all CVAG’s requests for reasonable security and rejected all of CVAG’s attempts to provide ample security for MET’s demands.

¹⁰¹ *League of Women Voters* at *5.

¹⁰² *Id.*

**a. There is a Substantial Likelihood of Success that
CVAG's Refusal to Interchange Traffic and Serve
CVAG Violates Fundamental Common Carrier
Obligation and Carrier Interchange Requirements**

MET is a common carrier railroad that provides essential delivery service on all feed commodity shipments made to CVAG's Modesto Facility. As such, MET has a duty under 49 U.S.C. § 11101(a) to provide rail service upon reasonable request. An important connected duty is that a carrier may not interrupt or "prevent the continuous carriage of freight from being continuous from the place of shipment to the place of destination." 49 U.S.C. § 10744. MET's fundamental common carrier and continuous carriage of freight obligations are not extinguished by its breach of the parties' Lease and refusal to accept CVAG's valid option to exercise, nor by MET's breach of the Transload Agreement.

Additionally, MET's obligation to transport animal feed commodities under governing pricing authorities in common carrier service is not subject to serious doubt. MET exclusively serves CVAG's Modesto Facility.¹⁰³ MET is a common carrier by railroad that serves as the handling line carrier for interstate, line-haul service connecting with both the UP and BNSF.¹⁰⁴ Per its arrangements with these carriers, MET performs transportation delivery services for UP and BNSF, including to CVAG.¹⁰⁵

¹⁰³ Konzen V.S. at ¶¶ 9, 13.

¹⁰⁴ *Id.* at ¶¶ 9, 16.

¹⁰⁵ *Id.*

49 U.S.C. § 11101(a) requires common carriers to provide service “on reasonable request.” This common carrier obligation is fundamental. *See, e.g., G.S. Roofing Products Co. v. STB*, 143 F.3d 387, 391 (8th Cir. 1997) (discussing the “higher standard of responsibility” to which the railroads are held and the special public interest considerations involved in the provision of rail services because of the carriers’ “quasi-public nature”).

MET’s core obligation is to “hold out” to serve the public, and all of MET’s valuable rights and franchises flow from that obligation. Moreover, the common carrier obligation is “comprehensive and exceptions are not be implied.” *American Trucking Ass’ns v. Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397, 407 (1967). Unless and until a carrier has lawfully abandoned its lines, which MET has not attempted to do to date, a carrier’s duty remains absolute. *Pejepscot Indus. Park, Inc. d/b/a Grimmel Indus. – Pet. for Declaratory Order*, STB Finance Docket No. 33989 (STB served May 15, 2003) 2003 WL 21108198 at *7 (“under the circumstances here (i.e., the Line had not been embargoed or abandoned), [the carrier has] an absolute duty to provide rates and service over the Line upon reasonable request, and that its failure to perform that duty was a violation of section 11101”). MET simply is not free to deny service to CVAG.

Additionally, a carrier may not interrupt or block interchange “with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this part.” 49 U.S.C. § 10744. MET has fully admitted that it is blocking interchange and the continuous carriage of freight for the purpose of “prevent[ing] the carriage of freight

from being continuous from the place of shipment to the place of destination” under § 10744.

MET has admitted that it is blocking interchange of animal feed unit train service as a means of coercing CVAG to pay its demands in full.¹⁰⁶ Remarkably, MET has also fully admitted that it knows CVAG cannot afford to pay its demands.¹⁰⁷ Last Friday, April 30, 2018 MET then ratcheted up matters even more, by casting aside its own tariffs, and simply informing CVAG that it will be immediately blocking interchange and refusing to deliver to CVAG the same commodities in the same size trains that it has been delivering to CVAG on the same trackage for almost a decade.¹⁰⁸ The blockage includes (a) all 100-car unit trains of canola shipments and (b) all 100-car unit trains of cotton seeds.¹⁰⁹

As referenced *supra*, while MET apparently has informed BNSF that it is blocking interchange because “MET IS REFUSING TRAIN DUE TO CONTRACTUAL AGREEMENTS WITH THE CUSTOMER. THE MET IS NOT GETTING PAID TO SWITCH THE UNIT TRAINS INTO THE CUSTOMERS FACILITY,” neither

¹⁰⁶ Konzen V.S., ¶¶ 94-98.

¹⁰⁷ MET and CVAG email correspondence regarding prepayment demand for train GALOMOD314 (“Email Correspondence re Prepayment Demand”), Counsel’s Exh. 8 (MET admission that CVAG cannot “afford” to pay MET’s demands and that CVAG should instead simply abandon its unit train business).

¹⁰⁸ Konzen V.S., ¶¶ 90-92.

¹⁰⁹ *Id.*

statement is true.¹¹⁰ Both statements also blatantly contradict MET's representation to CVAG that "we will continue to deliver and pick up traffic destined to and from CVAG's Transload Area as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently."¹¹¹ MET provides no legitimate explanation for its actions, and there can be no excuse for its blatant disregard of its train interchange and continuous carriage of freight obligations.

It also does not matter if MET has the misguided belief that its prepayment demands are reasonable and legitimate. For example, in *Railroad Salvage*, the Board granted an injunction prohibiting a short line handling carrier from applying to petitioners the security deposit provisions of its newly adopted demurrage tariff containing new fee structures and guidelines regarding credit and security deposits. The tariff stated that the carrier could provide credit at its sole discretion and allowed the carrier to require the customer to pay a security deposit of the higher of \$10,000 or the amount of "existing past due accessorial charges" before it could receive a rail car. The Board found that prong one of the *Holiday Tours* test was met (along with the rest of the prongs) and awarded injunctive relief because the security programs were not reasonable and did not avoid an undue financial burden on the shipper. It also found that requiring such a large

¹¹⁰ *Id.*, ¶¶ 83-86.

¹¹¹ *Id.*

payment from smaller, rail dependent customers in the form of a security deposit ignored the fact that the amount was in dispute before the Board. The same is true here with respect to MET's demands for full prepayment of amounts in dispute which it recognizes CVAG cannot afford to pay.¹¹²

Additionally, MET does not profess that its prepayment demands are cost-based. That is likely because they are not cost-based. The prepayments that MET is seeking amount to almost \$100 per minute, or over \$5,000 per hour, for switching time,¹¹³ on top of the substantial haulage fees MET is receiving from UP and BNSF for its deliveries to CVAG.

MET's charges are discriminatory, solely target CVAG, and are contrary to short line industry practices both nearby Modesto, and throughout the country.¹¹⁴ Other shippers in the Beard Industrial District are not subject to such delivery charges.¹¹⁵ Other short lines do not assess such charges, even in instances where unit trains need to be "cut" 6-7 times for delivery, and again the same amount for the return of empties, and for train reassembly.¹¹⁶

¹¹² See also *Ariz. Pub. Serv. Co. and PacifiCorp. v. Burlington N. & Sante Fe Ry.*, STB Docket No. 42077 (STB served May 12, 2003) (Board enjoins carrier from collecting tariff rate with sudden and significant rate increases).

¹¹³ *Konzen V.S.*, ¶¶ 79.

¹¹⁴ *Id.*, ¶¶ 61-67

¹¹⁵ *Id.*

¹¹⁶ *Id.*

MET's forced prepay requirements "will immediately put CVAG out-of-business at Modesto for unit train service."¹¹⁷ "The unprecedented charges sought by MET meet or exceed what CVAG receives from its customers for its unloading services at the Modesto Facility."¹¹⁸ The demands of MET "do not just adversely affect the economic competitiveness of the Modesto Facility, they make the Facility completely unfeasible."¹¹⁹ CVAG cannot operate its Modesto Facility at a loss and "[i]f forced to pay the MET demands during the pendency of the dispute, this will result in the suspension of unit train operations and rail service."¹²⁰ Moreover, MET itself has verified and confirmed that "it would be much wiser for CVAG to accept that it cannot afford" to pay MET's demands and that CVAG should instead simply give up and stop receipt of unit trains on its own accord in order to avoid MET's punitive charges.¹²¹ That is a remarkable admission that MET has deliberately taken its actions for that very purpose and as a transparent means of accomplishing its state law property eviction objectives.

¹¹⁷ *Id.*, ¶ 95.

¹¹⁸ *Id.*, ¶ 96, *see also* Gavilon letter, Counsel's Exh. 7, at 2 ("[t]he prepayment rates being sought by MET on this train meet or exceed the transload fees Gavilon pays to CVAG").

¹¹⁹ Konzen V.S., ¶ 97.

¹²⁰ *Id.*, ¶ 98.

¹²¹ Email Correspondence re Prepayment Demand, Counsel's Exh. 8 (email from Robert A. Wimbish to Peter Pfohl on Apr. 21, 2018 at 11:26PM).

Additionally, CVAG has attempted to prepay MET, not just \$10,000 in total as reasonable security as was involved in *Railroad Salvage*, but instead \$10,000 per train as an over-generous form of security for MET's accessorial charge claims as a means of "keeping the trains running."¹²² However, MET has outright refused such CVAG prepayments, instead refusing service unless CVAG prepaid the entirety of MET's demands for each train in full.¹²³ Under the circumstances, MET's demanded charges must be characterized as a penalty, and its practice of demanding prepayment in full, and refusing to engage in any reasonable security payment arrangements, may even raise antitrust concerns.¹²⁴

The injunction that CVAG seeks will require that MET act as a common carrier, reasonably interchange traffic without prepayment demands, and meet CVAG's reasonable service requirements. CVAG's prospects for success on the merits are thus extremely high.

2. CVAG Will be Irreparably Harmed Without an Injunction

To show irreparable harm, a party must demonstrate that (1) the harm will be "certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm," and (2) "the harm must be

¹²² *Id.*, ¶¶ 77-82.

¹²³ *Id.*

¹²⁴ See *Delaware & Hudson Ry. Co. v. Consolidated R. Corp.*, 902 F.2d 174 (2d Cir. 1990).

beyond remediation.”¹²⁵ Those requirements are easily met here. As stated, continuation of MET’s demands during the pendency of this proceeding will result in the decimation of CVAG livestock feed transload business at Modesto. A preliminary injunction will preserve the status quo, and CVAG’s survival at Modesto, until the Board is able to issue a decision on the full merits.

Again, in *Railroad Savage*, the Board enjoined a railroad from implementing tariff provisions relating to credit and payment of security deposits until the agency had time to evaluate and finally rule on whether those provisions represented an unreasonable practice. CVAG will be similarly immediately harmed as it cannot afford to pay MET’s demands¹²⁶ and it is not feasible for it to attempt to relocate.¹²⁷ MET’s demands will “put CVAG out-of-business at Modesto for service, harm our customers, and destroy competition.”¹²⁸ Much of CVAG’s \$7,000,000 in investments in its Modesto Facilities will likely be forfeited, and the jobs of its 25 employees will be lost.¹²⁹

¹²⁵ *League of Women Voters, supra*, at *4 (internal quotations and citations omitted).

¹²⁶ *Konzen V.S.*, ¶¶ 96-98; Email Correspondence re Prepayment Demand, Counsel’s Exh. 8.

¹²⁷ *Konzen V.S.*, ¶¶ 101-102.

¹²⁸ *Id.*, ¶ 95.

¹²⁹ *Id.*, ¶99.

CVAG's service to nearly 500 dairies in the Central and North Valley of California will cease.¹³⁰ There are no other transload facilities capable of handling the variety and volume of commodities that CVAG handles at its Modesto Facility.¹³¹ CVAG will lose good will with present and future customers in all of its businesses.¹³²

Waiting for a full decision on the merits is not a viable option. A review of recent unreasonable practice cases indicates that the merits decision could take up to three to four years.¹³³ CVAG's unit train business at Modesto will go out of business virtually immediately, long before the Board issues a decision. MET's penalty thus represents a "certain and great" "irreparable harm," and one that will otherwise "be beyond remediation."¹³⁴

¹³⁰ *Id.*, ¶ 100.

¹³¹ *Id.*

¹³² *Id.*, ¶ 103.

¹³³ *E.g.*, *N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42144 (complaint filed Mar. 31, 2015, and discovery has not been completed); *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557 (taking over 4 years from final complaint to decision on the merits); *State of Montana v. BNSF Ry. Co.*, NOR 42124 (over 2 years and 9 months from filing of complaint to merits decision); *N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42119 (over 4 years and 10 months from filing of complaint to merits decision).

¹³⁴ *League of Women Voters*, *supra*, at *4 (internal quotations and citations omitted).

3. Issuance of an Injunction Will Not Injure MET and Advances the Public Interest

A preliminary injunction maintaining the status quo will not “substantially harm” MET.¹³⁵ Suspension of MET’s harmful practices will instead benefit MET.

Without the penalty, MET will continue to receive the same revenues and profits on unit train traffic moving to CVAG’s Modesto Facility that it negotiated with its connecting carriers and that it has been receiving for the past nine years.¹³⁶ The more traffic MET delivers to CVAG, the more revenues it will receive through its per car haulage fees.

Since CVAG will continue to perform train related unloading services, MET will further benefit from the cost savings that CVAG provides it for train unloading that until February 15, 2018 had been solely provided by MET. CVAG will also remain MET’s most efficient receiver of railcars of any of the dozens of customers of MET in the Beard Industrial District.¹³⁷ MET is also not harmed competitively versus other short line railroads since, in contrast to MET, other short lines do not engage in such accessorial fee charge practices.¹³⁸ The injunctive relief will thus not cause MET any material harm at all.

The relief will promote the public interest by ensuring the viability of CVAG as an essential regional business at Modesto along with its 25 employees. It will

¹³⁵ *Stagecoach Group*, at 2

¹³⁶ *Konzen V.S.*, ¶¶ 15-19.

¹³⁷ *Id.*, ¶ 64.

¹³⁸ *Id.*, ¶¶ 65-67.

protect dairies from “great and irreparable harm” if CVAG’s Modesto Facility is forced to suspend or shut down operations.¹³⁹ It will also help protect animal feed suppliers and shippers that “rel[y] on CVAG’s services to help serve its customers,” through enjoining continuing harmful actions of a carrier that has already “stranded significant product and railcar resources,” caused “significant business disruption and additional costs,” and subjected shippers to “to tens of thousands” in fees involving just one train, and “creat[ed] considerable business harm and uncertainty.”¹⁴⁰

The balance of hardships between MET and CVAG favors injunctive relief. As in *Railroad Salvage*,¹⁴¹ MET’s “survival” does not require implementing the tariff revisions, whereas MET’s penalties and service cessation initiatives threaten CVAG’s basic survival and will result in CVAG’s evisceration as a business at Modesto and potential loss of much of its \$7,000,000 in facility investments.¹⁴² Its practices effectively represent a death-knell to CVAG’s unit train operations at Modesto. Elimination of CVAG as a competitor will contribute to substantially higher prices that will harm the local dairy industry.¹⁴³

¹³⁹ Kelley Decl., Counsel’s Exh. 5, ¶ 22; Borba Decl., Counsel’s Exh. 4, ¶ 23; Pires Decl., Counsel’s Exh. 3, ¶ 21-22.

¹⁴⁰ Gavilon letter, Counsel’s Exh. 7, 1-2.

¹⁴¹ *Railroad Salvage* at 4.

¹⁴² Konzen V.S., ¶ 99.

¹⁴³ Kelley Decl., Counsel’s Exh. 5, ¶ 22; Borba Decl., Counsel’s Exh. 4, ¶ 23; Pires Decl., Counsel’s Exh. 3, ¶ 21-22.

Accordingly, the third and four elements of the *Holiday Tours* criteria favor issuance of the requested relief.

C. ADDITIONAL BOARD OVERSIGHT AND INVESTIGATION ARE WARRANTED

Given the severity of the service situation, MET's refusal to reasonably interchange and deliver traffic, and its blatant disregard of its fundamental common carrier obligations, CVAG respectfully submits that additional Board oversight and investigation is warranted and necessary. In particular, the STB should assign appropriate Board staff to monitor and help ensure compliance with its orders and to conduct reasonable service delivery oversight during the pendency of the Complaint proceeding. Because this involves the essential need for reasonable rail service of the California dairy industry and the ability of suppliers and connecting carriers to meet dairy farmers' requirements, this oversight should include outreach, consultation, and input from dairy farmers and shippers.

Additionally, given the severity of the service situation, the Board should initiate a separate formal investigation of the regional service disruptions to help ensure that the essential service needs of the California dairy industry and shippers, as well as CVAG as a receiver, are met. Congress recently bestowed the Board with new investigatory authority, at 49 U.S.C. § 11701, which authorizes the Board to investigate, on its own initiative, issues that are "of national or regional significance." The Board evaluates such significance "on a case-by-case basis, considering, for instance, the extent of the impacts of the potential violation on national or regional rail traffic, customers, or

third parties, or the geographic scope of the alleged violation.”¹⁴⁴ “Examples of recent matters that the Board might consider to be of national or regional significance include (but are not limited to): fertilizer shipment delays; rail car supply issues that impact grain shipments; or extensive congestion at strategic interchange points such as Chicago, Ill.”¹⁴⁵ As Gavilon has stated and the California dairy farmers have confirmed, “[t]his is a matter of significant regional importance.”¹⁴⁶

III. CONCLUSION

For the reasons stated above, CVAG respectfully requests that the Board issue an emergency order and a preliminary injunction and related relief in the form requested above at soon as possible. CVAG respectfully submits that Board should issue a directed service order under 49 U.S.C. § 11123, and initiate an investigation under 49 U.S.C. § 11701, immediately. CVAG further suggests that the Board should provide

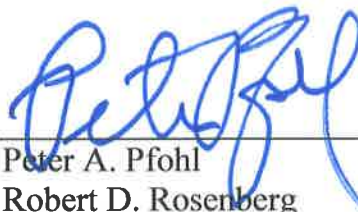
¹⁴⁴ *Rules Relating to Board-Initiated Investigations*, Docket No. EP 731 (STB served Dec. 14, 2016).

¹⁴⁵ *Id.* at 11

¹⁴⁶ Gavilon Letter, Counsel’s Exh. 7, at 2.

MET seven (7) days to reply to the Petition for Preliminary Injunction and issue a decision on the Petition as soon as possible thereafter.

Respectfully submitted,



Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

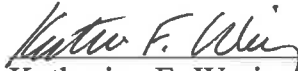
Dated: May 1, 2018

Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May, 2018, caused a copy of the foregoing to be served by overnight mail and email upon outside counsel for MET, as follows:

Robert A. Wimbish, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832


Katherine F. Waring
An Attorney for Complainant

Counsel's Exhibit 1



April 30, 2018

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. 42159, *Central Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co.*

The Western United Dairymen (WUD) support, and ask that the Board promptly approve, Central Ag Grinding Inc.'s (CVAG's) filing for a directed service order and preliminary injunction in the above-referenced proceeding in order to preserve CVAG's transload operations on its Modesto facility.

CVAG's transloading facility in Modesto, California, on the Modesto & Empire Traction Company (MET) rail road/line is a critical feed receiving facility, particularly for dairy farmers in the Northern and Central San Joaquin Valley region of California. Its unavailability, even for a short period of time, would be devastating to regional dairy farmers who comprise our membership.

WUD is an association of California dairy farmers that is headquartered in Modesto, California. WUD serves its dairy members by promoting sound legislative and administrative policies and programs for the profitability and general business welfare of the dairy industry. Part of our job at WUD is to be aware of issues facing dairy farmers in California and to effectuate policies and practices to address those issues. As a result, WUD employs a full time Director of Environmental Services & Regulatory Affairs, a Director of Economic Analysis, a Federal Affairs Lobbyist, and three Field Representatives who serve our members from southern California all the way up to the Oregon border.

WUD's members represent over 50% of all the milk produced in the State of California, and our members are primarily family farms. According to the most-current data published by the California Department of Food and Agriculture (CDFA), over 40% of

all California dairies are situated in the Northern and Central California regions, including the Counties of Madera, Merced, Stanislaus, San Joaquin, and Sacramento. This is considered the largest milk producing region in the nation. CVAG's Modesto facility is situated in the heart of this region and is critical to the state's dairy industry.

CVAG provides rail to truck transloading and short-term storage of feed ingredients and bulk commodities to our members primarily in the regional dairy industry. These feed ingredients and commodities have become an integral part of dairy cows' diet. Most of these products are grown or produced outside of California and transported into this state by rail. California farmers rely on open industry transloaders such as CVAG to receive and store these products until they can be picked up by farmers by truck. Regional farmers have only limited feed receiver options in the direct area where CVAG's Modesto facility is located.

CVAG's Modesto facility has been receiving unit trains and servicing our regional members for approximately nine years. Unfortunately, we understand that MET has recently been seeking to evict CVAG, or otherwise place on it significant new demands that are affecting incoming trains carrying product to our members. This is of considerable concern to WUD and its members, because it has impacted and will continue to impact whether or not our members receive the products they contracted for at the prices they contracted to ship them for. Many if not most of our members have forward-contracted to receive specific products through CVAG at its Modesto facility, and there are no local options and few other more distant options other than CVAG to meet their transload requirements. Longer-haul trucking from transloaders that are more distant is cost-prohibitive, especially with the large feed volume requirements of dairy farmers. If product is shipped to other locations or not shipped in at all, the farmers must bear that additional cost or forego use of the product completely. Local dairy farmers simply cannot afford to absorb the inevitable increased feed costs that will result. Higher market prices can be expected as well from any constriction in supply of the products typically shipped in through CVAG.

There are also non-monetary costs to our members from a shortage or cessation of the feed ingredients and commodities they receive through CVAG's Modesto facility. Dairy cow diets are specifically rationed to achieve production and animal wellness goals. Dairy farmers cannot simply remove or swap out those ingredients with other ingredients without impacting the overall health and production level of their animals. For example, canola has been shown to increase milk volume and percentage of milk fat as compared to diets with soybean meal or corn distillers dried grains. A large number of our regional members source their canola through CVAG. If they cannot get canola, they expect an immediate reduction in milk production for their cows.

The impact of a shortage of delivery of feed products through CVAG cannot be overstated. By far, the highest cost of dairy farm production is feed. According to

CDFA's latest data, feed costs represented 54% of the cost of producing milk in the fourth quarter of 2017. The California producer's margins are very thin, as they have no control over the price that processors pay them for their milk, and farmers cannot pass along rising costs of production to milk buyers. In fact, margins have been negative since the beginning of 2015 except for a brief six-month period where milk prices barely covered cost of production. Because operating margins are slim to negative, California dairy farmers simply cannot withstand rising feed costs, particularly with milk prices constantly below cost of production for the past three years. With rising costs of production, coupled with longstanding unfavorable market conditions, the state lost 139 dairies in the past three years.

Moreover, the dairy industry is a crucial part of California's economy. The regional dairy farms served by CVAG are the backbone of the dairy economy, supporting some 55,000 milk-production and processing jobs, and a total of approximately 190,000 jobs related to the dairy industry.

Therefore, many of our members have described CVAG ceasing to do business at its Modesto facility as "catastrophic" for their business and the California dairy industry.

For these and other reasons, WUD respectfully requests that the STB promptly issue a directed service order and appropriate injunctive relief as requested by CVAG to maintain the previous status quo and keep the trains running during the pendency of the complaint proceeding. This is of critical importance to California dairy farmers.

WUD appreciates your immediate attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Baudalvaughn".

Chief Executive Officer

Counsel's Exhibit 2

1 Angela Schrimp de la Vergne CSB #166521
2 Maria Fatima Gioletti, CSB #218335
3 DAMRELL, NELSON, SCHRIMP,
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11 Attorneys for Central Valley Ag Grinding, Inc.,
12 and Central Valley Ag Transport, Inc.

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF STANISLAUS**

15 CENTRAL VALLEY AG GRINDING,
16 INC., a California Corporation, and
17 CENTRAL VALLEY AG TRANSPORT,
18 INC., a California Corporation;

19 Plaintiffs,

20 vs.

21 MODESTO AND EMPIRE TRACTION
22 COMPANY, a California Corporation;
23 and DOES 1 through 10, inclusive,

24 Defendants.

Case No.: 2028642

**DECLARATION OF JED ASMUS IN
SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER TO SHOW
CAUSE FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

Date : January 30, 2018
Time : 8:20 a.m.
Dept. : 24

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE ROGER M. BEAUCHESNE

25 I, Jed Asmus, declare as follows:

26 1. I am a Ruminant Nutritionist (i.e., "dairy nutritionist"). I am the President and
27 Chief Executive Officer of January Innovation Inc., a company providing nutrition consulting
28 services to livestock owners, primarily dairy farmers, in the Central San Joaquin Valley. I have
worked in that capacity from 2006 to the present. Prior to that time, I was a staff dairy nutritionist
from 2007 to 2012 for Michel A. Etchebarne, PhD, Inc., an animal nutritionist company
specializing in dairy nutrition with its primary place of business in Stanislaus County, California.

1 2. I am familiar with the facts stated in this declaration except as to those matters
2 stated on information and belief, and as to those matters, I believe them to be true. If called as a
3 witness, I could and would competently testify thereto.

4 3. I earned my Bachelor of Science and Masters degree from the University of
5 California at Davis. The topic of my master thesis was Nutrient Management: A quantitative
6 assessment of by-product feeds, their impact on phosphorus variability in dairy rations and
7 evaluation of fecal phosphorus prediction equations.

8 4. In my career, I have also conducted byproduct research for multiple food producers
9 including without limitation, The Morning Star Company and ABInbev. Specifically, the research
10 for The Morning Star Company was the investigation of tomato seeds as a novel feed by-product
11 as feed for lactating dairy cattle.

12 5. More detailed information pertaining to my work history and educational
13 background, as well as a list of articles, essays, and other publications that I have authored, can be
14 found on my curriculum vitae, a true and correct copy of which is attached hereto as **Exhibit A**
15 and is incorporated herein by this reference.

16 6. I am familiar with the Plaintiffs in the above-entitled action, Central Valley Ag
17 Grinding, Inc. and Central Valley Ag Transport, Inc., ("CVAG" or "Plaintiff").

18 7. Because my industry involves dairy nutrition and developing dairy cow rations that
19 include prescribing many different feed ingredients and commodities, I am familiar with most if
20 not all feed companies and feed transload facilities that operate in Northern and Central California.

21 8. I have no financial, managerial, or other interest in any supplier, purveyor,
22 transloader, or transporter of feed, including CVAG. However, I do monitor the feed supply
23 situation in California and specifically the supply of proteins like canola and soy, and starches like
24 corn and barley, which are typically produced outside of California (primarily in Canada and the
25 Midwest United States), along with secondary products, including corn gluten meal and pellets,
26 corn distiller's grains, cottonseed, beet pulp, etc.

27 9. I am familiar with the fact that CVAG owns and/or operates a transload facility
28 located at 300/330 Codoni Avenue in Modesto, Stanislaus County, California, in which CVAG

1 provides rail to truck transloading and short-term storage of feed ingredients and bulk commodities
2 primarily to customers in the dairy, milling, and truck logistics industries.

3 10. I have reviewed the Complaint filed by CVAG on January 19, 2018 in the above-
4 entitled against Modesto and Empire Traction Company ("MET" or "Defendant") and am
5 generally familiar with its contents.

6 11. In the preparation for this declaration, I reviewed the most current data that is
7 published by the California Department of Food and Agriculture ("CDFA"). Specifically, I
8 reviewed CDFA's dairy cow census for 2016 which can be found on the CDFA's official website
9 at <https://www.cdfa.ca.gov/statistics/PDFs/2016Report.pdf>. Based on this data and information, I
10 can attest to the data and information provided in this Declaration.

11 12. In preparation for this declaration, I also reviewed a report published by the CDFA
12 called "California Dairy Statistics & Trends Mid-Year Year Review January-June 2017 Data,"
13 which includes a spreadsheet entitled, "A Breakdown of Feed Ingredients, January-March 2017
14 (Based on the CDFA Cost of Production Survey)", a true and correct copy of which is attached
15 hereto as **Exhibit B** and is incorporated herein by this reference. This report can also be found on
16 the CDFA's official website at: <https://www.cdfa.ca.gov/dairy/pdf/Annual/2017/MidYear2017.pdf>.
17 According to the information provided on the CDFA website, as well as my conversations with
18 representatives of the Dairy Marketing Branch of the CDFA, this document is the most recent data
19 that has been published by the CDFA, and its annual report is expected to be released in and
20 around April of 2018.

21 13. In addition, I also reviewed the following in preparation for this declaration:

- 22 a. Journal of Dairy Science. Numerous journal articles; and,
23 b. Canola Council of Canada, Research Hub.

24 14. The above-referenced materials and information are the types of data, materials,
25 and information regularly relied upon by me and others in the dairy nutrition industry in forming
26 the types of opinions set forth herein.

27 15. I presently have approximately thirty (30) dairy clients situated primarily in the
28 Counties of Stanislaus, San Joaquin, Merced, Visalia, and Kings.

1 16. As of January of 2018, the average milking herd size of my clients is 1,200 milking
2 cows, although their average milking herds range from approximately 500 to 4,150 dairy cows.

3 17. I perform the following tasks for my dairy clients: (a) diet design, which includes
4 the collection, sampling, and analysis of feed ingredients and average animal production on my
5 clients' dairies to enhance their herd productivity and animal health; (b) feed cost analysis, (c)
6 dairy management auditing, (d) production cost and profitability analyses, and (e) providing
7 strategies for long-term business planning.

8 18. I formulate a nutrition program or ration for each client on a dairy-by-dairy basis,
9 depending on the various ages, gestational levels, lactation levels, and levels of production of my
10 clients' different groups of cows. For example, I will regularly formulate 6-19 different rations
11 at one time for each of my clients' animals, based upon their different nutritional needs. This
12 includes, but is not limited to: Close Up, Springer, Fresh Cow, Fresh 1st lactation, High Cow,
13 High 1st lactation, Mid lactation, Late lactation, dry cow, calves, weaner, pre-breeding, breeding
14 and post breeding.

15 19. The common goal for all my dairy clients is to create a feed ration that maximizes
16 milk production (including volume and components such as milk fat and solids non-fat
17 components), reproductive capacity, and animal health. In general, as dairy farmers increase the
18 volume and component levels of their milk, the value of their milk increases on a per pound basis,
19 because most of my clients' processors pay for their milk on the basis of volume and components.
20 The largest contributing factor to milk production and component production, in my opinion, is
21 dietary ingredients and diet formulation.

22 20. Once I formulate animal nutrition programs or rations for my clients' different
23 groups of cows, my clients then independently source and purchase the forage, feed ingredients,
24 and commodities necessary to make the rations. If a particular forage, feed ingredient, or
25 commodity is unavailable or too expensive for the client, my clients will usually contact me and let
26 me know. I will then be required to reformulate the nutrition program to reflect a substitute
27 product.
28

1 21. Approximately 70% of my dairy clients raise Holstein cows, and approximately
2 15% raise Jersey cows, with the remainder raising crosses. The primary difference between these
3 two primary types of dairy cows from a nutritional standpoint is that Holstein cows tend to require
4 more pounds of intake, and more dietary forage, while Jersey cows tend to require more
5 concentrates and can perform on less forage as a percentage. However, both types of dairy cows
6 generally can perform on similar forage-to-feed ingredient and commodity ratios, namely, 40-50%
7 of their feed is made up of forages or forage type ingredients, and the remaining 50-60% comes
8 from feed ingredients and commodities which are not grown in California.

9 22. According to the data published by the CDFA that I reference above, California
10 dairy cows produced an overage of between 60.93 and 77.7 pounds of milk per day. I believe that
11 these production rates are due in large part to the fact that most dairies in California continue to
12 implement and improve their comprehensive animal nutrition program designed to maximize
13 productivity and animal health.

14 23. I can attest, based on my knowledge and experience in the dairy nutrition industry,
15 that the first three categories of feed referenced on that spreadsheet, DRY ROUGHAGE, SILAGE,
16 and OTHER FORAGES & WET FEEDS, and the last category, PASTURE, are produced locally.
17 By "locally," I mean within mostly Northern and Central California. Similarly, I can attest that the
18 fourth and fifth categories, CONCENTRATES & BYPRODUCTS and MINERALS &
19 ADDITIVES, are largely produced outside of California and shipped into California. These latter
20 categories comprise an average total of 60.8% for California Holstein Cows and 65.2% for
21 California Jersey cows according to the same spreadsheet.

22 24. Of the CONCENTRATES & BYPRODUCTS listed on the above-referenced
23 spreadsheet, I can attest that the following are shipped through CVAG's Modesto Facility:

- 24 a. Whole Cottonseed/Pima;
- 25 b. Soybean Meal;
- 26 c. Canola;
- 27 d. Beet Pulp Pellets;
- 28 e. Dried Distillers Grain;

1 f. Other Grains & byproducts; and

2 g. Minerals and additives.

3 These categories total approximately 24-28% of all ingredients supplied in California according to
4 the CDFA's mid-year review.

5 25. According to the most-current CDFA data, which I reviewed, approximately 41.9%
6 of all California dairies are situated in the Northern and Central California regions, including
7 without limitation the Counties of Madera, Merced, Stanislaus, San Joaquin, and Sacramento.
8 These counties are situated in and around CVAG's Modesto Facility. According to CDFA data
9 from its 2016 Cow Census, there were 584 active dairies collectively in the above-listed Counties.

10 26. According to data provided to me by CVAG, which I believe is true and accurate, at
11 present, CVAG services 500 of dairies in these counties.

12 27. As a result, I am confident in stating that approximately one-third of all feed fed to
13 dairies in Madera, Merced, Stanislaus, San Joaquin, and Sacramento comes through CVAG's
14 Modesto Facility.

15 28. According to the 2017 CDFA data that I reviewed, an average dairy farmer in
16 California spends approximately \$6.04 and \$5.51 per cow per day on feed, for Holsteins and
17 Jerseys respectively. If CVAG's Modesto Facility closes immediately, farmers will be forced to
18 obtain the same feed (assuming they can obtain the same quantity and type of feed) from other
19 locations throughout the state, the nearest of which would be south of Fresno.

20 29. There would be two primary and immediate areas of loss to regional dairies from
21 the immediate shut-down of CVAG's Modesto Facility: (a) freight cost increases from having to
22 go further to obtain the products; and (b) feed cost increases that will result from constriction on
23 supply of feeds.

24 30. There would be other immediate, short-term, and long-term costs to regional dairies
25 from such an event that are inevitable yet more difficult to quantify. Those include the following:

- 26 a. Once a dairy farmer has an established animal nutrition program, utilizing
27 specific feed ingredients and commodities, it can be problematic to interchange
28 other ingredients or components and achieve the same result. Rather, switching

1 ingredients can result in an immediate reduction in milk production or adverse
2 impacts on animal health that cannot simply be reversed by reverting back to
3 the originally-prescribed ingredients. Conservatively it can take 3-4 weeks
4 recover milk production or animal health from small infractions. In extreme
5 cases it may take up to six (6) to nine (9) months to reverse the effects of
6 adverse diet alteration on milk and production levels and general cow health.

7 b. There will also be impacts to general cow health, including without limitation to
8 hoof health, lameness, reproduction, cycling, uterine tone, rumination, acidosis,
9 ketosis, food poisoning, milk production, both volume and percentage of
10 components, etc.

11 c. Milk production levels will be affected, because certain feeds and commodities
12 provided through CVAG are known to promote milk production. Canola for
13 example, has been shown to increase milk volume and percentage of milk fat as
14 compared to diets with soybean meal or corn distillers dried grains.

15 31. I am informed and believe based on my over 15 years in the dairy industry, that
16 CVAG's operations at its Modesto Facility are integral to the dairy industry in California, and
17 particularly in the North and Central San Joaquin Valley, because dairy farmers simply cannot
18 obtain the volume and diversity of feed supplies that CVAG transloads from any other facility
19 north of Fresno.

20 32. I am informed and believe and on that basis allege that there is no facility north of
21 Fresno in the entire State of California that can accommodate, move, and warehouse the sheer
22 volume and variety of commodities that CVAG manages from its Modesto Facility.

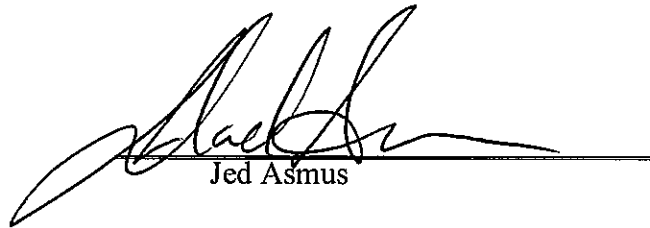
23 33. I am informed and believe and thereon allege that the nearest other feed and
24 commodities transload facility is located in Fresno, California. For dairies to obtain their feed and
25 commodities from these farther facilities will result in a doubling of freight costs to dairies in my
26 opinion on a per ton basis.

27 34. Accordingly, if CVAG were forced to vacate its Modesto Facility immediately
28 without a suitable substitute facility in place locally, the industry will have to find a way to spread

1 that capacity over multiple facilities throughout the state. This will require regional farmers
2 (which by my calculations own approximately 41.9% of all dairy cows in this state) to travel
3 farther to obtain the feed necessary to maintain their current production levels, if they are even still
4 available.

5 35. Moreover, a shut-down of CVAG's facility will very likely cause substantial
6 constriction of feed and commodities markets. I declare under penalty of perjury under the
7 laws of the State of California that the foregoing is true and correct.

8 Executed on this 21 day of January 2018 at Modesto, California.

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12 Jed Asmus
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States, over 18 years of age and not a party to the within
3 action. I am employed in Stanislaus County; my business address is 1601 I Street, Fifth Floor,
4 Modesto, California 95354.

5 On the date indicated below, I served on all parties in this action the attached **Declaration**
6 **of Jed Asmus** in the manner(s) described below and addressed as follows:

7 Carl Ciochon
8 Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

9 **BY U.S. MAIL:** The document was placed in a sealed envelope or package, with postage
10 thereon fully prepaid, for collection and mailing, following our ordinary business practices.
11 I am readily familiar with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva's practice for
12 collection and processing documents for mailing. It is deposited with the United States
Postal Service in Modesto, California on that same day in the ordinary course of business.

13 **BY HAND DELIVERY:** I caused the above-described document(s) to be hand delivered
to the addressee(s) designated.

14 **BY FEDEX:** I caused the above-described documents(s) to be delivered to a FedEx agent
for overnight delivery to the addressee(s) designated.

15 **BY FACSIMILE:** I caused the above-described document(s) to be transmitted via
16 facsimile to the addressee(s) designated.

17 **X BY ELECTRONIC TRANSMISSION:** I caused the above-described document(s) to be
transmitted via e-mail to the addressee(s) designated.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Dated this 9th day of January 2018 at Modesto, California.

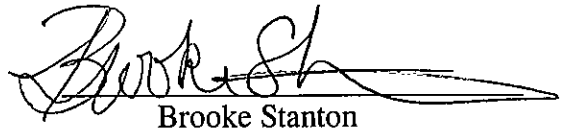
20 
21 Brooke Stanton

EXHIBIT A

Jed Asmus, M.S. PAS

2715 W. Kettleman Ln, Suite 203-310, Lodi CA 95242 • (530)-304-0389 •
jed.asmus@gmail.com

Profile

My personal mission is to assist my clients in their business, focusing on animal nutrition, health, management and financial return. Through continued education in the field of nutrition, coupled with the study of variables that impact nutrient partitioning, animal health, management and a personal interest in the local and global dairy industry, I continue to push myself and my clients to achieve ever higher objectives, with the goal of continuous improvement.

Education

University of California, Davis, CA

2001-2003

Masters in Science in Animal Science and Nutrition.

- Thesis Topic(s): Quantification of 10 By-product feed production from 10 countries, the World and California, analysis of By-product feeds economic value to the dairy industry with in the United States and California. Investigation of the feasibility of developing bio-fuels via fermentation from by-products, and estimation of market values that would facilitate alternative uses for by-products as feed to fuel. Development of biological models form Phosphorus recycling in lactating dairy cows and comparison of existing models to determine accuracy of prediction of nutrient excretion into the environment.

University of California, Davis, CA

Bachelors in Science in Animal Science.

1998-2001

University of California Extension, Los Angeles, CA

Classes in business accounting and management.

2010-Current

Work Experience

January Innovation Inc. Owner / Nutritionist 2006-Current

January Innovation Inc. is my core business in which I operate as a consulting animal nutritionist. I consult for approximately 35,000 lactating cows and 40,000 growing animals. As part of the management team for my clients business, I am responsible for the allocation of over 9 million dollars in monthly feed expense, which has a direct impact on the creation of 85% of their revenue in the short term and 100% in the long term.

My client base consists of family farms located in California, spread through out the San Joaquin and Sacramento Valley. The family farms consist of herds ranging in size from 450-4150 cows, and families that have been in business between less than 10 years and over 100+ years. The approach we (my clients and I) take in our approach is the pursue long term profits through incremental improvements, reduction in risk and the minimization of market forces on the profits generated through milk and animal production.

The Morning Star Company: By-products and Nutrition Research 2007-2011

As a colleague researcher I developed and purified the tomato manufacturing by-products to be used as animal feed. In doing so I designed, managed and evaluated scientific and field trials, determined the applied value of the by-products, resulting in an approximate increase in value of \$250,000 annually, and enabling my customers to eliminate costly diet ingredients while maintaining performance.

Publications and Presentations:

Tomato seeds as a novel by-product feed for lactating dairy cows

Cassinerio, C.A. et al.

Journal of Dairy Science , Volume 98 , Issue 7 , 4811 - 4828

Geographical Distribution and Environmental Impact of By-products.

Fadel, J.G., Asmus J.N.

Alternative Feeds for Livestock and Poultry, Proceedings of the 3rd National Symposium, Kansas City, MO.

Forage Quality and Dairy Production: What Quality Attributes do we look for and why

Asmus, J.N.

2015 Western Alfalfa & Forage Symposium

Reno, Nevada

Nutritionist Perspective on Almond Hulls as a Feed Ingredient

Asmus, J.N.

2015 Almond Hullers Education Seminar

Modesto, CA

Effective Nutrition Management Practices – Proper Forage Analysis & Mineral Supplementation

Asmus, J.N.

2017 Improving Lamb Marketing, Quality, and Profitability Options for California Chico, CA

Memberships and Titles:

- President of the California Chapter of the American Registry of Professional Animal Scientists. 2015-2016.
- Committee Member of the California Chapter of the American Registry of Professional Animal Scientists. 2011-2015
- Committee Member for the California Animal Nutrition Conference. 2013-2014
- Member of the American Dairy Science Association
- Member of the American Registry of Professional Animal Scientists.

EXHIBIT B

California Dairy



Statistics & Trends Mid-Year Review January-June 2017 Data

Milk Production

During the first six months of 2017, California produced 20.3 billion pounds of milk, which represents a 2.2 percent decrease in total milk production compared to the same period in 2016. Output in the state decreased each month during the first half of 2017, compared to the corresponding month in the previous year.

Overall U.S. milk production during the first half of 2017 was up 1.4 percent, compared to the first half of 2016.

Dairy Products

Comparing the first half of 2017 to the first half of 2016, total cheese production in California increased 0.4 percent, yogurt production increased 28.2 percent, butter production decreased 6.9 percent, and nonfat dry milk production (for human consumption) decreased 6.3 percent. In addition, from January through June of 2017, total sales of Class 1 fluid milk products (including half-and-half) in California decreased 3.3 percent, compared to the same period in 2016.

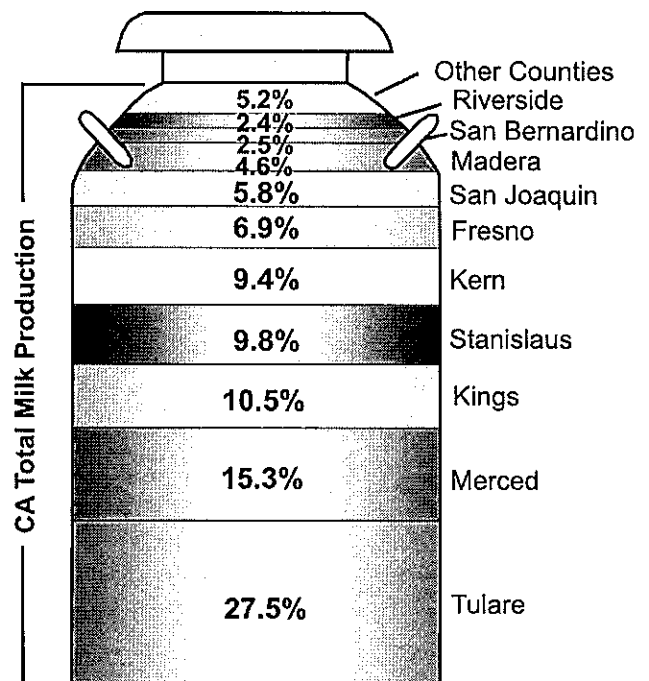
Milk Prices

From January through May of 2017, the average mailbox price paid to California producers was \$15.95/cwt., which represents a \$2.35/cwt. increase compared to the average mailbox price paid to producers during the first five months of 2016 (\$13.60/cwt.). Comparing May 2017 to May 2016, the California mailbox price increased by \$3.08/cwt., and the average mailbox price for all reporting Federal order areas was up \$1.78/cwt.

California's Top 10 Milk Producing Counties Percent Share of California's Total Milk Production January-June 2017

County (by rank)	Total Milk Production Jan-June 2017 (In Pounds)	% Change from 2016	% Total California Milk Production Jan-June 2017
#1 Tulare	5,576,035,366	-1.7%	27.5%
#2 Merced	3,094,228,999	-1.9%	15.3%
#3 Kings	2,131,855,329	-3.1%	10.5%
#4 Stanislaus	1,987,635,597	-2.5%	9.8%
#5 Kern	1,911,186,077	-3.4%	9.4%
#6 Fresno	1,397,636,684	-0.8%	6.9%
#7 San Joaquin	1,181,469,489	-3.0%	5.8%
#8 Madera	940,952,164	3.1%	4.6%
#9 San Bernardino	502,258,098	-8.9%	2.5%
#10 Riverside	484,442,470	-1.9%	2.4%

Percent Share of California's Total Milk Production January-June 2017



Milk Production during January-June 2017:

- The top ten counties in California accounted for 94.8 percent of the state's total milk production and 17.6 percent of the nation's total milk production.
- The milk production of Tulare, Merced, Kings, Stanislaus, and Kern counties accounted for 13.5 percent of the nation's total milk production.

California Commercial Production of Market and Manufacturing Milk January-June, 2016 vs 2017 (In Pounds)

Month	Market Milk			Manufacturing Milk			Total Milk Production		
	2016	2017	% Change	2016	2017	% Change	2016	2017	% Change
January	3,361,345,440	3,318,236,446	-1.3%	68,403,833	89,507,226	30.9%	3,429,749,273	3,407,743,672	-0.6%
February	3,232,942,324	3,037,785,944	-6.0%	66,062,915	84,685,014	28.2%	3,299,005,239	3,122,470,958	-5.4%
March	3,534,440,389	3,405,988,127	-3.6%	68,546,109	93,297,214	36.1%	3,602,986,498	3,499,265,341	-2.9%
April	3,412,072,627	3,349,283,415	-1.8%	65,868,217	90,722,189	37.7%	3,477,940,844	3,440,005,604	-1.1%
May	3,480,555,643	3,415,254,998	-1.9%	70,091,908	95,703,648	36.5%	3,550,647,551	3,510,958,646	-1.1%
June	3,290,989,522	3,198,567,444	-2.8%	65,665,920	88,937,438	35.4%	3,356,655,442	3,287,504,882	-2.1%
Jan - Jun Totals	20,312,345,945	19,725,096,374	-2.9%	404,638,902	542,852,729	34.2%	20,716,984,847	20,267,949,103	-2.2%

Size of California's Dairy Farms, May 2017

	Range of Milk Marketings	Percent of Total Grade A & B Farms	Percent of Total Grade A & B Milk Marketings
	≥ 5.0 Million Lbs.	14.9%	43.2%
	2.4 Million to 4,999,999 Lbs.	24.2%	32.1%
	1.5 Million to 2,399,999 Lbs.	17.0%	12.5%
	1 Million to 1,499,999 Lbs.	12.6%	6.1%
	750,000 to 999,999 Lbs.	8.0%	2.7%
	500,000 to 749,999 Lbs.	7.4%	1.7%
	250,000 to 499,999 Lbs.	9.1%	1.3%
	≤ 249,999 Lbs.	6.8%	0.4%

 = Farms producing at least one tanker load of milk per day, based on 1.5 million pounds/month.

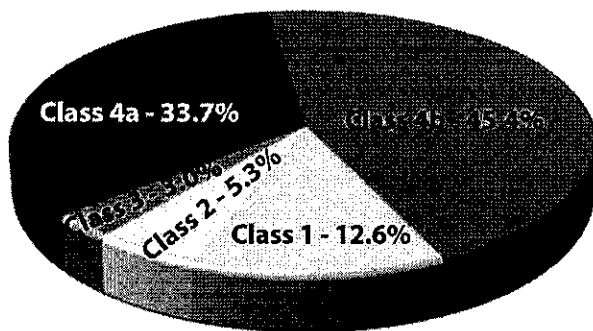
Sources: CDFA Dairy Marketing and Milk Pooling Branches

Comparison of California Dairy Farms by Size:

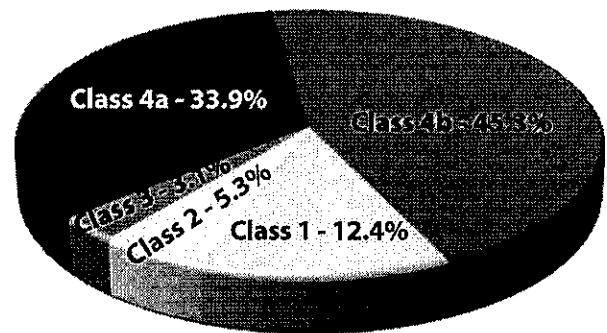
- ▶ In May 2017, 14.9 percent of all California dairies produced more than 5 million pounds of milk during the month. These dairy farms accounted for 43.2 percent of the state's total milk marketings during the month.
- ▶ Approximately 56 percent of all dairies in the state produced at least one tanker load of milk per day during the month. These dairies accounted for 87.8 percent of California's total milk marketings during May 2017.
- ▶ Less than 4 percent of California's total milk marketings during May 2017 was produced by 23.3 percent of the state's dairy farms. Each of these dairies had a monthly output of less than 750,000 pounds during the month.

Percent Utilization of Pooled Milk in California, by Class

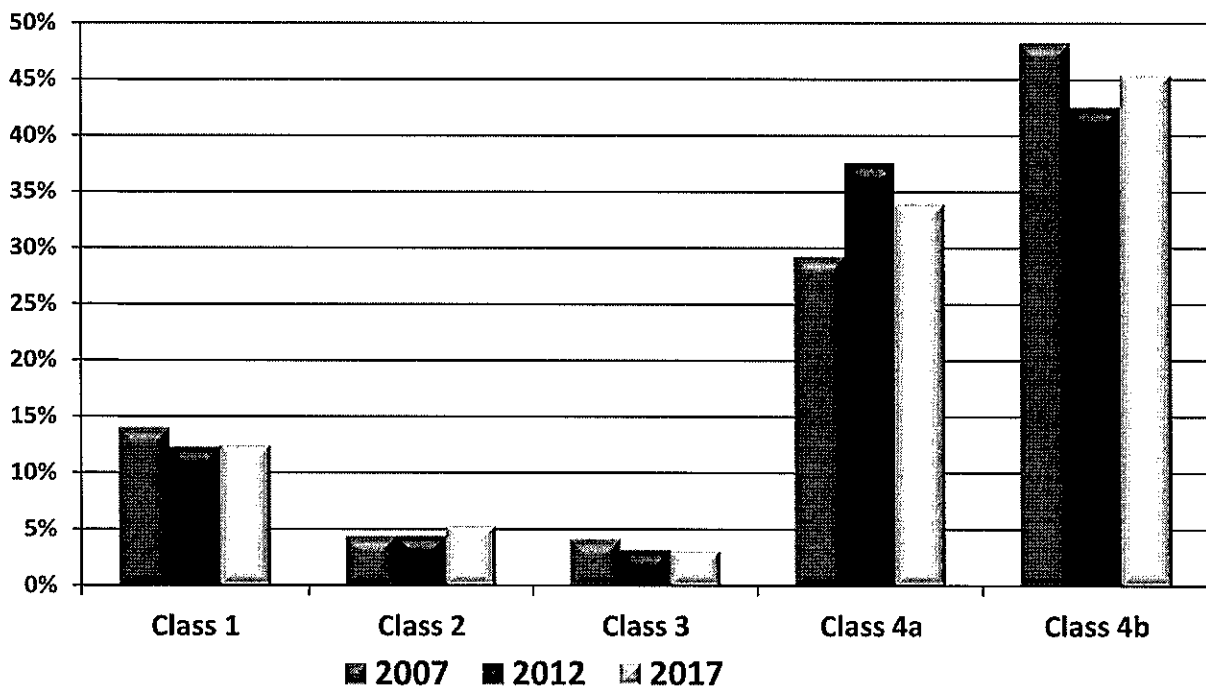
January - June 2016



January - June 2017



January-June 2007, 2012, 2017



Comparison of Class Utilization during January-June of 2007, 2012, 2017:

- ▶ Over the ten-year period, the percent of milk utilized for the production of Class 1 and Class 3 products has decreased overall, while the percent of milk utilized for the production of Class 2 products has increased overall.
- ▶ Over the ten-year period, the percent of milk utilized for the production of Class 4a products has fluctuated, but increased overall, while the percent of milk utilized for the production of Class 4b products has fluctuated, but decreased overall.
- ▶ During January through June of 2017, approximately 79.2 percent of the milk pooled in California was utilized to manufacture Class 4a and 4b products.

A Breakdown of Feed Ingredients, January-March 2017

(Based on the CDFA Cost of Production Survey)

This summary provides a breakdown for feed ingredients fed to milk cows (excludes dry cow feed) for the first quarter of 2017. The table displays the dollars-per-ton fed for each commodity fed, feed intake per-cow-per-day, estimated dry matter intake per-cow-per-day, and the percent of total feed cost. This table does not include organic herds.

California Holstein and Jersey Dairies - Feed Summary

1st Quarter 2017-Weighted Averages, Based on CDFA Cost Study Dairy Surveys

FEED	HOLSTEIN MILK COWS			
	\$ Per Ton ¹	As Fed #'s Per Cow Per Day ¹	Dry Matter #'s Per Cow Per Day ²	% of Total Feed Cost ¹
DRY ROUGHAGE				
Alfalfa Hay	\$211.39	8.55	7.68	15.0%
Other Hay	\$96.44	0.64	0.57	0.5%
Almond Hulls & Shells	\$72.78	4.85	4.36	2.8%
Total Dry Roughage	\$158.24	14.04	12.61	18.4%
SILAGE				
Corn Silage	\$56.75	27.87	9.38	13.1%
Other Silage	\$49.20	8.55	2.81	3.5%
Green Chop	\$58.02	0.26	0.05	0.1%
Total Silage	\$55.00	36.68	12.24	16.7%
OTHER FORAGES & WET FEEDS				
Earlage	\$0.00	0.00	0.00	0.0%
Wet Distiller Grain	\$61.43	2.93	0.94	1.5%
Wet Corn Gluten	\$69.87	1.59	0.51	0.9%
Whey	\$28.58	3.58	0.56	0.8%
Other Wet Feeds	\$26.50	3.40	0.67	0.7%
Total Other Forages & Wet Feeds	\$42.05	11.51	2.68	4.0%
CONCENTRATES & BYPRODUCTS				
Inside Barn Mix	\$234.54	0.74	0.64	1.4%
Rolled Corn	\$178.94	10.20	8.98	15.1%
Rolled Barley	\$180.41	0.10	0.09	0.2%
Whole Cottonseed/Pima	\$332.30	2.96	2.71	8.1%
Soybean Meal	\$371.19	0.14	0.13	0.4%
Canola	\$263.59	4.43	4.06	9.7%
Beet Pulp	\$177.76	0.20	0.18	0.3%
Wheat Millrun	\$146.26	0.72	0.65	0.9%
Dried Distillers Grain	\$181.21	2.23	2.04	3.3%
Other Grains & byproducts	\$266.37	2.80	2.53	6.2%
Mill/Custom Mix	\$242.82	4.80	4.15	9.7%
Total Concentrates & Byproducts	\$227.70	29.33	26.16	55.3%
MINERALS & ADDITIVES				
All Minerals	\$409.93	1.62	1.36	5.5%
PASTURE				
Pasture	\$37.29	0.16	0.03	0.0%

TOTALS	\$129.34	93.34	55.09	100.0%
---------------	-----------------	--------------	--------------	---------------

Cost Per Cow-Per Day \$6.04
 Cost Per Cwt. of Milk \$7.77
 Avg. Milk Cows 1,370
 Milk Production Per Cow-Per Day 77.70

FEED	JERSEY MILK COWS			
	\$ Per Ton ¹	As Fed #'s Per Cow Per Day ¹	Dry Matter #'s Per Cow Per Day ²	% of Total Feed Cost ¹
DRY ROUGHAGE				
Alfalfa Hay	\$242.58	5.34	4.77	11.8%
Other Hay	\$94.08	1.52	1.31	1.2%
Almond Hulls & Shells	\$65.29	3.02	2.70	1.7%
Total Dry Roughage	\$165.46	9.88	8.78	14.8%
SILAGE				
Corn Silage	\$56.46	25.55	8.48	13.1%
Other Silage	\$49.05	9.48	3.20	4.2%
Green Chop	\$0.00	0.00	0.00	0.0%
Total Silage	\$54.45	35.03	11.69	17.3%
OTHER FORAGES & WET FEEDS				
Earlage	\$0.00	0.00	0.00	0.0%
Wet Distiller Grain	\$63.92	1.74	0.54	1.0%
Wet Corn Gluten	\$68.59	2.16	0.86	1.3%
Whey	\$24.32	0.66	0.12	0.1%
Other Wet Feeds	\$29.08	0.59	0.12	0.2%
Total Other Forages & Wet Feeds	\$56.79	5.15	1.64	2.7%
CONCENTRATES & BYPRODUCTS				
Inside Barn Mix	\$530.00	0.10	0.09	0.5%
Rolled Corn	\$175.72	10.37	9.17	16.5%
Rolled Barley	\$0.00	0.00	0.00	0.0%
Whole Cottonseed/Pima	\$318.91	3.20	2.95	9.3%
Soybean Meal	\$363.00	0.43	0.38	1.4%
Canola	\$258.66	3.41	3.12	8.0%
Beet Pulp	\$176.00	0.13	0.12	0.2%
Wheat Millrun	\$152.69	0.42	0.37	0.6%
Dried Distillers Grain	\$178.70	1.78	1.63	2.9%
Other Grains & byproducts	\$275.02	4.08	3.74	10.2%
Mill/Custom Mix	\$286.46	3.24	2.82	8.4%
Total Concentrates & Byproducts	\$235.28	27.17	24.39	58.0%
MINERALS & ADDITIVES				
All Minerals	\$367.10	2.15	1.77	7.2%
PASTURE				
Pasture	\$0.00	0.00	0.00	0.0%

TOTALS	\$138.79	79.39	48.28	100.0%
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Cost Per Cow-Per Day \$5.51
 Cost Per Cwt. of Milk \$9.04
 Avg. Milk Cows 1,977
 Milk Production Per Cow-Per Day 60.93

¹ All figures based on weighted averages

² Dry Matter is estimated

This table represents California Holstein and Jersey herds that participate in the Cost of Production Survey.

California Dairy Product Production, January-June 2017

Month	Total Class 1 Sales (In Gallons)		
	2016	2017	% Change
Jan	55,122,199	54,738,285	-0.7%
Feb	52,317,950	48,954,570	-6.4%
Mar	55,298,752	54,313,959	-1.8%
Apr	53,974,671	50,038,205	-7.3%
May	54,365,896	53,720,920	-1.2%
Jun	50,135,299	48,791,334	-2.7%
Jul	49,569,015		
Aug	54,546,298		
Sep	54,143,934		
Oct	54,642,221		
Nov	53,475,014		
Dec	54,302,815		
Jan-June	321,214,767	310,557,273	-3.3%

Month	Butter (In Pounds)		
	2016	2017	% Change
Jan	52,775,726	51,552,040	-2.3%
Feb	50,993,111	48,611,404	-4.7%
Mar	55,449,529	50,685,931	-8.6%
Apr	51,573,985	48,026,718	-6.9%
May	49,548,856	45,828,042	-7.5%
Jun	46,035,491	40,596,071	-11.8%
Jul	43,445,385		
Aug	38,223,444		
Sep	39,971,458		
Oct	42,246,467		
Nov	42,373,652		
Dec	50,429,011		
Jan-June	306,376,698	285,300,206	-6.9%

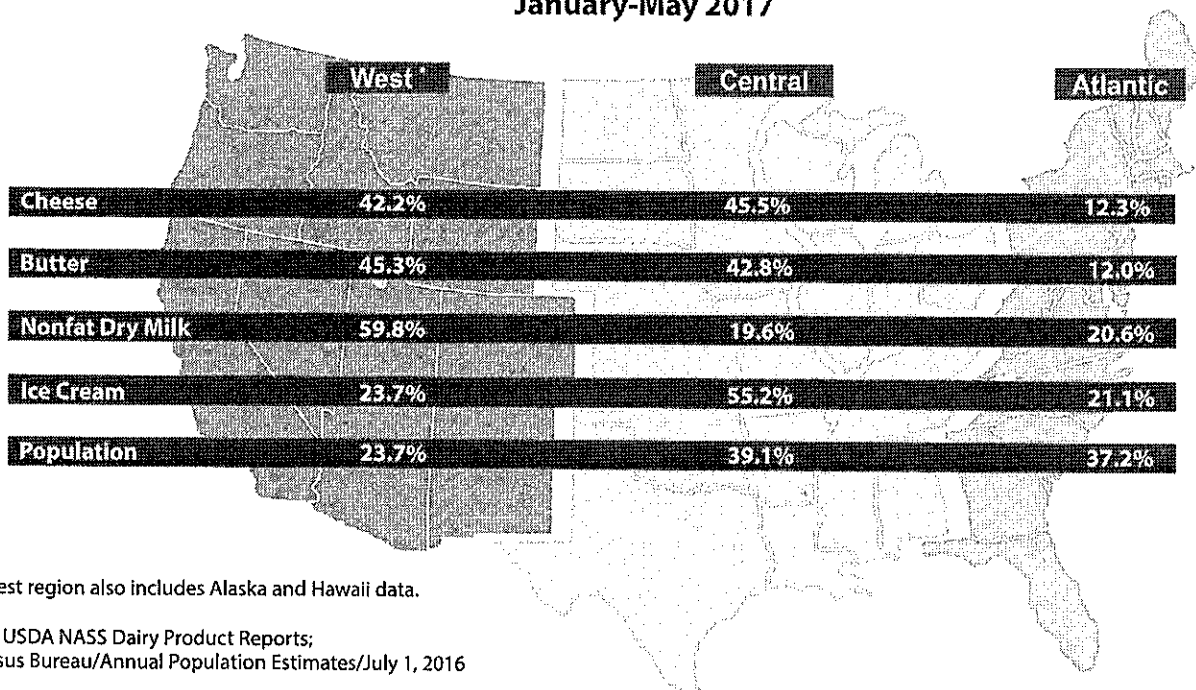
Month	Yogurt (In Pounds)		
	2016	2017	% Change
Jan	27,837,137	38,673,018	38.9%
Feb	29,071,669	35,330,926	21.5%
Mar	31,617,039	38,793,187	22.7%
Apr	30,402,962	38,043,880	25.1%
May	29,573,692	38,690,748	30.8%
Jun	30,435,189	39,878,614	31.0%
Jul	24,442,632		
Aug	44,334,443		
Sep	41,114,432		
Oct	37,400,353		
Nov	33,964,571		
Dec	34,705,257		
Jan-June	178,937,688	229,410,373	28.2%

Month	Nonfat Dry Milk, Human (In Pounds)		
	2016	2017	% Change
Jan	46,948,139	53,489,864	13.9%
Feb	52,555,834	49,295,295	-6.2%
Mar	65,948,141	49,039,779	-25.6%
Apr	60,262,040	56,497,286	-6.2%
May	50,565,610	41,682,800	-17.6%
Jun	38,003,851	44,548,855	17.2%
Jul	44,664,285		
Aug	30,551,942		
Sep	41,800,951		
Oct	43,891,431		
Nov	38,589,723		
Dec	53,414,945		
Jan-June	314,283,615	294,553,879	-6.3%

Month	Total Frozen Products (In Gallons)		
	2016	2017	% Change
Jan	11,223,012	12,557,129	11.9%
Feb	12,744,722	12,134,299	-4.8%
Mar	16,733,149	14,858,282	-11.2%
Apr	16,733,860	13,980,815	-16.5%
May	16,561,616	14,951,124	-9.7%
Jun	17,127,118	15,436,433	-9.9%
Jul	14,112,558		
Aug	14,572,406		
Sep	12,505,137		
Oct	11,166,195		
Nov	9,306,681		
Dec	8,244,189		
Jan-June	91,123,477	83,918,082	-7.9%

Month	Total Cheese (In Pounds)		
	2016	2017	% Change
Jan	215,135,491	210,996,332	-1.9%
Feb	199,172,216	192,090,502	-3.6%
Mar	214,937,696	216,556,669	0.8%
Apr	201,538,143	210,462,427	4.4%
May	213,651,074	219,620,977	2.8%
Jun	207,588,408	207,196,604	-0.2%
Jul	213,633,069		
Aug	205,598,362		
Sep	203,205,347		
Oct	213,451,227		
Nov	209,834,300		
Dec	217,257,730		
Jan-June	1,252,023,028	1,256,923,511	0.4%

Percent Share of Selected U.S. Dairy Product Production and U.S. Population, by Region January-May 2017

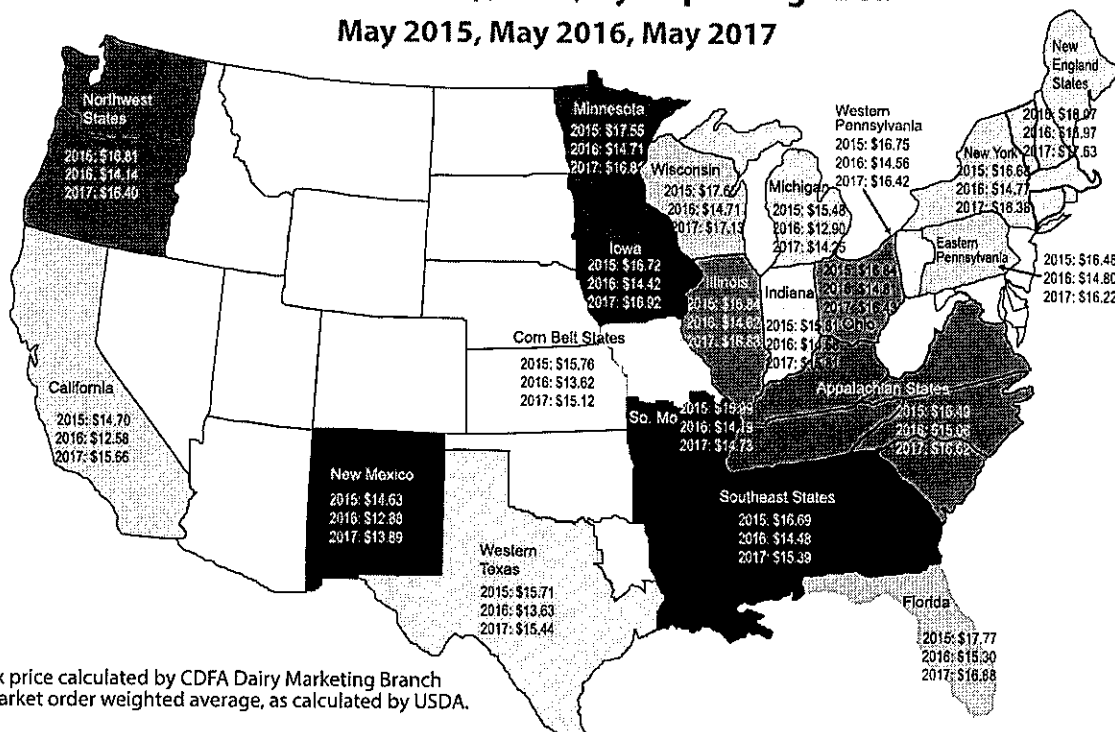


* The West region also includes Alaska and Hawaii data.

Sources: USDA NASS Dairy Product Reports;
U.S. Census Bureau/Annual Population Estimates/July 1, 2016

- ▶ The West region, which accounts for 23.7 percent of the U.S. population, produced the largest percent share of U.S. nonfat dry milk (59.8 percent) and butter (45.3 percent).
- ▶ The Central region, which represents 39.1 percent of the U.S. population, produced the largest percent share of U.S. cheese (45.5 percent) and ice cream (55.2 percent).
- ▶ The Atlantic region, which accounts for 37.2 percent of the U.S. population, produced the smallest percent share of U.S. cheese (12.3 percent), butter (12.0 percent), and ice cream (21.1 percent).

Mailbox Prices (\$/cwt) by Reporting Area May 2015, May 2016, May 2017



California mailbox price calculated by CDFA Dairy Marketing Branch
All federal milk market order weighted average, as calculated by USDA.

Counsel's Exhibit 3

Angela Schrimp de la Vergne CSB #166521
Maria Fatima Gioletti, CSB #218335
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PALLIOS, PACHER & SILVA
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Facsimile: (916) 504-3701
aschrimp@damrell.com
fgioletti@damrell.com

Attorneys for Central Valley Ag Grinding, Inc.,
and Central Valley Ag Transport, Inc.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS

CENTRAL VALLEY AG GRINDING,
INC., A CALIFORNIA CORPORATION,
dba CENTRAL VALLEY AG
TRANSLOAD;

Plaintiff,

vs.

MODESTO AND EMPIRE TRACTION
COMPANY, A California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2028642

**DECLARATION OF ELDRED PIRES IN
SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER TO SHOW
CAUSE FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

Date : January 30, 2018
Time : 8:20 a.m.
Dept. : 24

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE ROGER M. BEAUCHESNE

I, Eldred Pires, declare as follows:

1. I am a dairy farmer. I am an owner and operator of Pires Dairy Farms, a dairy farming operation located primarily in Gustine, Merced County, California. I have been involved in the dairy business 81 years, as I was raised on a dairy farm. I have been running my family's dairy farm for approximately twenty-five (25) years. On my family's dairy farm, I raise Holstein cows. Our herd consists of approximately 3,600 milking cows and 3,600 support stock. As part of my family's dairy operation, I raise and feed cows at all stages of development, from calves to mature lactating cows.

1 2. I am familiar with the facts stated in this declaration except as to those matters
2 stated on information and belief, and as to those matters, I believe them to be true. If called as a
3 witness, I could and would competently testify thereto.

4 3. I make this declaration in support of the *Ex Parte* Application For Order To Show
5 Cause For Preliminary Injunction And Temporary Restraining Order that is being filed in the
6 above-entitled action by Plaintiffs, Central Valley Ag Grinding, Inc., and and Central Valley Ag
7 Transport, Inc. (collectively hereinafter "CVAG"), against Modesto & Empire Traction Company
8 (hereinafter "MET").

9 4. I am contracted to ship my milk to Saputo, Incorporated, a California processor of
10 milk products, but I have little to no control over the price that I am paid for the milk my cows
11 produce. My processor sets the price pursuant state regulations and pays for the milk that I
12 produce on a volume and components basis. In other words, I am paid more the greater the
13 volume I produce and the greater the percentage of milk fat and milk non-fat solids components in
14 my milk. The milk is tested by the processor when it is delivered to the plant to determine the
15 exact level and amount of these components, and I am provided a print-out or electronic copy of
16 this information. I use this information to work with my dairy nutritionist to formulate a nutrition
17 program (or feed ration) for my cows that will maximize the volume and components in my cows'
18 milk, improve their overall health and production rate levels, and minimize costs to the extent that
19 I can.

20 5. The way that I am able maximize the volume and/or level of components in my
21 cows' milk is primarily by supplementing cow diets with purchased grains, minerals, and
22 commodities, in addition to the forages they are normally fed. The forages I normally feed include
23 primarily locally grown alfalfa and oat hay, corn silage, oat silage, and mixed grain forage crops
24 and grasses.

25 6. The most significant cost component of my dairy farm is animal feed. On average,
26 I spend approximately 50% of my total monthly operating expenses on purchased feed ingredients,
27 minerals, and commodities (as opposed to forage-based feed).

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1 7. I typically contract my feed purchases through a feed broker or directly with local
2 and/or national feed companies that supply the feed products. However, in these contacts, I am
3 generally responsible for having the products transported to my dairy from feed mills or from
4 railyards directly.

5 8. I have personal knowledge of the fact that CVAG operates a feed transload facility
6 on a railyard in Modesto, California, which is the subject of this lawsuit ("Modesto Facility").

7 9. I am familiar with CVAG's Modesto Facility as one of the primary facilities where
8 I obtain the feed ingredients, minerals, and commodities that I purchase. I have obtained products
9 from CVAG's Modesto Facility since 2004.

10 10. I am not aware of any other facility in California, north of Fresno, that handles all
11 of the feed that CVAG does.

12 11. Within the last twelve months, I have obtained the following products through
13 CVAG's Modesto Facility:

- 14 a. Canola;
15 b. Amino Plus (bypass protein);
16 c. Minerals and additives.

17 12. I would estimate that approximately 35% of all of the feed that I purchase for my
18 dairy comes from CVAG. At present, I pick-up or receive approximately 850 tons of products per
19 month from CVAG's facility.
20

21 13. CVAG is centrally-located within 35 miles of my farm, which helps keep my
22 freight costs down in an industry where profit margins are very slim.

23 14. The nearest other place that I could obtain canola would be in Guernsey, Selma,
24 and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this product
25 from CVAG, I would have to travel an average of 100 miles further, increasing my freight and fuel
26 costs by \$8, from \$7.50 per ton to approximately \$15.50 per ton. This would result in an
27 immediate increase in my operating expenses by \$4,800 per month for this one product alone.
28

1 15. The nearest other place that I could obtain nova meal would also be in Guernsey,
2 Selma, and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this
3 product from CVAG, I would have to travel an average of 100 miles further, increasing my freight
4 and fuel costs by \$8, from \$7.50 per ton to approximately \$15.50 per ton. This would result in an
5 immediate increase in my operating expenses by \$1,200 per month for this one product alone.

6 16. The nearest other place that I could obtain amino plus would be in Trevor,
7 California. Therefore, if I could not obtain this product from CVAG, I would have to travel
8 approximately 100 miles further, increasing my freight and fuel costs by \$8, from \$7.50 per ton to
9 approximately \$15.50 per ton. This would result in an immediate increase in my operating
10 expenses by \$800 per month for this one product alone.

11 17. The sum total increase in just my freight costs, for the afore-mentioned 2
12 commodities, would be \$6,800 per month, if I were not able to obtain these products from CVAG.

13 18. In addition, I would anticipate an almost inevitable constriction of the feed
14 ingredient and commodities market from elimination of CVAG's Modesto Facility as the market
15 responds to increased demand. If this happens, I expect the price for any or all of the above-listed
16 feed products that I get from CVAG to increase by as much as 18%.

17 19. I also anticipate experiencing other losses from the inability to get my feed at
18 CVAG that could be very substantial yet difficult to quantify.

19 20. For example, switching feeds or having the wrong balance of feed ingredients can
20 result in reduced production and component levels as well as cow health issues. As a specific
21 example, if I am unable to get sufficient amounts of canola and amino plus for my cow's diet, I
22 can expect a reduction in milk and components. Even after feed rations are resumed or stabilized,
23 it may still take up to 12 months to reverse the negative effects of a changed diet on dairy cows.

24 21. Therefore, I feel that my operation and operations like mine would suffer great and
25 irreparable harm if CVAG is dispossessed of its right to operate the Modesto Facility pending a
26 resolution of the underlying litigation.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct.

22. Therefore, I feel that my operation and operations like mine would suffer great and irreparable harm if CVAG is dispossessed of its right to operate the Modesto Facility pending a resolution of the underlying litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of January 2018 at Gustine, California.

Eldred Pires
Eldred Pires

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PROOF OF SERVICE

I am a citizen of the United States, over 18 years of age and not a party to the within action. I am employed in Stanislaus County; my business address is 1601 I Street, Fifth Floor, Modesto, California 95354.

On the date indicated below, I served on all parties in this action the attached **Declaration Of Eldred Pires In Support Of Plaintiffs' Ex Parte Application For Order To Show Cause For Preliminary Injunction And Temporary Restraining Order** in the manner(s) described below and addressed as follows:

 X **BY U.S. MAIL:** The document was placed in a sealed envelope or package, with postage thereon fully prepaid, for collection and mailing, following our ordinary business practices. I am readily familiar with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva's practice for collection and processing documents for mailing. It is deposited with the United States Postal Service in Modesto, California on that same day in the ordinary course of business.

 BY HAND DELIVERY: I caused the above-described document(s) to be hand delivered to the addressee(s) designated.

 BY FEDEX: I caused the above-described documents(s) to be delivered to a FedEx agent for overnight delivery to the addressee(s) designated.

 BY FACSIMILE: I caused the above-described document(s) to be transmitted via facsimile to the addressee(s) designated.

 BY ELECTRONIC TRANSMISSION: I caused the above-described document(s) to be transmitted via e-mail to the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this __ day of January 2018 at Modesto, California.

Brooke Stanton

Counsel's Exhibit 4

Angela Schrimp de la Vergne CSB #166521
Maria Fatima Gioletti, CSB #218335
DAMRELL, NELSON, SCHRIMP,
PALLIOS, PACHER & SILVA
1414 K Street, Suite 200
Sacramento, CA 95814
Telephone: (916) 504-3700
Facsimile: (916) 504-3701
aschrimp@damrell.com
fgioletti@damrell.com

Attorneys for Central Valley Ag Grinding, Inc.,
and Central Valley Ag Transport, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF STANISLAUS

CENTRAL VALLEY AG GRINDING,
INC., A CALIFORNIA CORPORATION,
dba CENTRAL VALLEY AG
TRANSLOAD;

Plaintiff,

vs.

MODESTO AND EMPIRE TRACTION
COMPANY, A California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2028642

Facsimile Signature
[C.R.C., Rule 2.305(d)]

**DECLARATION OF MICHAEL BORBA IN
SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER TO SHOW
CAUSE FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

Date : January 30, 2018
Time : 8:20 a.m.
Dept. : 24

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE ROGER M. BEAUCHESNE

I, Michael Borba, declare as follows:

1. I am a dairy farmer. I am an owner, operator, and managing partner of Borba Dairy Farms, LP ("BDF") and B6 Dairy, LP ("B6"), dairy farming operations located primarily in Hilmar, Merced County, California. I have been involved in the dairy business my entire life, as I was raised on a dairy farm. I have been running my family's dairy farm for approximately seventeen (17) years. On my family's dairy farm, I raise Holstein cows. Our herd consists of approximately 3,200 milking cows and 3,000 support stock at BDF, with an additional 1,600

1 milking cows and 1,200 support stock at B6. As part of my family's dairy operation, I raise and
2 feed cows at all stages of development, from calves to mature lactating cows.

3 2. I am familiar with the facts stated in this declaration except as to those matters
4 stated on information and belief, and as to those matters, I believe them to be true. If called as a
5 witness, I could and would competently testify thereto.

6 3. I make this declaration in support of the *Ex Parte* Application For Order To Show
7 Cause For Preliminary Injunction And Temporary Restraining Order that is being filed in the
8 above-entitled action by Plaintiffs, Central Valley Ag Grinding, Inc., and and Central Valley Ag
9 Transport, Inc. (collectively hereinafter "CVAG"), against Modesto & Empire Traction Company
10 (hereinafter "MET").

11 4. I am contracted to ship my milk to California Dairies, Incorporated, a California
12 processor of milk products, but I have little to no control over the price that I am paid for the milk
13 my cows produce. My processor sets the price pursuant state regulations and pays for the milk that
14 I produce on a volume and components basis. In other words, I am paid more the greater the
15 volume I produce and the greater the percentage of milk fat and milk non-fat solids components in
16 my milk. The milk is tested by the processor when it is delivered to the plant to determine the
17 exact level and amount of these components, and I am provided a print-out or electronic copy of
18 this information. I use this information to work with my dairy nutritionist to formulate a nutrition
19 program (or feed ration) for my cows that will maximize the volume and components in my cows'
20 milk, improve their overall health and production rate levels, and minimize costs to the extent that
21 I can.

22 5. The way that I am able maximize the volume and/or level of components in my
23 cows' milk is primarily by supplementing cow diets with purchased grains, minerals, and
24 commodities, in addition to the forages they are normally fed. The forages I normally feed include
25 primarily locally grown alfalfa and oat hay, corn silage, oat silage, and mixed grain forage crops
26 and grasses.

1 6. The most significant cost component of my dairy farm is animal feed. On average,
2 I spend approximately 50% of my total monthly operating expenses on purchased feed ingredients,
3 minerals, and commodities (as opposed to forage-based feed).

4 7. I typically contract my feed purchases through a feed broker or directly with local
5 and/or national feed companies that supply the feed products. However, in these contacts, I am
6 generally responsible for having the products transported to my dairy from feed mills or from
7 railyards directly.

8 8. Attached hereto as **Exhibit 1** is a true and correct copy of a typical feed contract
9 that I entered into in the regular course of my business (with proprietary information redacted). I
10 enter into several of these types of contracts per month. The back or second side of this contract –
11 which is typical of my other contracts – provides in part that I am responsible for additional freight
12 or fuel costs that arise after I have signed the contract.

13 9. I have personal knowledge of the fact that CVAG operates a feed transload facility
14 on a railyard in Modesto, California, which is the subject of this lawsuit (“Modesto Facility”).

15 10. I am familiar with CVAG’s Modesto Facility as one of the primary facilities where
16 I obtain the feed ingredients, minerals, and commodities that I purchase. I have obtained products
17 from CVAG’s Modesto Facility since 2004.

18 11. I am not aware of any other facility in California, north of Fresno, that handles all
19 of the feed that CVAG does.

20 12. Within the last twelve months, I have obtained the following products through
21 CVAG’s Modesto Facility:

- 22 a. Canola;
- 23 b. Corn gluten feed pellets (bypass protein);
- 24 c. Nova meal;
- 25 d. Amino Plus (bypass protein);
- 26 e. Minerals and additives.
- 27
- 28

1 13. I would estimate that approximately 40% of all of the feed that I purchase for my
2 dairy comes from CVAG. At present, I pick-up or receive products from CVAG's facility
3 approximately 39 loads per month (1 load = 25 tons).

4 14. CVAG is centrally-located within 25 miles of my farm, which helps keep my
5 freight costs down in an industry where profit margins are very slim.

6 15. The nearest other place that I could obtain canola would be in Guernsey, Selma,
7 and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this product
8 from CVAG, I would have to travel an average of 100 miles further, increasing my freight and fuel
9 costs by \$8, from \$7 per ton to approximately \$15 per ton. This would result in an immediate
10 increase in my operating expenses by \$4,800 per month for this one product alone.

11 16. The nearest other place that I could obtain corn gluten would also be in Guernsey,
12 Selma, and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this
13 product from CVAG, I would have to travel an average of 100 miles further, increasing my freight
14 and fuel costs by \$8, from \$7 per ton to approximately \$15 per ton. This would result in an
15 immediate increase in my operating expenses by \$1,400 per month for this one product alone.

16 17. The nearest other place that I could obtain nova meal would also be in Guernsey,
17 Selma, and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this
18 product from CVAG, I would have to travel an average of 100 miles further, increasing my freight
19 and fuel costs by \$8, from \$7 per ton to approximately \$15 per ton. This would result in an
20 immediate increase in my operating expenses by \$400 per month for this one product alone.

21 18. The nearest other place that I could obtain amino plus would be in Trevor,
22 California. Therefore, if I could not obtain this product from CVAG, I would have to travel
23 approximately 100 miles further, increasing my freight and fuel costs by \$8, from \$7 per ton to
24 approximately \$15 per ton. This would result in an immediate increase in my operating expenses
25 by \$1,200 per month for this one product alone.

26 19. The sum total increase in just my freight costs, for the afore-mentioned 4
27 commodities, would be \$7,800 per month, if I were not able to obtain these products from CVAG.

28

1 20. In addition, I would anticipate an almost inevitable constriction of the feed
2 ingredient and commodities market from elimination of CVAG's Modesto Facility as the market
3 responds to increased demand. If this happens, I expect the price for any or all of the above-listed
4 feed products that I get from CVAG to increase by as much as 20%.

5 21. I also anticipate experiencing other losses from the inability to get my feed at
6 CVAG that could be very substantial yet difficult to quantify.

7 22. For example, switching feeds or having the wrong balance of feed ingredients can
8 result in reduced production and component levels as well as cow health issues. As a specific
9 example, if I am unable to get sufficient amounts of canola and amino plus for my cow's diet, I
10 can expect a reduction in milk and components. Even after feed rations are resumed or stabilized,
11 it may still take up to 12 months to reverse the negative effects of a changed diet on dairy cows.

12 23. Therefore, I feel that my operation and operations like mine would suffer great and
13 irreparable harm if CVAG is dispossessed of its right to operate the Modesto Facility pending a
14 resolution of the underlying litigation.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on this 29th day of January 2018 at Hilmar, California.

18
19
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21 
22 _____
23 Michael Borba
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States, over 18 years of age and not a party to the within
3 action. I am employed in Stanislaus County; my business address is 1601 I Street, Fifth Floor,
4 Modesto, California 95354.

5 On the date indicated below, I served on all parties in this action the attached **Declaration Of**
6 **Michael Borba In Support Of Plaintiffs' Ex Parte Application For**
7 **Order To Show Cause For Preliminary Injunction And Temporary Restraining Order** in the
8 manner(s) described below and addressed as follows:

9 Carl Ciochon
10 Wendel Rosen Black & Dean, LLP
11 1111 Broadway, 24th Floor
12 Oakland, CA 94607

13 **BY U.S. MAIL:** The document was placed in a sealed envelope or package, with postage
14 thereon fully prepaid, for collection and mailing, following our ordinary business practices.
15 I am readily familiar with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva's practice for
16 collection and processing documents for mailing. It is deposited with the United States
17 Postal Service in Modesto, California on that same day in the ordinary course of business.

18 **BY HAND DELIVERY:** I caused the above-described document(s) to be hand delivered
19 to the addressee(s) designated.

20 **BY FEDEX:** I caused the above-described documents(s) to be delivered to a FedEx agent
21 for overnight delivery to the addressee(s) designated.

22 **BY FACSIMILE:** I caused the above-described document(s) to be transmitted via
23 facsimile to the addressee(s) designated.

24 X **BY ELECTRONIC TRANSMISSION:** I caused the above-described document(s) to be
25 transmitted via e-mail to the addressee(s) designated.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct. Dated this 29th day of January 2018 at Modesto, California.
28

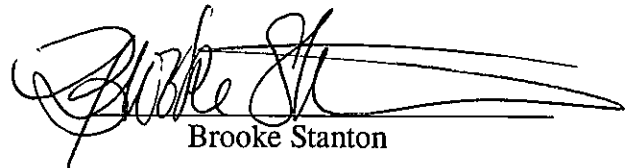
29 
30 Brooke Stanton

EXHIBIT 1



J.D. Heiskell
20010 Manderson Street, Ste. A
Elkhorn, NE 68022

CONFIRMATION OF SALE

Sold To:

000401

BORBA DAIRY FARMS

5297 KELLEY RD

HILMAR, CA 95324

File

Contract #: 400-0027564

Your Contract #:

Contract Date: 11/9/2017

We are pleased to confirm this contract:

Commodity: CANOLA

Shipment: 11/1/2017 TO 3/31/2018

Quantity: 1,000.00 Ton at \$262.0000 USD / Ton

Delivery Basis: FOB MODESTO

Broker: FEED SERVICES CO.

Grades: ORIGIN

Weights: ORIGIN

Discount Scale: ALL FUEL SURCHARGES FOR SELLER'S ACCOUNT
FREIGHT INCREASES FOR SELLER'S ACCOUNT

Remarks: 40 TRUCKS

Trade Rules: NGFA TRADE AND ARBITRATION RULES TO APPLY

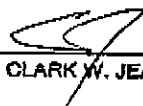
Payment Terms:

Accepted and agreed to this _____ day of _____.

Buyer: BORBA DAIRY FARMS

Seller: J.D. HEISKELL & CO.

By: _____

By: 
CLARK W. JEARY

Please sign and return a single copy of this contract within 48 hours. Thank You!



Counsel's Exhibit 5

Angela Schrimp de la Vergne CSB #166521
Maria Fatima Gioletti, CSB #218335
DAMRELL, NELSON, SCHRIMP,
PALLIOS, PACHER & SILVA
1414 K Street, Suite 200
Sacramento, CA 95814
Telephone: (916) 504-3700
Facsimile: (916) 504-3701
aschrimp@damrell.com
fgioletti@damrell.com

Attorneys for Central Valley Ag Grinding, Inc.,
and Central Valley Ag Transport, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF STANISLAUS

CENTRAL VALLEY AG GRINDING,
INC., A CALIFORNIA CORPORATION,
dba CENTRAL VALLEY AG
TRANSLOAD;

Plaintiff,

vs.

MODESTO AND EMPIRE TRACTION
COMPANY, A California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2028642

Facsimile Signature
[C.R.C., Rule 2.305(d)]

**DECLARATION OF SEAN KELLEY IN
SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER TO SHOW
CAUSE FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

Date : January 30, 2018
Time : 8:20 a.m.
Dept. : 24

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE ROGER M. BEAUCHESNE

I, Sean Kelley, declare as follows:

1. I am a dairy farmer. I am the chief operating officer of James J. Stevinson, a California corporation, a dairy farming operation located primarily in the unincorporated area of Stevinson, County, California. I have been involved in the dairy business over 75 years. I have been running my family's dairy farm for approximately three (3) years. On my family's dairy farm, I raise Holstein cows. Our herd consists of approximately 3,000 milking cows and approximately 3,000 support stock. As part of my family's dairy operation, I raise and feed cows at all stages of development, from calves to mature lactating cows.

Angela Schrimp de la Vergne CSB #166521
Maria Fatima Gioletti, CSB #218335
DAMRELL, NELSON, SCHRIMP,
PALLIOS, PACHER & SILVA
1414 K Street, Suite 200
Sacramento, CA 95814
Telephone: (916) 504-3700
Facsimile: (916) 504-3701
aschrimp@damrell.com
fgioletti@damrell.com

Attorneys for Central Valley Ag Grinding, Inc.,
and Central Valley Ag Transport, Inc.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS

CENTRAL VALLEY AG GRINDING,
INC., A CALIFORNIA CORPORATION,
dba CENTRAL VALLEY AG
TRANSLOAD;

Plaintiff,

vs.

MODESTO AND EMPIRE TRACTION
COMPANY, A California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2028642

Facsimile Signature
[C.R.C., Rule 2.305(d)]

**DECLARATION OF SEAN KELLEY IN
SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER TO SHOW
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Date : January 30, 2018
Time : 8:20 a.m.
Dept. : 24

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE ROGER M. BEAUCHESNE

I, Sean Kelley, declare as follows:

1. I am a dairy farmer. I am the chief operating officer of James J. Stevinson, a California corporation, a dairy farming operation located primarily in the unincorporated area of Stevinson, County, California. I have been involved in the dairy business over 75 years. I have been running my family's dairy farm for approximately three (3) years. On my family's dairy farm, I raise Holstein cows. Our herd consists of approximately 3,000 milking cows and approximately 3,000 support stock. As part of my family's dairy operation, I raise and feed cows at all stages of development, from calves to mature lactating cows.

1 2. I am familiar with the facts stated in this declaration except as to those matters
2 stated on information and belief, and as to those matters, I believe them to be true. If called as a
3 witness, I could and would competently testify thereto.

4 3. I make this declaration in support of the *Ex Parte* Application For Order To Show
5 Cause For Preliminary Injunction And Temporary Restraining Order that is being filed in the
6 above-entitled action by Plaintiffs, Central Valley Ag Grinding, Inc., and and Central Valley Ag
7 Transport, Inc. (collectively hereinafter "CVAG"), against Modesto & Empire Traction Company
8 (hereinafter "MET").

9 4. I am contracted to ship my milk to a California processor of milk products, but I
10 have little to no control over the price that I am paid for the milk my cows produce. My processor
11 sets the price pursuant state regulations and pays for the milk that I produce on a volume and
12 components basis. In other words, I am paid more the greater the volume I produce and the greater
13 the percentage of milk fat and milk non-fat solids components in my milk. The milk is tested by
14 the processor when it is delivered to the plant to determine the exact level and amount of these
15 components, and I am provided a print-out or electronic copy of this information. I use this
16 information to work with my dairy nutritionist to formulate a nutrition program (or feed ration) for
17 my cows that will maximize the volume and components in my cows' milk, improve their overall
18 health and production rate levels, and minimize costs to the extent that I can.

19 5. The way that I am able maximize the volume and/or level of components in my
20 cows' milk is primarily by supplementing cow diets with purchased grains, minerals, and
21 commodities, in addition to the forages they are normally fed. The forages I normally feed include
22 primarily locally grown alfalfa and oat hay, corn silage, oat silage, and mixed grain forage crops
23 and grasses.

24 6. The most significant cost component of my dairy farm is animal feed. On average,
25 I spend approximately 40% of my total monthly operating expenses on purchased feed ingredients,
26 minerals, and commodities (as opposed to forage-based feed).

27 7. I typically contract my feed purchases through a feed broker or directly with local
28 and/or national feed companies that supply the feed products. However, in these contacts, I am

1 generally responsible for having the products transported to my dairy from feed mills or from
2 railyards directly.

3 8. Attached hereto as **Exhibit 1** is a true and correct copy of a typical feed contract
4 that I entered into in the regular course of my business (with proprietary information redacted). I
5 enter into several of these types of contracts per month. The back or second side of this contract –
6 which is typical of my other contracts – provides in part that I am responsible for additional freight
7 or fuel costs that arise after I have signed the contract.

8 9. I have personal knowledge of the fact that CVAG operates a feed transload facility
9 on a railyard in Modesto, California, which is the subject of this lawsuit (“Modesto Facility”).

10 10. I am familiar with CVAG’s Modesto Facility as one of the primary facilities where
11 I obtain the feed ingredients, minerals, and commodities that I purchase. I have obtained products
12 from CVAG’s Modesto Facility since 2004.

13 11. I am not aware of any other facility in California, north of Fresno, that handles all
14 of the feed that CVAG does.

15 12. Within the last twelve months, I have obtained the following products through
16 CVAG’s Modesto Facility:

- 17 a. Canola;
- 18 b. Amino Plus;
- 19 c. Whole Cottonseed;
- 20 d. Minerals and additives.

21 13. I would estimate that approximately 30% of all of the feed that I purchase for my
22 dairy comes from CVAG. At present, I pick-up or receive products from CVAG’s facility
23 approximately 23 times per month.

24 14. CVAG is centrally-located within 27 miles of my farm, which helps keep my
25 freight costs down in an industry where profit margins are very slim.

26 15. The nearest other place that I could obtain Canola would be in Guernsey, Selma,
27 and/or Pixley, California, depending upon availability. Therefore, if I could not obtain this product
28

1 from CVAG, I would have to travel an average of 100 miles further, increasing my freight and fuel
2 costs by \$8, from \$7 per ton to approximately \$15 per ton. This would result in an immediate
3 increase in my operating expenses by \$3,600 per month for this one product alone.

4 16. The nearest other place that I could obtain whole cottonseed would be in Stockton,
5 California. Therefore, if I could not obtain this product from CVAG, I would have to travel an
6 average of 100 miles further, increasing my freight and fuel costs by \$2, from \$7 per ton to
7 approximately \$9 per ton. This would result in an immediate increase in my operating expenses
8 by \$200 per month for this one product alone.

9 17. The nearest other place that I could obtain amino plus would be in Trevor,
10 California. Therefore, if I could not obtain this product from CVAG, I would have to travel
11 approximately 100 miles further, increasing my freight and fuel costs by \$8, from \$7 per ton to
12 approximately \$15 per ton. This would result in an immediate increase in my operating expenses
13 by \$600 per month for this one product alone.

14 18. The sum total increase in just my freight costs, for the afore-mentioned 3
15 commodities, would be \$4,400 per month, if I were not able to obtain these products from CVAG.

16 19. In addition, I would anticipate an almost inevitable constriction of the feed
17 ingredient and commodities market from elimination of CVAG's Modesto Facility as the market
18 responds to increased demand. If this happens, I expect the price for any or all of the above-listed
19 feed products that I get from CVAG to increase by as much as 15%.

20 20. I also anticipate experiencing other losses from the inability to get my feed at
21 CVAG that could be very substantial yet difficult to quantify.

22 21. For example, switching feeds or having the wrong balance of feed ingredients can
23 result in reduced production and component levels as well as cow health issues. As a specific
24 example, if I am unable to get sufficient amounts of canola and amino plus for my cow's diet, I
25 can expect a reduction in milk and components. Even after feed rations are resumed or stabilized,
26 it may still take up to 12 months to reverse the negative effects of a changed diet on dairy cows.

22. Therefore, I feel that my operation and operations like mine would suffer great and irreparable harm if CVAG is dispossessed of its right to operate the Modesto Facility pending a resolution of the underlying litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of January 2018 at Stevinson, California.


Sean Kelley

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, over 18 years of age and not a party to the within
3 action. I am employed in Stanislaus County; my business address is 1601 I Street, Fifth Floor,
4 Modesto, California 95354.

5 On the date indicated below, I served on all parties in this action the attached **Declaration Of**
6 **Sean Kelley In Support Of Plaintiffs' Ex Parte Application For**
7 **Order To Show Cause For Preliminary Injunction And Temporary Restraining Order**
8 in the manner(s) described below and addressed as follows:

9 Carl Ciochon
10 Wendel Rosen Black & Dean, LLP
11 1111 Broadway, 24th Floor
12 Oakland, CA 94607

13 **BY U.S. MAIL:** The document was placed in a sealed envelope or package, with postage
14 thereon fully prepaid, for collection and mailing, following our ordinary business practices.
15 I am readily familiar with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva's practice for
16 collection and processing documents for mailing. It is deposited with the United States
17 Postal Service in Modesto, California on that same day in the ordinary course of business.

18 **BY HAND DELIVERY:** I caused the above-described document(s) to be hand delivered
19 to the addressee(s) designated.

20 **BY FEDEX:** I caused the above-described documents(s) to be delivered to a FedEx agent
21 for overnight delivery to the addressee(s) designated.

22 **BY FACSIMILE:** I caused the above-described document(s) to be transmitted via
23 facsimile to the addressee(s) designated.

24 X **BY ELECTRONIC TRANSMISSION:** I caused the above-described document(s) to be
25 transmitted via e-mail to the addressee(s) designated.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct. Dated this 29th day of January 2018 at Modesto, California.
28

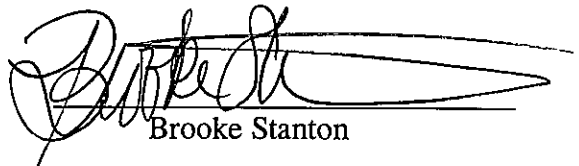
29 
30 Brooke Stanton

EXHIBIT 1



Contract of Sale

Buyer:

JAMES J STEVINSON, A CORP
PO BOX 818
NEWMAN CA 953600818

Date: 07/31/17

Our No: S77448

Your No:

Broker:

Broker No:

Broker Cont.

Seller:

GAVILON INGREDIENTS, LLC
4500 S. LASPINA ST.
SUITE 205
TULARE CA 93274
Ph#: (559)688-5151

BUYER AND SELLER HEREBY AGREE TO, AND CONFIRM, THE PURCHASE AND SALE OF THE REFERENCED COMMODITIES, SUBJECT TO THE TERMS AND CONDITIONS STATED BELOW AND ON THE REVERSE SIDE OF THIS CONFIRMATION. FAILURE TO ADVISE GAVILON VIA E-MAIL, FAX, OR OTHER WRITTEN FORM WITHIN FIVE (5) BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THIS CONFIRMATION OF ANY DISCREPANCY, OBJECTION TO, OR DISAGREEMENT WITH THIS CONFIRMATION SHALL RESULT IN THIS CONFIRMATION'S AUTOMATICALLY BEING DEEMED ACCEPTED BY YOU.

Commodity: CANOLA PELLETS

Quantity: 104 BULK TRUCKLOAD(S)

Shipment: OCT17-SEP18

Price: \$ 273.000US PER SHORT

Shipping Basis: F.O.B.: MODESTO

Weights To Apply: ORIGIN

Terms: NET 30 DAYS

Remarks:

JAMES J STEVINSON, A CORP

By

GAVILON INGREDIENTS, LLC

CHRISTY FARIA

NOTE: The lack of a signature shall not prevent a valid and binding agreement from being formed between the parties.

The provisions of: (a) the Electronic Signatures in Global and National Commerce Act ("E-Sign"); (b) the Uniform Electronic Transactions Act ("UETA"); and (c) Amended Article 2 of the Uniform Commercial Code relating to electronic contracting ("Amended Article 2") shall apply to this contract. In the event of a conflict between or among the provisions of any of the foregoing, such conflict shall be resolved as follows: (y) the provisions of E-Sign shall have precedence over those of UETA; and (z) the provisions of UETA shall have precedence over those of Amended Article 2. However, all such provisions shall be reasonably interpreted so as to avoid conflicts between or among them.

Counsel's Exhibit 6

From: Lynda Broberg <lbroberg@commoditiesplus.com>
Date: April 26, 2018 at 7:49:35 AM PDT
To: Lynda Broberg <lbroberg@commoditiesplus.com>
Subject: FW: GLUTEN FEED @ CVAG

Good morning, please see message below from JDH, no CGFP available at CVAG until early next week. Please let me know if you need some delivered.

Thank you!

Lynda Broberg
Commodities Plus, Inc.
Phone: 509-623-1144
Mobile: 509-723-8344

From: Blackwell, Barbara [<mailto:BBlackwell@heiskell.com>]
Sent: Wednesday, April 25, 2018 4:43 PM
To: Kauffmann, John <JKauffmann@heiskell.com>; VanDenover, Arika <AVanDenover@heiskell.com>; Blackwell, Barbara <BBlackwell@heiskell.com>
Subject: GLUTEN FEED @ CVAG

We regret to inform you that we have run out of gluten feed at CVAG Modesto. Our 105 car unit train is close by and we are coordinating with CVAG to see when the train will spot for unload which will probably be early next week. We will keep you posted on new developments as they arise.

Any questions please feel free to call me. Thank you.

John Kauffmann
Vice President - Director of California Trading
P.O. Box 1379
1939 Hillman St.
Tulare CA 93275
559-684-3263 office
559-799-7402 cell
jkauffmann@heiskell.com

Counsel's Exhibit 7



April 27, 2018

Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Deb Miller
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Animal Feed Service to Central Valley, California

Gavilon Ingredients, LLC (Gavilon) requests that the Surface Transportation Board investigate and assist to help ensure the safe and efficient delivery of essential animal feed trains to meet the needs of the California dairy industry.

Gavilon Ingredients is part of the Gavilon group of companies, a global commodity logistics organization with 2,000 employees in more than 300 locations. Gavilon works with producers to meet the needs of livestock and dairy farmers, food and feed manufacturers, and industrial users. Gavilon's success hinges in large part on maintaining a reliable, competitive network in order to effectively serve both our producers that partner with us to deliver agricultural products to the market and the customers who utilize these products.

Central Valley Ag Grinding, Inc.'s (CVAG's) Modesto, California facility is one of the few transloading facilities of its kind in California's Northern Central Valley capable of meeting Gavilon's large business requirements for handling animal feed products. Gavilon has long relied on CVAG's services to help serve its customers, including meeting the needs of the local California dairy industry, by shipping hundreds of unit trains to CVAG-Modesto over the past 8-9 years, without any serious incident or delay.

During the week of April 23, 2018, Gavilon had trainload of cottonseed placed on hold en route to CVAG. Gavilon had shipped this product on the BNSF Railway (BNSF) via BNSF tariff, which tariff applies from origin to the CVAG-Modesto destination. Gavilon was in full compliance with all tariff terms, including the payment terms, and the train was scheduled for arrival at CVAG on the morning of April 23, 2018. On April 24, 2018, at 8:32 p.m. PDT, Gavilon was informed by BNSF that "MET IS REFUSING THE TRAIN DUE TO CONTRACTUAL COMMITMENTS WITH THE CUSTOMER." Gavilon was told that its train had been placed on hold by BNSF near Fresno, California due to Modesto and Empire Traction Company's (MET's) interchange refusals. Gavilon is the shipper, BNSF is the railroad, and CVAG is the receiver of this cottonseed train. Gavilon has been told that MET has a handling line agreement with BNSF to deliver this train, and is paid by BNSF for its switching services.

Gavilon was told that MET was refusing train interchange with BNSF due to disputes with CVAG, and learned that MET had demanded \$42,050 in prepayments from CVAG in order to accept this train in interchange and deliver it to CVAG Modesto. The prepayment rates being sought by MET on this train meet or exceed the transload fees Gavilon pays to CVAG.

These actions by MET effectively blocked acceptance and delivery of Gavilon's train have caused Gavilon significant business disruption and additional costs, and have subjected Gavilon to tens of thousands of dollars in potential BNSF demurrage and storage fees. Additionally, these actions stranded significant product and railcar resources.

Under the circumstances, and having been told by CVAG that it could not pay the significant prepayment amount demanded by MET, Gavilon reluctantly took the extraordinary step to pay MET's demands in full for this train, doing so under protest. This payment was done as a means of last resort to mitigate further damages and business harm to Gavilon, even though Gavilon had already fully paid for train delivery to CVAG-Modesto. We understand that following Gavilon's payment, its cottonseed train will be delivered shortly to CVAG.

MET's aforementioned actions are creating considerable business harm and uncertainty to Gavilon and the local dairy industry. Gavilon needs to know that when it ships product and is in full compliance with valid tariffs that its trains will not be unreasonably delayed or suspended from delivery. Again, CVAG-Modesto is one of the only transloaders in the region capable of receiving unit train service, and neither Gavilon nor the Northern Central Valley dairy industry can afford to lose its essential services.

We urge the Surface Transportation Board to take appropriate actions under its powers, including necessary investigation of this matter, to ensure that Gavilon's animal feed trains are safely and properly interchanged and delivered without interruption, and without the unreasonable prepay requirements that have already unreasonably hindered Gavilon's product delivery. This is a matter of significant regional importance. We greatly appreciate your attention to this important matter.

Sincerely,

GAVILON INGREDIENTS, LLC



Corey Dencklau

Vice President & General Manager, Ingredients

Counsel's Exhibit 8

From: [Peter Pfohl](#)
To: [Robert A. Wimbish](#)
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: RE: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California
Date: Sunday, April 22, 2018 6:55:00 PM
Attachments: [CVAG Response to MET Fourth Revised Prepay Demand 4.22.18.pdf](#)

Rob: Please find the attached response to MET's fourth revised prepayment demand for Train GALOMOD314. As with our previous response letter, I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [mailto:RWimbish@fletcher-sippel.com]
Sent: Saturday, April 21, 2018 11:26 PM
To: Peter Pfohl <pap@sloverandloftus.com>
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Pete -

You have decided that it is appropriate here to include BNSF and Gavillon in this discussion, and I suppose it may be helpful for them to become involved and be fully informed as they may care to be, so I am copying them, also, in MET's response.

CVAG is expecting MET to provide extensive switching services, and to supply considerable track capacity, for trains that far exceed what CVAG is able to accept and efficiently unload. Personally, it seems to me that it would be much wiser for CVAG to accept that it cannot afford the cost that comes with shifting the brunt of its own capacity limitations and inefficiencies on MET, and, in so doing, to encourage or require CVAG's customers to reduce its shipment sizes to what CVAG can accommodate, thereby avoiding the need to dispute MET's switching and demurrage charges at all.

MET has carefully considered what is appropriate to charge for the switching services it provides to CVAG, and it has done so with regard to the rate schedules of many other carriers.

Ultimately, and I speak for myself here, neither you nor your client have the authority to determine what MET charges or what CVAG pays. CVAG claims that MET's charges and prepayment requirements are "inappropriate and unwarranted." The law and applicable regulation are likely to show otherwise should it come to that. The charges are substantial because the demands made of MET are also substantial.

I realize that you must advocate as best you can for your client, but your claim that MET is refusing to serve CVAG is false, and relies on the telling of only part of the story. MET has always committed to serving CVAG in accordance with applicable tariff charges, and it remains committed to doing so. If CVAG is convinced that MET's conduct is illegal, it may prepay the estimated tariffs, obtain the requested services from MET, and then pursue relief in the appropriate venue, rather than refuse to pay and then blame MET for the suspended service that follows from CVAG's decision.

The following is MET's formal response to your letter of April 20, 2018. In connection with the following response, I am attaching a revised charges estimate and prepayment requirement.

Pete –

As I understand it, CVAG wants MET to deliver the first 25 cars of train GALOMOD314 to Tracks 1038/1039, and then hold the balance (76 carloads) on MET track, rather than deliver the balance to Tracks 1041/1042 as was the plan until late yesterday. This is an abrupt change of plans, and imposes logistical hardship upon MET, to say nothing of the fact that CVAG seems to think that it's fine to expect MET suddenly to accept some 76 cars into its yard tracks with little warning.

Word is that another unit train is on its way for unloading on Tracks 1041/1042 – a train that may show up at about the same time as train GALOMOD314. It's unfortunate, to put it politely, that no one from CVAG bothered to alert MET of this.

MET will endeavor to accommodate both trains if possible, but this is a major demand of MET switching and car holding resources. The revised plan for train GALOMOD314 is attached, including a revised estimate of charges that CVAG must prepay. The estimate now includes charges for estimated demurrage, as the new plan for the cotton seed train is likely to exceed demurrage free time.

The required prepayment total is now \$42,050.

Despite your mistaken assertions to the contrary, MET's charges and its prepayment demands are appropriate and fully defensible. CVAG's refusal to prepay estimated charges and to demand that MET accept partial payment (and to extend credit to CVAG beyond that) is not.

If CVAG will pay as required there will be no service disruption. Any service disruption would be entirely of CVAG's own making, as CVAG seems to have persuaded itself that it alone is the arbiter of what charges are appropriate and should be prepaid.

CVAG must prepay all the estimated charges, not some portion more to CVAG's liking. To be very clear, MET rejects CVAG's partial payment proposal.

MET will not allow CVAG to take abusive advantage of MET's services and facilities, and, accordingly, MET has instructed BNSF that MET will not accept interchange of train GALOMOD314 absent prepayment in full by CVAG. MET will take all steps necessary to bar the interchange of train GALOMOD314 unless and until it received prepayment in full. The choice is CVAG's.

Again, it is exceedingly troubling that CVAG has failed to alert MET to a new inbound unit train, which we understand to be train G-VBTMOD3-21A, a 100-car canola unit train. We assume, in the absence of any instruction from CVAG, that this train is destined to unloading on Tracks 1041/1042, hence the sudden, self-serving change in plans for train GALOMOD314. We will formulate a prepay estimate for G-VBTMOD3-21A as soon as is reasonably possible. But, once again, we will undertake no switching this this train also, unless or until all estimated charges are paid in full.

Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>

Sent: Friday, April 20, 2018 5:02 PM

To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET modified mandatory prepayment demand for Train GALOMOD314. I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

April 22, 2018

Via Email and First Class Mail

Mr. Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Re: MET's Fourth Revised Prepay Demand on Train GALOMOD314

Dear Rob:

On behalf of our client, Central Valley Ag Grinding, Inc. ("CVAG"), CVAG rejects the latest revised "Accessorial Service Estimate and Required Charges Prepayment" of Modesto & Empire Traction Company ("MET") sent late last night, which demand is enclosed.

Through its fourth revised prepay demand on the above-referenced train, MET again insists that it will not reasonably deliver the train to CVAG's Modesto, California facility unless CVAG tenders payment, in advance, of \$42,050. This demand replaces three previous MET prepay demands made on the same train of \$37,050 (April 20th); \$45,800 (April 19th); and \$50,000 (April 11). Additionally, MET now states that "MET has instructed BNSF that MET will not accept interchange of train GALOMOD314 absent prepayment in full by CVAG. MET will take all steps necessary to bar the interchange of train GALOMOD314 unless and until it receives prepayment in full."

As with its previous demands, MET's latest demand is unwarranted. It is also inconsistent with its successful delivery of a similar cotton seed train earlier this year, without MET protest, objection, or prepayment demand. In addition, MET's newest threat to "bar" train interchange with BNSF and prevent the continuous carriage of freight, on top of its previous line embargo and numerous other cessation of service threats, is highly improper.

On behalf of CVAG, we fully responded to MET's previous demands of a similar nature, as well as its recent line embargo threats, in a number of communications, including by letters dated March 30, 2018, April 11, 2018, and April 20, 2018 and in various emails including but not limited to those dated March 30, 2018, April 11, 2018, April 12, 2018, April 13, 2018, and April 19, 2018. We incorporate by reference herein these previous objections and protests that also apply here with respect to MET's latest prepay demand.

In addition, MET's fourth revised prepay demand has considerable errors and inconsistencies. For example, the vast majority MET prepayment demand charges, comprising \$37,050 of the total of \$42,050 in demands, reflect switching of loaded and empty cars from and to CVAG tracks 1041/1042 to CVAG tracks 1038/1039. At the same time, MET appears to

demand significant demurrage prepayments for possible use of these tracks. However, as MET acknowledges in its latest service plan, CVAG tracks 1041/1042 will not be used for MET train staging of this train, so all of these charges are clearly in error and inappropriate.

In your response, MET "rejects" CVAG's request that the parties enter into a "keep the trains running" interim prepayment agreement with respect to this train successfully employed earlier this week with respect to train GVBTMOD309. That is unfortunate. As explained in our letter of April 20, 2018, under the circumstances, and in order to keep the trains running, MET has left CVAG with little choice but to cede to its improper demands and pay in advance certain of the amounts sought, under protest. As previously advised, funds in the amount of \$10,000 will be wired to your account, or hand delivered by check, whichever MET prefers, as security for the expense of any possible legitimate additional special switching activity associated with this train. These amounts far exceed MET's costs for any additional services it may be providing, and that sought by MET on the delivery of the last cotton seed train. CVAG also acknowledges that receipt and deposit by MET of these amounts shall be without prejudice to MET's right to later seek any additional payments or amounts, etc. that it believes reasonable, so MET's collection rights are fully preserved.¹

Finally, MET states that "[w]ord is that another unit train is on its way," a 100-car canola train GVBTMOD321A, and that it is "exceedingly troubling that CVAG has failed to alert MET to a new inbound unit train." MET, as the acknowledged agent and handling carrier of BNSF for delivery of this train and all other BNSF-originated trains, has had full and much better knowledge of the status of this inbound train than CVAG. CVAG has been treating this train no differently than any other similar train, and has not improperly failed any possible notification duties. MET has not alleged, and we find it very hard to believe, that BNSF has not sufficiently notified MET as to this train's departure and expected interchange times.

Please be further advised that MET's instructions that "we will undertake no switching" of the above-referenced train and future trains absent full acquiescence of MET's improper demands will have a devastating impact on CVAG and its ability to meet the needs of the California dairy industry. CVAG intends to hold MET fully liable for all resulting damages.

Sincerely,



Peter A. Pfohl

An Attorney for Central Valley Ag Grinding, Inc.

Enclosure

cc: Corey Dencklau, Vice President & General Manager, Ingredients, Gaviion (via email)
Sam Sexhus, Group Vice President, Ag Products, BNSF (via email)

¹ These payments are being made under protest and shall not be used to establish liability on the part of CVAG, or for any other purpose inconsistent with CVAG's position that MET has no right to charge these excessive and inappropriate fees, impose any such "self-help" conditions, including prepay, or cease servicing CVAG in the face of a bona-fide dispute over the disputed charges.

Peter Pfohl

From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Sent: Saturday, April 21, 2018 11:26 PM
To: Peter Pfohl
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California
Attachments: Charge Estimate G ALOMOD3 14 - April 21.docx

Pete -

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Rob Wimbish

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Sent: Friday, April 20, 2018 5:02 PM
To: Robert A. Wimbish
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

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Regards,

Pete

Peter A. Pfohl

Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

ACCESSORIAL SERVICE ESTIMATE AND REQUIRED CHARGES PREPAYMENT

TRAIN G ALOMOD3-14

MET has learned of the impending receipt in interchange of train G ALOMOD3-14, which according to CVAG's Jeff Robinson, is a cotton seed unit train consisting of 102 carloads. G ALOMOD3-14 is scheduled to be delivered in interchange to MET on or about April 21, 2018. For this train, CVAG will be required to prepay estimated accessorial charges to MET in keeping with MET Freight Tariff 8000-B (Supplement 1-A), Item 270 and , effective April 9, 2018, in the total amount of **\$42,050**.

This estimate is based upon MET's switching-intensive handling of a similar agricultural products unit train for CVAG earlier this year. The contents of that train were unloaded in similar fashion from CVAG-occupied Tracks 1038/1039. MET charges are based upon applicable the tariff provisions referenced herein. If CVAG wishes to procure MET's services in accordance with the following plan, then MET must receive payment of the estimated charges by no later than the first day upon which MET's switching crews reasonably could be assigned to switch the first blocks of cars (empty) from Tracks 1038/1039. If the estimated charges are paid in advance, then MET will commit to provide the services set forth below.

The below estimate assumes that CVAG will have available capacity to hold all cars from this train on Tracks 1041/1042, except for those cars initially placed on Tracks 1038/1039. If CVAG lacks sufficient car holding capacity on Tracks 1041/1042, additional charges may be assessed stemming from additional switching and from demurrage.

Unit Train Configuration Accessorial Charges

Placement of First 12 on Track 1038:	No charge
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Switch First 12 (empty) from Track 1038 to 1041/1042	\$2,400 (12 cars X \$200/car)
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Outbound unit train reconfiguration:	\$1,250
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Total estimated switching and unit train reassembly charges = \$37,050

MET reserves the right to invoice for additional charges for accessorial services rendered beyond those paid in advance. If actual switching and handling service charges are less than estimated here, MET will credit CVAG accordingly.

Demurrage

In light of CVAG's recent request of MET to hold the majority of this train on MET track while cars are pulled and placed at intervals on Tracks 1038/1039, it appears likely that demurrage will accrue to cars that cannot be timely placed and/or that are released back to MET pending reconfiguration of the unit train. (Please advise ASAP if CVAG wishes MET to return blocks of unloaded cars back to BNSF piecemeal once they have been unloaded, rather than to await unloading of the entire train.) Based upon the assumption that CVAG would prefer that MET hold released empties until the entire train has been unloaded and released, MET estimates that demurrage will amount to at least \$5,000 (50 cars X \$50/day post-free time X 2 days past free time) per Freight Tariff M&ET 9500-A (Supplement 1-A), Item 125.

Total estimated demurrage = \$5,000

MET will separately charge for actual demurrage in excess of the foregoing estimate, and will credit CVAG for prepayment of demurrage not actually accrued.

From: Robert A. Wimbish
To: [Peter Pfohl](#)
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California
Date: Saturday, April 21, 2018 11:26:14 PM
Attachments: [Charge Estimate G ALOMOD3 14 - April 21.docx](#)

Pete -

You have decided that it is appropriate here to include BNSF and Gavillon in this discussion, and I suppose it may be helpful for them to become involved and be fully informed as they may care to be, so I am copying them, also, in MET's response.

CVAG is expecting MET to provide extensive switching services, and to supply considerable track capacity, for trains that far exceed what CVAG is able to accept and efficiently unload. Personally, it seems to me that it would be much wiser for CVAG to accept that it cannot afford the cost that comes with shifting the brunt of its own capacity limitations and inefficiencies on MET, and, in so doing, to encourage or require CVAG's customers to reduce its shipment sizes to what CVAG can accommodate, thereby avoiding the need to dispute MET's switching and demurrage charges at all.

MET has carefully considered what is appropriate to charge for the switching services it provides to CVAG, and it has done so with regard to the rate schedules of many other carriers. Ultimately, and I speak for myself here, neither you nor your client have the authority to determine what MET charges or what CVAG pays. CVAG claims that MET's charges and prepayment requirements are "inappropriate and unwarranted." The law and applicable regulation are likely to show otherwise should it come to that. The charges are substantial because the demands made of MET are also substantial.

I realize that you must advocate as best you can for your client, but your claim that MET is refusing to serve CVAG is false, and relies on the telling of only part of the story. MET has always committed to serving CVAG in accordance with applicable tariff charges, and it remains committed to doing so. If CVAG is convinced that MET's conduct is illegal, it may prepay the estimated tariffs, obtain the requested services from MET, and then pursue relief in the appropriate venue, rather than refuse to pay and then blame MET for the suspended service that follows from CVAG's decision.

The following is MET's formal response to your letter of April 20, 2018. In connection with the following response, I am attaching a revised charges estimate and prepayment requirement.

Pete –

As I understand it, CVAG wants MET to deliver the first 25 cars of train GALOMOD314 to

Tracks 1038/1039, and then hold the balance (76 carloads) on MET track, rather than deliver the balance to Tracks 1041/1042 as was the plan until late yesterday. This is an abrupt change of plans, and imposes logistical hardship upon MET, to say nothing of the fact that CVAG seems to think that it's fine to expect MET suddenly to accept some 76 cars into its yard tracks with little warning.

Word is that another unit train is on its way for unloading on Tracks 1041/1042 – a train that may show up at about the same time as train GALOMOD314. It's unfortunate, to put it politely, that no one from CVAG bothered to alert MET of this.

MET will endeavor to accommodate both trains if possible, but this is a major demand of MET switching and car holding resources. The revised plan for train GALOMOD314 is attached, including a revised estimate of charges that CVAG must prepay. The estimate now includes charges for estimated demurrage, as the new plan for the cotton seed train is likely to exceed demurrage free time.

The required prepayment total is now \$42,050.

Despite your mistaken assertions to the contrary, MET's charges and its prepayment demands are appropriate and fully defensible. CVAG's refusal to prepay estimated charges and to demand that MET accept partial payment (and to extend credit to CVAG beyond that) is not. If CVAG will pay as required there will be no service disruption. Any service disruption would be entirely of CVAG's own making, as CVAG seems to have persuaded itself that it alone is the arbiter of what charges are appropriate and should be prepaid.

CVAG must prepay all the estimated charges, not some portion more to CVAG's liking. To be very clear, MET rejects CVAG's partial payment proposal.

MET will not allow CVAG to take abusive advantage of MET's services and facilities, and, accordingly, MET has instructed BNSF that MET will not accept interchange of train GALOMOD314 absent prepayment in full by CVAG. MET will take all steps necessary to bar the interchange of train GALOMOD314 unless and until it received prepayment in full. The choice is CVAG's.

Again, it is exceedingly troubling that CVAG has failed to alert MET to a new inbound unit train, which we understand to be train G-VBTMOD3-21A, a 100-car canola unit train. We assume, in the absence of any instruction from CVAG, that this train is destined to unloading on Tracks 1041/1042, hence the sudden, self-serving change in plans for train GALOMOD314. We will formulate a prepay estimate for G-VBTMOD3-21A as soon as is reasonably possible. But, once again, we will undertake no switching this train also, unless or until all estimated charges are paid in full.

Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>

Sent: Friday, April 20, 2018 5:02 PM

To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET modified mandatory prepayment demand for Train GALOMOD314. I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

ACCESSORIAL SERVICE ESTIMATE AND REQUIRED CHARGES PREPAYMENT

TRAIN G ALOMOD3-14

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Verified Statement of Paul Konzen

Introduction and Purpose

1. My name is Paul Konzen. I am the Vice-President and one of the two owners of Central Valley Ag Grinding, Inc. and Central Valley Ag Transport, Inc. (collectively, “CVAG”). My business address is 5509 Langworth Road, Oakdale, California.

2. I have been involved in the livestock feed handling business for 35 years, managing railroad transload facilities in Modesto, Stockton, and Oakland, California during that time. Transloading is the process of transferring goods from one mode of transportation to another.

3. I am submitting this Verified Statement in support of the *Ex Parte* Application and Petition for Preliminary Injunction filed in this proceeding by CVAG.

4. As discussed below, Modesto and Empire Traction Company (“MET”) has currently ceased service to CVAG, and refused all railroad interchange with connecting carriers absent full payment of unprecedented new charges of up to \$50,000 per train, causing train stoppage of all animal feed commodities that are critical to the California dairy industry. This is putting CVAG’s Modesto California transload business and its 25 employees in critical jeopardy. If CVAG is forced to accede to MET’s demands, it will have a devastating impact on our business, employees, and over \$7,000,000 in plant investments, our ability to serve our customers’ requirements, and cause a suspension of our Modesto transloading business.

5. The purpose of this statement is to provide the Surface Transportation Board (“Board” or “STB”) with background on CVAG and the markets in which it participates; the significant investments and improvements it has made to its facilities to make its operations more efficient and competitive; its reliance on efficient, non-discriminatory rail service for its business success and livelihood; recent demands and actions undertaken by the MET to limit and cease service deliveries to CVAG’s Modesto Facility; and the serious impacts of those actions on CVAG.

CVAG Background and Operations

6. As part of its transloading business, CVAG provides our customers with transloading, transport, processing, import/export, and drayage services. In total, CVAG operates six (6) transload facilities and employs 200 full time people – with its business operations centered in the California Central Valley.

7. Since 2005, CVAG has operated and continues to operate its Modesto Facility located on approximately 80 acres of land at 300/330 Codoni Avenue in Modesto, Stanislaus County, California. CVAG leases this property from MET, which also operates a short line railroad. At its Modesto Facility, CVAG receives, stores, and transloads a variety of agricultural commodities, the vast majority of which is agricultural feed commodities destined to California dairy farmers that it receives exclusively by rail.

8. CVAG employs approximately 25 people at its Modesto Facility, 18 of which are full time employees.

9. CVAG is solely served by MET at its Modesto Facility, which operates a short line railroad west of the City of Modesto at a facility commonly known as the Beard

Industrial District. MET is a “short line” railroad with control over the delivery of through train shipments to CVAG’s Modesto Facility and other shippers in MET’s Beard Industrial District. MET has informed CVAG that it is the handling carrier for the connecting “Class I” railroads Union Pacific Railroad Company (“UP”) and BNSF Railway Company (“BNSF”) in shipping commodities to CVAG and the other shippers and receivers in the Beard Industrial District.

Rail Transportation Service to the Modesto Facility

10. CVAG receives over 780 railroad carloads (“railcars”) of agricultural commodities at its Modesto Facility monthly, and the facilities are equipped to handle, and do regularly handle, greater traffic volumes depending on market demand. The traffic mainly originates in the Midwest and Western Canada, often from distances of 1,500 miles or more.

11. In total, CVAG transloads over 800,000 tons of feed ingredients and other agricultural commodities through its Modesto Facility annually. Although CVAG transloads and stores fifteen (15) different feeds and other commodities at its Modesto Facility, the majority of its inventory is comprised of Canola Pellets (“Canola”), Gluten Feed Pellets (“Gluten”), and Distillers Dried Grains with solubles (“DDGs”). Nearly all of this material is slated for ultimate consumption by dairy cows in the Northern and Central California regions, including without limitation the Counties of Madera, Merced, Stanislaus, San Joaquin, and Sacramento, situated in and around CVAG’s Modesto Facility.

12. Most of the commodities that CVAG receives by railroad at its Modesto facility, including virtually all of the dairy farm feed commodities, is received in unit-train service of 100+ cars, with the remainder in manifest service. The vast size of the California dairy industry demands and requires unit train delivery, and there are few, if any other options north of Fresno California for the receipt and transload of unit train deliveries of Canola, Gluten, and DDGs.

13. As referenced, MET solely serves the Modesto Facility. CVAG has no other inter- or intramodal competitive options on the receipt of its feed commodities other than MET service. Additionally, the large volumes of traffic received and the long distances involved for the shipments, preclude potential truck competition. In any event, CVAG's Modesto Facility does not have the capability to receive its large volumes of inbound feed commodities by truck. As mentioned, the markets require that this product be received in unit train service comprised usually of 100 cars, in part because of the high volume demands of the dairy industry, the low margins, and because of the rate incentives provided for such service.

14. Without the ability to receive 100+ car unit train service, a transloader serving the dairy industry, such as CVAG, will immediately become uncompetitive and forced out of that line of business. That is because the canola, gluten, and DDGs animal feed commodities received at the Modesto Facility are generally shipped in 100-car trains, and have not been shipped in manifest train service or in unit trains of less than 90 cars in several years. Even if these commodities could be shipped in manifest train service or shorter non-standard unit trains not provided for under UP and BNSF's tariffs,

the substantially higher costs would render the service uneconomical for both CVAG's customers and the California dairy industry.

Railroad Service Rates and Terms

15. CVAG is a railroad receiver. It is not a shipper, consignor, consignee, or "in care of" party. The shippers and railroads arrange for transportation service, not CVAG. The Class I rail carriers that connect with MET for service to the Modesto Facility, UP and BNSF, control the rail rates and service terms for traffic that MET interchanges for delivery to the Modesto Facility through various pricing instruments.

16. As the handling line carrier and self-described "agent" for UP and BNSF, I understand that MET receives a handling line fee for its switching services, paid through a portion of the line-haul rates received from the shippers. CVAG is generally not privy to any of these transportation terms. However, a review of the carriers' tariff terms shows that MET likely receives over \$20,000 per unit train delivered to CVAG's Modesto Facility.

17. For example, Tariff UP 4053, Item 4431 –AB CORN GLUTEN MEAL – UNIT TRAIN RATES, show UP direct shipments of the animal feed to three UP direct served California destinations, Goshen Jct., Pixley, and Famoso, all of which are the same distance of haul or longer haul for the gluten unit train shipments originating in the Midwest.

18. The table below compares the rate from three Midwest origins to these "UP Direct" destinations, the nearby San Joaquin Valley Railroad ("SJVR"), also a short line handling carrier for UP, and the MET. A comparison of these rates shows the difference

between the UP direct rate and the short line rate (“Diff” column), which I believe is likely close to the payments the short line handling carriers receive for the gluten feed unit trains:

	UP Direct		SJVR Ivory		MET Modesto	
UP 4053 4431-AB Gluten	Rate	Diff	Rate	Diff	Rate	Diff
90-105 cars						
Cedar Rapids IA	\$5,964	-	\$6,214	\$250	\$6,193	\$229
East St Louis IL	\$5,952	-	\$6,202	\$250	\$6,181	\$229
Kansas City MO	\$5,781	-	\$6,031	\$250	\$6,010	\$229
>105 cars						
Cedar Rapids IA	\$5,564	-	\$5,814	\$250	\$5,793	\$229
East St Louis IL	\$5,552	-	\$5,802	\$250	\$5,781	\$229
Kansas City MO	\$5,381	-	\$5,631	\$250	\$5,610	\$229

Based on the above rate differentials, MET would receive \$22,900 to reasonably interchange, switch, and place a Gluten unit train to CVAG’s loop tracks for unloading in the Beard Industrial District. The actual amount of handling carrier charges is confidential, and could be less or more. However, MET has never indicated to CVAG that it is not receiving full market rates for its handling line delivery service to CVAG Modesto.

19. In addition to its haulage fee, under the parties’ Lease and Transload Agreements, MET has received substantial CVAG payments amounting to close to \$1,000,000 per year, assessed on a monthly per car basis. However, MET recently rejected CVAG’s \$80,000 February payment, claiming the parties’ Lease has expired.

20. Until MET’s recent demands, CVAG has never been asked to, or paid, a freight service rate to its Modesto Facility by MET, UP, or BNSF. Instead, the shippers of these commodities pay all of the line-haul freight rates, including any and all of those

received by MET as a handling line carrier for UP and BNSF. These shippers are CVAG's transload customers, many of whom are large national or regional businesses. CVAG's major customers include the Archer Daniels Midland Company ("ADM"), JD Heiskell, A.L. Gilbert Company, and Gavilon.

21. Until MET's recent demands, CVAG has received an occasional accessorial charge invoice from MET, e.g., manifest car demurrage or an occasional single car switch charge, but only in relatively small amounts and usually for discrete events where CVAG initiated special requests for service. However, until the last month or so, CVAG has rarely, if ever received an MET accessorial charge invoice on its unit train delivery service. It has never received an invoice even close to the current up to \$50,000+ per train demand levels that MET is seeking from CVAG in advance of delivery, even for trains delivered/returned in multiple cuts.

CVAG's Lease and Facility Investments

22. In December 2003, CVAG and MET entered into a Transload Agreement, and in the fall of 2004 entered into a Lease for the property underlying the Modesto Facility. The initial term of the Lease was for five (5) years commencing February 1, 2005 and ending on January 31, 2010. The Lease has been amended and extended six times since 2004.

23. CVAG took possession of the property on or about 2005 and has been in continuous possession of the Modesto Facility since then.

24. The Modesto Facility has been improved with, among other things, two agricultural warehouse buildings, an office building, a conveyor system specifically

designed to offload agricultural commodities from railcars, and concrete slabs for outside storage. While considerable improvements were constructed by MET at its expense, and as an incentive for CVAG to grow its business, CVAG has also invested over \$7,000,000 to improve the Premises at its sole cost and expense. Through CVAG's investment, I am informed and believe that the Modesto Facility is now the largest transload facility in the State of California north of Fresno.

25. At the time CVAG and MET entered into the Lease, MET wanted to increase the volume of its business. As a result, the Lease terms required CVAG to grow its transload operations through escalating minimum volume requirements and tying CVAG's "rent" to these railcar minimums, along with penalties for failure to meet minimum volume requirements.

26. Over the last 12 years, CVAG did exactly what MET wanted it to do: it grew its transload business at the Modesto Facility, and met all of MET's considerable growth demands. When CVAG first took possession of the property, it had no transload business. Today, CVAG receives approximately 780 railcars every month. I am informed and believe that the only other tenant at the Industrial Tract that brings in as many railcars as CVAG is E. & J. Gallo Winery and related businesses ("Gallo"). I am further informed and believe that Gallo and CVAG, combined, are responsible for a substantial amount of all the railcar business at the Beard Industrial District.

27. As CVAG's capacity increased, it required additional improvements to the Premises to handle this increased capacity. Over the years that CVAG has occupied the location, many improvements have been made by CVAG, some mentioned above. These

improvements include additional railroad track, two large buildings that can be used to store commodities, an unloading conveyor system, a double-wide modular office, an unloading pit, and truck scales.

The Lease Extension Dispute and MET's Attempted Eviction of CVAG

28. At the end of 2016 and into the first quarter of 2017, MET and CVAG were discussing joint venture opportunities. However, at the beginning of 2017 when CVAG's lease extension option became exercisable, MET began taking affirmative steps that I believe were specifically designed to deprive CVAG of the ability to exercise its option and/or to put pressure on CVAG to renegotiate its Lease.

29. In February 2017, MET began serving CVAG with various notices designed to place CVAG in default under the Lease.

30. On June 29, 2017, CVAG hand-delivered a written Notice of Exercise of Option to Extend ("Option Notice") to MET. In a letter from MET's attorneys dated July 17, 2017, MET notified CVAG that it did not accept CVAG's option exercise. The matters are currently in litigation in Superior Court, Stanislaus County, and the three lawsuits (one brought by CVAG and two by MET) have been consolidated in Case No. 2028642. As part of these actions, CVAG seeks specific performance, damages and injunctive relief for MET's breach of contract. MET seeks to evict and dispossess CVAG of its right to operate the Modesto Facility, and claims that CVAG is operating its Modesto Facility as a trespasser.

31. MET claims that its eviction actions were made only in response to CVAG's unsafe operations. However, CVAG has always worked to maintain safe

conditions and operations at its Modesto Facility. In the 13 years that CVAG has operated the Modesto Facility, except for one State of California citation in 2015 that resulted in a minor fine, to my knowledge, CVAG has not received any Federal Railroad Administration or State of California citations or notices of unsafe transloading or rail related activities.

32. CVAG's Modesto Facility has been inspected by the Stanislaus Consolidated Fire Protection District annually. The most recent inspection which took place in April 2017 did not identify a single violation of law or regulation.

33. Despite the fact that CVAG maintains safe operations at its Modesto Facility and was not in default under the Lease at the time it exercised the option, MET has failed and refused, and continues to fail and refuse, to comply with the Lease with respect to CVAG's option to extend the term of the Lease.

34. MET has repeatedly assured CVAG that unless and until a final court order is issued in its favor to approve MET's forced eviction initiative, it will uphold its common carrier obligation to reasonably serve CVAG's Modesto Facility.

35. On January 29, 2018, CVAG filed an Application for Order to Show Cause for Preliminary Injunction and Temporary Restraining Order, seeking to enjoin MET from terminating rail service pending resolution of the parties' property rights dispute. However that matter was removed from the court's calendar after MET provided CVAG written assurances that it would not cease its service.

36. A copy of MET's January 29, 2018 written assurance of current and future service is attached as **Exhibit 1**. MET's assurance of service states as follows:

As I advised you, CVAG's ex parte application is unnecessary and improper because CVAG faces no threat of immediate or irreparable injury. In particular, MET has no intention of taking any extra-judicial action that would "interfere with interstate rail service to CVAG's Modesto Facility." To the contrary, MET intends to continue common carrier service, subject only to the congestion limiting procedures that have been in place for the past year or so. In that regard, Tracy Alves will continue to work with Jeff Robinson to coordinate inbound train scheduling so that it does not interfere with traffic on the MET tracks. Additionally, MET may alter some of its procedures with respect to the handling of CVAG's railcars within the Transload area and leased premises (positive spotting) to minimize the need for MET personnel to enter CVAG's workzone.

But to reiterate, there is no intention whatsoever on MET's part to "interfere" extra-judicially with inbound rail traffic based on its termination of the Transload Permit. MET will instead file an unlawful detainer action and enforce and protect its rights through the judicial process.

Accordingly, we request that CVAG withdraw its ex-parte application.

CVAG's Unit Train Receipt Facilities

37. Prior to 2009, in order to grow CVAG's business and enable unit train service for the first time, MET engaged in substantial tenant improvements. These improvements consisted of construction of a large 182,000 square foot agricultural commodity storage building, a large unit train loop track, and a covered railcar unloading pit adjacent to the commodity storage building. The loop track and other improvements were designed and built for the exclusive use of CVAG in receiving and transloading rail shipments, and were completed in 2009.

38. The loop track includes two designated sections of tracks that comprise CVAG's unit train receiving tracks, Tracks 1041 and 1042. Adjacent Track 1043 was recently added by MET in 2015 for the benefit of CVAG's service, and it is used regularly for CVAG's train delivery service.

39. CVAG understands that the loop track and unloading facilities were designed and built by MET to comply with UP and BNSF's unit train unloading facility requirements, and meet these carriers' unit train facility requirements. MET has informed CVAG that the Modesto Facility loop tracks were designed to accommodate 110-car trains. CVAG has never accepted an order or attempted to receive a train exceeding those design requirements.

40. As part of the parties' multiple amendments to their Lease, as consideration for MET's construction of the above-referenced facilities for CVAG's use, MET substantially increased CVAG's monthly railcar minimums each year, from 240 railcars per month to 810 cars per month, with substantial per car penalties for delivery shortfalls. The minimum volume requirements were later revised to 780 railcars per month.

MET's Unit Train Delivery Operations, 2009-February 2018

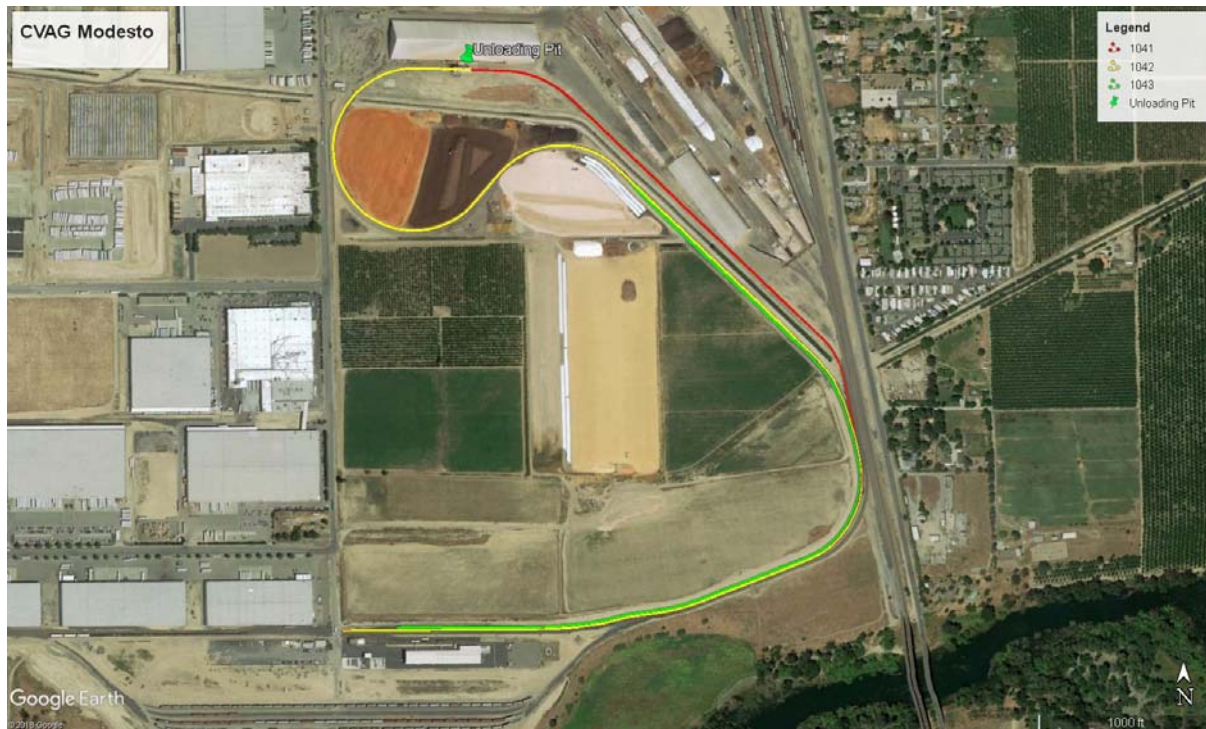
41. From approximately June 2009, when the Modesto Facility unit train facilities were completed, MET has delivered to CVAG over 60,000 railcars, or over 6,000,000 total tons, all at no cost or expense to CVAG, and without any prepay demands for its service, until its recent demands.

42. Over this period, virtually all of the unit trains received at CVAG's Modesto Facility have consisted of the following types and sizes of trains:

<i>Train Type</i>	<i>Typical Cars/Length</i>
DDGs	100 car/7000'
Gluten	100 car/7000'
Canola	100 car/6000'

43. From approximately June 2009 through February 2018, a period of over 90 straight months, CVAG exclusively conducted all train activities in support of unloading for CVAG at its Modesto Facility. This typically included the use of two to three MET remote control locomotives (“RCL”) with one crew member in full time service for three to four straight days, or between 34 – 48 hours for unloading, depending on the type and length of train.

44. The unit train unloading trackage that was used for these operations prior to February, 2018 is reflected in the following schematic:



The total track length used for unloading during this period was a total of approximately 15,400 feet: 8,700 feet on Track 1042 from Codini Avenue to the unloading pit, and 6,700 feet of track from the unloading pit through Track 1041 back to Codini Avenue.

45. Prior to February, 2018, loaded cars were placed on the Track 1042 side (yellow track) and indexed through by RCL to the unloading pit moving west to east, as reflected in the following schematic:



46. After unloading, the empty cars were further indexed by RCL around the loop onto Track 1041 with the cars then extending back on Track 1041 to Codoni Avenue, as reflected in the below schematic:



47. However, since Track 1041 only included 6,700 feet of track prior to reaching Codini Avenue, MET has always had to cut the train on the empty side for any train exceeding 6,700 feet in order to avoid blocking Codini Avenue. This affected many trains, with the typical 100-car Gluten or DDG train needing to be cut and reassembled into a unit train by MET prior to return to UP or BNSF. No accessorial tariff charge assessments or demands were ever made for any train for the above related delivery service by MET, including train cutting and RCL service, and unit train reassembly, over the 90+ month period of unit train service from June 2009 through February 2018.

48. As referenced, until recently MET has repeatedly encouraged CVAG to increase its train volumes far above contractual minimums. For example, MET has used four locomotives, and special weekend crews, as necessary, to accommodate the longer trains, all without tariff charge assessments or demands.

49. For example, in June 2014, MET sent CVAG a congratulatory message thanking CVAG for exceeding contractual commitment levels, stating: “My total carloads estimate for May is 1,401, an all-time record exceeding 862 c/l May 2013. Thank you for your business and all of your and your team’s hard work, we need to get together and celebrate!” In February, 2016, MET similarly celebrated a weekend inbound train of an 108-car gluten train, 7,400 feet and 1500 tons, calling it “[t]he biggest one to date!” and promising to put four locomotives on the train for prompt delivery to CVAG at 6:00 a.m. on a Sunday morning. These communications are reflected in **Exhibit 2**.

MET’s Post February-2018 Unit Train Delivery Operations

50. On February 2, 2018, MET sent to CVAG certain new “Service Bulletins” informing CVAG that:

MET must reduce the amount of time that MET personnel remain in CVAG’s Transload Area. Specifically, on and after Monday, February 12, 2018, we will continue to deliver cars to the specific track you designate within your portion of the Transload Area trackage, but will not otherwise provide positive car placement by zones, or otherwise assist in your car unloading process.

Copies of MET’s Service Bulletins are attached as **Exhibit 3**. CVAG has never seen any similar service bulletin by MET in it’s almost decade of receiving MET service at

Modesto, and it is unaware that any other Beard Industrial District customer has ever received such a notice.

51. MET's February 2, 2018 Service Bulletins also promised that MET would not cease service, and it did not reference any new charges that MET might seek to apply for its normal delivery service:

So there is no confusion on the issue, we will continue to deliver and pick up traffic destined to and from CVAG's Transload Area as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently. The scheduling procedures that we have been following for the last year on a collaborative basis to avoid congestion will continue.

52. In response to MET's demands, since February 12, 2018, CVAG has been performing all car unloading, though use of its own, leased car movers without event or incident.

53. However, despite MET's promises of cooperation in deliveries and full use of trackage, since February 12, 2018, CVAG has taken deliberate steps to (i) restrict CVAG's access to its designated unit train receipt track and (ii) its ability to reasonably and safely receive unit train service.

54. First, MET unilaterally restricted CVAG's full use of the loop track, by placing "derails" on the three designated tracks assigned for CVAG's use in the receipt of CVAG trains, Tracks 1041, 1042, and 1043. These three tracks, and the derails are reflected on the following schematic:



55. After turning over unloading to CVAG on February 12, 2018, CVAG’s unit train delivery plan for CVAG specifically included Track 1043, with full use and access to the trackage by CVAG for train staging and delivery purposes. This is further confirmed in communications from MET’s Operations Manager as reflected in **Exhibit 4**.

56. However, on or around March 14, 2018, MET declared that Track 1043 was no longer available for CVAG’s benefit or use. CVAG disputes this further restriction on its use of trackage for train unloading.

57. The below schematic reflects the restricted current status of CVAG's loop track access:



58. After significantly restricting CVAG's track access, rather than work with CVAG on the reasonable and safe delivery, placement, and return of unit trains on the CVAG loop tracks without fouling of the unloader, MET instead insisted that it would only bring in trains in a single cut. MET stated that "[i]t came in as a grain train and we will spot it as a grain train" only in a single unit cut. Copies of one representative MET's communication is included as **Exhibit 5**. MET knows from its long experience of service to CVAG's Modesto Facilities that such train placement would result in gridlock, and trains could not be unloaded and returned safely or at all under such operations. In fact, as indicated above, all Gluten and DDGs trains in the past required train cutting of empties for train removal and reassembly.

59. The current total loop track length (Tracks 1041/1042) available to CVAG after CVAG's recent restrictions is approximately 10,000 feet or less. Trains can be placed for unloading by CVAG on either side of the unloader, on Tracks 1042 or 1041. However, due to the longer length of Track 1042, which can accommodate a 100-car, 6,000 foot canola train before reaching and fouling the unloading pit, versus the shorter length of Track 1041, which is approximately 3,000 feet in its current configuration, loaded trains typically are placed on the Track 1042 for unloading. At most, for a typical Gluten/DDGs train, this requires MET to simply split the train in half and deliver in two cuts for loading and again for return where necessary, with limited exceptions.

60. While MET has long represented that the Modesto Facility and related trackage was designed and would accommodate required unit train service for trains of up to 110 cars of up to 7,800 feet, and has required CVAG by its contract minimum volume requirements to deliver in such standard unit train lengths, MET is now refusing to provide reasonable service, claiming that there is inadequate track for what it now calls "oversize unit trains."

Delivery of Other Beard Industrial District and Other Comparable Traffic

61. In contrast to MET's unit train service, CVAG still receives manifest service of agricultural commodities that it receives other than Canola, Gluten, and DDGs, received on different tracks on a connected area of the property, without such MET prepay charge demands. CVAG's manifest cars come in on manifest trains. These trains are delivered to MET in various sizes and configurations, with diverse car types and

commodities. The trains include CVAG destined cars, and cars for any other of MET's other customers. CVAG then sorts out the cars between customers, and then by type and track delivery.

62. A single manifest train could be cut up, and then reassembled, a dozen different times by MET for customer delivery. That is a part of railroading, and part of the delivery process, for which MET is paid through its haulage fees, and without separate accessorial fee charges. Just like with the cutting up of manifest trains, which does not entail massive switching fee events/demands by MET placed on CVAG or its other customers, the same should easily be true for unit trains being cut in only several discrete cuts.

63. Cutting unit trains into two cuts at most for delivery and return for CVAG unit train deliveries of Gluten is a breeze in comparison and a part of the normal delivery process. Elsewhere at the Beard Industrial District, Gallo ships large quantities of wine in large, insulated boxcars, in what I understand are often in smaller 20-30 car units, but sometimes longer. As stated, Gallo and CVAG are MET's two largest customers, and it may be that total traffic volumes for Gallo exceed those of CVAG. Gallo ships its wine from multiple, shorter stub ended tracks because Gallo does not have private track comparable to CVAG's large unit train loop track. CVAG is unaware if MET is seeking to impose its new accessorial fee program on Gallo for the extra switching work it performs on the Gallo trains that significantly exceeds the work it performs on the CVAG trains.

64. In comparison, because of its ability to quickly process cars through its large unit train loop track and extensive unloading system, CVAG is easily the most efficient receiver of railcars of any of the dozens of customers of MET in the Beard Industrial District. Yet, to my knowledge, CVAG is the only customer on which MET is seeking to impose its exorbitant delivery fees.

65. In addition to its transload operations in Modesto, CVAG also operates a truck to container transload facility in the Port of Oakland, where the short line carrier Oakland Global Rail Enterprise (“OGRE”) serves as the delivery carrier for inbound UP trains, including grain unit trains. The unit trains are taken to the transloader in several small cuts, without separate accessorial fee charges.

66. Richard Best Transfer (“RBT”) has long operated an agricultural feed transload facility at Ivory, California near Fresno, approximately 125 miles to the south of Modesto, that does not have a unit train loop track. Instead, unit trains are delivered to 6-7 RBT stub-ended receiving tracks in 6-7 cuts. However, RBT is still a certified UP unit train facility for dairy feed and other commodities receiving full unit train service, even though it is incapable of receiving unit trains on the delivering shortline, SJVR, in a single unit train placement. RBT-Ivory is not assessed separate similar accessorial fee charges by SJVR. The below schematic reflects RBT-Ivory’s unit train receiving tracks:



There are many other examples where unit trains are received on stub-ended and other tracks of far smaller size and far more complexity in switching than the CVAG Modesto Facility loop tracks, and without separate accessorial fee charges.

67. Based on my experience, MET's demanded delivery charges are unprecedented, and similar charges are not assessed at other numerous facilities in the region and throughout the country. Many of these do not have loop tracks that are as large of a size of those at the Modesto Facility, yet still receive unit train service, without \$50,000 prepay demands or any other charges for delivery on top of the line-haul rates.

MET's New Tariff and Pricing Demands

68. Following the above, in a sincere effort to improve the situation, CVAG put together a reasonable operating plan for MET's consideration, which simply requested that the trains be cut in half and delivered in two cuts, and picked up in two cuts, with CVAG continuing to unload each train with its own railcar handling equipment. Copies

of CVAG's outreach with MET on the requested operating plan are included at **Exhibit 6**.

69. MET largely agreed to a reasonable operating plan for CVAG service. However, it then insisted on unprecedented payments of up to \$50,000 per train for all current and future trains or it would cease service to CVAG. Copies of a MET's initial response are included at **Exhibit 7**.

70. The MET since January 1, 2018 has revised each of its Tariffs 8000 and 9500 two to three separate times, and on April 20, 2018 we were notified that they will be revised a fourth time. These tariff revisions unfairly target CVAG operations and are excessive and unreasonable. I believe these tariffs are being implemented in an attempt to compel CVAG to abandon the Modesto Facility. The multiple tariff revisions are also disruptive to CVAG's business and make it impossible for CVAG to forecast potential new charges and cost demands at the Modesto Facility.

71. MET has been refusing to timely remove two cuts of empty railcars, or to cut trains in two for reasonable delivery when necessary (for Gluten/DDG trains), and to include this as part of the delivery switch.

72. With CVAG now performing all car movements relating to train unloading, and exclusively paying the costs of such services, MET's service requirements have been dramatically reduced since prior to February 12, 2018, resulting in considerable MET cost savings. Those savings result in large part because MET no longer has the considerable locomotive (typically 2-3 locomotives per train) and crew expenses that it previously incurred for CVAG's delivery service. Yet, in the face of those considerable

resource and cost savings, MET has placed enormous new “accessorial fee” demands on CVAG.

73. Instead, MET now calls each individual delivery and empty car release a chargeable “accessorial fee” event, seeking to charge CVAG upwards of \$275 per car, plus additional demurrage, “train reassembly” and other charge demands. MET seeks and demands full prepayment of between \$40,000 - \$50,000 for most trains as a condition of delivery. Its demands are reflected in part in correspondence included at **Exhibit 8**.

74. In the past several weeks, MET has repeatedly committed itself to full cessation of rail service to CVAG’s Modesto Facility without meeting its full prepayment demands. While the assessed charges and demands have been inconsistent, MET has been resolute in its threat of self-help cessation of service in the absence of full prepayment of its demands. Copies of representative MET cessation of service instructions are included at **Exhibit 9**.

75. Over the past several weeks, MET has also threatened line embargos and refusal to interchange traffic with UP and BNSF in the absence of CVAG acceding to its unprecedented delivery prepayment demands, as reflected in **Exhibit 10**.

76. CVAG counsel asked MET to enter into reasonable security deposit arrangements to keep the trains running while the parties worked out their disputes. MET refused, instead demanding full prepayment of its demands. These communications are reflected in **Exhibit 11**.

77. After considerable discussion, MET did agree to a “keep the trains running” interim agreement with regard to one canola train. This “keep the trains running” arrangement is reflected in **Exhibit 12**.

78. CVAG has urged MET to accept its “keep the trains running approach” or any other reasonable security measure, with all future trains. However, MET has refused, instead insisting on full prepayment of its demands. This refusal is reflected in the communications included in **Exhibit 13**.

79. Recently, under protest and as a form of security, and without waiver of its rights, CVAG acceded to MET’s prepay demand for \$11,250 for one additional switch entailing MET’s removal of 50 empty cars released for return by CVAG, as reflected in **Exhibit 12**. This additional switch took no more than one hour and forty-five minutes to complete. Thus, under its prepay demand, in addition to its substantial haulage fees, MET was paid almost \$100 per minute, or over \$5,000 per hour, for switching time for this train.

80. Even without CVAG’s specific agreement, or demand, CVAG has delivered checks to CVAG in the amount of \$10,000 for each inbound train. It does so under protest, as a form of security, simply in order to keep the trains running. This is being done to meet the critical needs of the dairy industry, to ensure the connecting rail operations of UP and BNSF remain fluid, and to help secure timely delivery for CVAG’s customers. Representative correspondence with MET on such payments are set forth in **Exhibit 14**.

81. CVAG recently paid MET \$21,250 for two trains under protest as a form of security to keep the trains running, and MET has refused another \$20,000 from CVAG for an additional two trains that CVAG attempted to pay it as a form of security. Correspondence with MET regarding one of these payments is set forth in **Exhibit 12**.

82. As stated, CVAG remains willing to pay MET \$10,000 per train as a form of security under protest, and without waiver of its objections to the charges and underlying tariff terms, but MET has repeatedly rejected this approach. Instead, MET has insisted that it is “resolute” in preventing trains from interchange and delivery to CVAG’s Modesto Facility, as reflected in **Exhibit 11**.

83. Last week, a train en route to CVAG’s Modesto Facility was refused in interchange and held up for delivery by MET, absent full prepayment of its demands. The MET train blockage involved a 102-car cotton seed train (Train GALOMOD314) being shipped by Gavilon on BNSF. MET refused a hand-delivered \$10,000 payment by check from CVAG as a form of security to keep this train running and delivered. The Gavilon train was scheduled for delivery last Monday, April 23, 2018. However, when the train was refused in interchange by MET, it was then held en route by BNSF.

84. BNSF sent Gavilon a message in the evening of April 24, 2018 as follows: “CP ACCOUNT UNIT TRAIN HELD SHORT OF BILLED DESTINATION. THE MET IS REFUSING TRAIN DUE TO CONTRACTUAL AGREEMENTS WITH THE CUSTOMER. THE MET IS NOT GETTING PAID TO SWITCH THE UNIT TRAINS INTO THE CUSTOMERS FACILITY. JARED IS ONE OF THE CONTACTS I TALKED TO THIS MORNING. 209 543 5943 CASE-2453143.” Jared

refers to Jared Martin, MET's VP of Operations. A copy of this notice is included in **Exhibit 15**.

85. The above statement that "MET IS NOT GETTING PAID" for train delivery is clearly incorrect for the reasons stated above. The statement that "MET IS REFUSING TRAIN DUE TO CONTRACTUAL AGREEMENTS WITH CUSTOMER" is also incorrect – CVAG has no agreement with MET authorizing MET to refuse interchange and delivery. Additionally, this new position about possible contract disputes is an apparent reversal from MET's January 29, 2018 commitment to CVAG referenced above in **Exhibit 1** that "MET has no intention of taking any extra-judicial action that would 'interfere with interstate rail service to CVAG's Modesto Facility.'" It is also inconsistent with MET's commitment that "we will continue to deliver and pick up traffic destined to and from CVAG's Transload Area as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently."

86. After the Gavilon cotton seed train sat on hold for over two days, Gavilon stepped in and offered to prepay MET's full \$42,050 prepayment demands by wire. MET first accepted, "for this train only" while further threatening that "this does not relieve CVAG of additional accessorial charges that may occur due to the nature of this train." However, within an hour, MET refused to accept payment from Gavilon, and instead instructed CVAG and Gavilon to have Gavilon wire the money to CVAG, and have CVAG, in turn, hand deliver payment by check to MET, before agreeing to instruct

BNSF to move the train for interchange and delivery. This unnecessarily further delayed train delivery. These communications are included in **Exhibit 16**. CVAG remains hopeful that the Gavilon cotton train will arrive at CVAG soon.

87. On Thursday, April 26, 2018, MET unreasonably placed a Gluten train on CVAG's track in one cut, under its "[i]t came in as a grain train and we will spot it as a grain train." It did so in a manner that was designed to purposely foul the unloading pit, and ensure train unloading gridlock, causing further delays and safety hazards for CVAG employees. MET then refused to conduct any actions to correct the problem without full prepay of its \$18,450 demands for safe delivery of the train. A picture of this gridlocked train fouling the unloading pit is below:



Communications regarding the fouling of track and gridlock are included in **Exhibit 17**.

88. Ultimately, one of the shippers, JD Heiskell, agreed to pay MET's demand in order to keep the train moving, and address the problem. Communications on this train are included in **Exhibit 18**.

89. MET promises to block, and based on the above experience, has shown that it will block, all other future unit train service to CVAG's Modesto facility absent CVAG's acceptance in full of its new forced prepay demands.

MET's Cessation of Canola Unit Train Service, Effective April 29, 2018

90. Late Friday, April 27, 2018, MET sent CVAG another prepay demand for an inbound 100-car canola train of \$11,250. As part of its demand, MET acknowledged that its recent demands and practices had produced "uncertainty, congestion, and instability on the MET rail system. We cannot allow this to continue." MET then instructed CVAG that "[t]he inbound train that is the subject of our attached service estimate will be the last canola unit train exceeding 77 cars that MET will accept." MET also added that no canola trains of 77 cars or less would be accepted by MET unless "MET has been able to confirm that Tracks 1041/1042 are free to accept such a shipment." MET's demand and notice of service cessation is included in **Exhibit 19**.

91. MET's latest announcement will block all regular unit train delivery service to CVAG's Modesto Facility for Canola. As mentioned above, these trains are generally shipped in 100-car trains, and have not been shipped in manifest train service or in unit trains of less than 90 cars in several years. As further mentioned above, the markets require that this product be received in unit train service usually of 100+ cars, in part because of the high volume demands of the dairy industry, the low margins, and because

of the rate incentives provided for such service. UP and BNSF's tariffs do not provide for such shorter train service, and even if they did, the substantially higher costs would render the service uneconomical for both CVAG's customers and the California dairy industry.

MET's Cessation of Cotton Seed Unit Train Service, Effective Immediately

92. As part of MET's April 27, 2018 demand, CVAG also instructed CVAG that "MET will restrict its receipt of inbound cotton seed destined to CVAG to a maximum of 25 carloads at a time." MET also added that its acceptance in interchange of a maximum of 25 carloads of cotton seed commodity shipments was also "subject to confirmation of available capacity on Tracks 1038 and 1039." As mentioned, after considerable effort and through the intervention and assistance of Gavilon, CVAG did pay under protest CVAG's full prepay demands of \$42,050 for the shipment of the Gavilon's 102-car cotton seed train (Train GALOMOD314). That train has not yet arrived to MET in interchange, but should arrive shortly. Based on MET's Cessation of service notice, however, it is unclear whether MET will accept and deliver this train, even though its \$42,050 prepay demands have been fully met.

93. CVAG has informed MET repeatedly that it will pay all valid accessorial charges that are reasonable and properly applied. If there are truly additional services being performed separate from reasonable delivery services, then CVAG is willing to discuss what those are and reasonable compensation for such services. However, the charges MET is demanding, in addition to being unprecedented, are clearly not reasonable, or what I have ever seen before at any time during my 35 years in the

transloading business. The parties have an ongoing dispute over the charges, and we do not believe it is appropriate for MET to demand full prepay under the circumstances, especially given our payment of more than reasonable security payments.

The Impacts of MET's Prepay Demands

94. MET's imposition of significant prepayment for its services, and its recent unit train service restrictions not only severely threatens, but eviscerates the viability of unit train service at CVAG's Modesto Facility.

95. MET's threatened cessation of service, if realized, will force the shutdown of CVAG's unit train transloading services at its Modesto Facility, and over 80% of its business (other than manifest service), as it has no other means of receiving its Canola, Gluten, and DDGs feed commodities other than through MET rail service. CVAG's ability to meet the transload needs of the California dairy industry will thus also be blocked by MET's discontinuance of rail service. MET's demands, if allowed to be implemented, will immediately put CVAG out-of-business at Modesto for unit train service, harm our customers, and destroy competition.

96. The unprecedented charges sought by MET meet or exceed what CVAG receives from its customers for its unloading services at the Modesto Facility. The transload business operates on a wire-thin level of cost margins, hence the need for large volumes of business for survival and possible success.

97. CVAG's variable costs (not including fixed costs) are already at the \$3.00 - \$3.50 or more per ton level before MET's added costs. MET's demands would add another \$4.00-\$5.00 per ton to our costs. Neither CVAG, nor any other unit train

transloader receives more than approximately \$5.00 per ton. MET's accessorial fee payment demands for delivery alone consume the entirety of CVAG's transloading charge receipts, before considering CVAG's regular costs of service. MET's rate demands do not just adversely affect the economic competitiveness of the Modesto Facility, they make the Facility completely unfeasible.

98. Operating at a significant loss is not a sustainable business model for CVAG at its Modesto Facility on a short or long-term basis. If forced to pay the MET demands during the pendency of the dispute, this will result in the suspension of unit train operations and rail service.

99. CVAG has also invested over \$7,000,000 in its Modesto Facilities. Much of that investment will be stranded if MET's prepay demands are not enjoined. Additionally, the employment of most, if not all, of the twenty-five people at CVAG's Modesto facility will be lost if MET's prepay demands are sustained.

100. Through its Modesto Facility, CVAG provides livestock feed to nearly 500 dairies in the Central and North Valley of California. If CVAG were forced to suspend its Modesto Facility operations, which would occur in the face of MET's prepay demands, I am informed and believe that there is no other facility in Northern California with the capability or capacity to provide immediate substitute service. Any partial substitute transload service that is available from more distant locations, even if available, which is uncertain, significantly increases the farmers' trucking costs (not to mention the fuel, road-maintenance and other environmental costs associated with the additional trucking distance). The "domino effect" of MET's initiative to discontinue service,

through its prepay demands, will be widespread and substantial, although CVAG is unable to quantify with precision the total economic harm that will result.

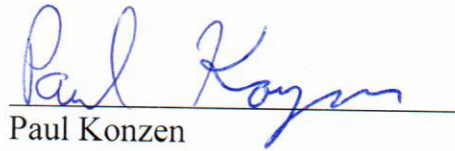
101. It is not feasible to move CVAG's Modesto Facility transload operations to another one of CVAG's facilities. Of CVAG's other facilities, only three of them have rail service. The Port of Oakland rail facility is an import-export operation and transloads only from rail to shipping container and vice versa. CVAG's two other rail facilities do not have the present capacity to handle the railcar volume that CVAG is transloading in Modesto. The balance of CVAG's facilities do not have rail service.

102. Since there is no other transload facility that is capable of handling the variety and volume of commodities that CVAG handles at its Modesto Facility, before CVAG can move from the Premises it must locate, design and build another transload facility at a different location. This would be a massive undertaking and would cost CVAG many millions of dollars.

103. In the meantime, CVAG will lose good will with present and future customers who will no longer have confidence in CVAG's ability to meet their transload needs. It is my experience, based on my 35 years of experience in the Central California animal feed transloading business, that once customers go elsewhere, they are not likely to return.

VERIFICATION

I, Paul Konzen, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.


Paul Konzen

Executed on April 29, 2018

Exhibit 1

From: Angela Schrimp de la Vergne
To: [Peter Pfohl](#)
Subject: FW: NOTICE OF EX PARTE HEARING
Date: Thursday, April 12, 2018 7:06:50 PM

From: Carl D. Ciochon [mailto:Cciochon@wendel.com]
Sent: Monday, January 29, 2018 3:17 PM
To: Angela Schrimp de la Vergne; Fatima Gioletti
Cc: Brooke Stanton; Steven J. Cramer; Matthew F. Graham; Phyllis A. Best
Subject: RE: NOTICE OF EX PARTE HEARING

Angela,

This email follows on your notice of ex parte appearance tomorrow morning and our subsequent phone call.

As I advised you, CVAG's ex parte application is unnecessary and improper because CVAG faces no threat of immediate or irreparable injury. In particular, MET has no intention of taking any extra-judicial action that would "interfere with interstate rail service to CVAG's Modesto Facility." To the contrary, MET intends to continue common carrier service, subject only to the congestion limiting procedures that have been in place for the past year or so. In that regard, Tracy Alves will continue to work with Jeff Robinson to coordinate inbound train scheduling so that it does not interfere with traffic on the MET tracks. Additionally, MET may alter some of its procedures with respect to the handling of CVAG's railcars within the Transload area and leased premises (positive spotting) to minimize the need for MET personnel to enter CVAG's workzone.

But to reiterate, there is no intention whatsoever on MET's part to "interfere" extra-judicially with inbound rail traffic based on its termination of the Transload Permit. MET will instead file an unlawful detainer action and enforce and protect its rights through the judicial process.

Accordingly, we request that CVAG withdraw its ex-parte application.

- Carl

Carl D. Ciochon | Wendel Rosen Black & Dean LLP

1111 Broadway, 24th Floor | Oakland, CA 94607

Direct [510.622.7536](tel:510.622.7536) | Main [510.834.6600](tel:510.834.6600) | Fax [510.808.4647](tel:510.808.4647)

From: Fatima Gioletti [mailto:fgioletti@damrell.com]
Sent: Monday, January 29, 2018 9:58 AM
To: Carl D. Ciochon

Cc: Angela Schrimp de la Vergne; Brooke Stanton
Subject: NOTICE OF EX PARTE HEARING
Importance: High

***NOTICE OF EX PARTE HEARING on JANUARY 30, 2018 at 8:20 a.m. in
Department 24***

Dear Carl,

This email is to advise you that this office has scheduled an ex parte hearing before the Honorable Roger M. Beauchesne in Department 24 of the Stanislaus County Superior Court, Civil Division for tomorrow, January 30 at 8:20 in tomorrow morning.

CVAG will be seeking an OSC for TRO and preliminary injunction on the grounds that CVAG has demonstrates that it is entitled to the relief sought, because MET has violated the covenant of good faith and fair dealing by interfering with and threatening to interfere with interstate rail service to CVAG's Modesto Facility, and that such conduct violates the federal rights of CVAG and the carriers that ship product to CVAG's Modesto Facility.

Please let us know if MET intends to appear and oppose the motion. Please also let us know if MET will agree to allow you to accept service of the moving papers on its behalf, which we intend to get to you as soon as possible.

Kindest regards,

Fatima Gioletti

Maria Fatima Gioletti
Damrell, Nelson, Schrimp,
Pallios Pacher & Silva
1601 I Street, Fifth Floor
Modesto, CA 95354
Telephone: (209) 526-3500
Facsimile: (209) 526-3534
E-mail: fgioletti@damrell.com

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Exhibit 2

From: Jim Ross
To: [Paul Konzen](#); [Mike Barry](#)
Subject: CVAG Car Volume Commitment
Date: Wednesday, June 4, 2014 1:08:50 PM

Guys,

My back of the envelope calculations say after May you are plus 228 carloads for this contract year. Numbers went from -453 c/l at start of May to +228 c/l at month's end. My total carloads estimate for May is 1,401, an all-time record exceeding 862 c/l May 2013. Thank you for your business and all of your and your team's hard work, we need to get together and celebrate!

Jim Ross
Modesto & Empire Traction Company
530 Eleventh Street
P O Box 3106
Modesto, CA 95353
p. 209.557.2708
f. 209.529.0336

From: Jared Martin <jmartin@beardland.com>
Sent: Thursday, February 4, 2016 8:46 PM
To: Jim Ross; Jeff Robinson
Cc: Chris P. Varela
Subject: Fwd: Gtrain

The biggest one to date!

Sent from my iPhone

Begin forwarded message:

From: "Marshall C. Porter" <cporter@beardland.com>
Date: February 4, 2016 at 5:07:29 PM PST
To: OperatingSupervisor <OperatingSupervisor@beardland.com>, Mike Bradshaw
<mbradshaw@beardland.com>
Subject: Gtrain

Hey guys that UP Gtrain is showing for Sunday morning I am going to run my crew at 6am that day. This train is 108 cars 7400 feet and 1500 tons I just made Jared aware he wants 4 engines on it. Also the loop is designed for 110 cars so whoever is bringing it in need to know it will be close but we will be fine. Like I said I will probably be the OS on duty but wanted to make you guys aware incase if moves. Mike could you have you weekend guy coordinate with Jorge about getting 4 engines together. Thanks Cody

This email was scanned by BitDefender.

Exhibit 3



Ph.: 209-524-4631 Fax: 209-529-0336
530 11th Street PO Box 3106 Modesto, California 95355

Service Bulletin – Leased Premises

February 2, 2018

Via Email

To: Central Valley Ag Grinding, Inc

This bulletin relates to Modesto and Empire Traction Company's ancillary rail service to the Premises located at 300 Codoni Avenue Modesto, as described in our Lease dated October 26, 2004. as amended.

MET must reduce the amount of time that MET personnel remain in the Premises. To this end, on and after Monday, February 12, 2018, we will not provide railcar switching or spotting on the trackage serving the Premises (i.e., the loop track), or otherwise assist in your car unloading process. Once we complete the delivery of a train onto the Premises, our personnel and equipment will leave until you release the train for pick-up. We make this change because of well-documented safety violations associated with your operations, including on or about our rail tracks, which unfortunately have not abated. We also note that as of today's date, the Transload Agreement has terminated.

We are aware that you maintain your own car moving equipment. You are also of course free to contract with qualified third-party non-common carrier switching services providers to meet your car switching/spotting needs (subject to said providers limiting their activities to the loop track).

So there is no confusion on the issue, we will continue to deliver and pick up traffic destined to and from the Premises as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently. The scheduling procedures that we have been following for the last year on a collaborative basis to avoid congestion will continue.

We must of course reserve the right to update this Service Bulletin in the future.

Sincerely,

Modesto and Empire Traction Company,

A handwritten signature in blue ink, appearing to read "Jared Martin", with a long horizontal flourish extending to the right.

By Jared Martin, VP Operations



Ph.: 209-524-4631 Fax: 209-529-0336
530 11th Street PO Box 3106 Modesto, California 95355

Service Bulletin – Transload Area

February 2, 2018

Via Email

To: Central Valley Ag Grinding, Inc
And Central Valley Ag Transport, Inc (collectively “CVAG”)

This bulletin relates to Modesto and Empire Traction Company’s ancillary rail service to that portion of the Transload Area, which you utilize under the Transload Agreement between us dated December 11, 2003 (“CVAG’s Transload Area”).

MET must reduce the amount of time that MET personnel remain in CVAG’s Transload Area. Specifically, on and after Monday, February 12, 2018, we will continue to deliver cars to the specific track you designate within your portion of the Transload Area trackage, but will not otherwise provide positive car placement by zones, or otherwise assist in your car unloading process. Once we complete the delivery of a train into CVAG’s Transload Area, our personnel and equipment will leave until you release the train for pick-up. We make this change because of well-documented safety violations associated with your operations, including on or about our rail tracks, which unfortunately have not abated. We also note that as of today’s date, the Transload Agreement has terminated.

We are aware that you maintain your own car moving equipment. You are also of course free to contract with qualified third-party non-common carrier switching services providers to meet your car switching/spotting needs (subject to

said providers limiting their activities to the trackage within CVAG's Transload Area).

So there is no confusion on the issue, we will continue to deliver and pick up traffic destined to and from CVAG's Transload Area as a handling carrier unless or until such time as an appropriate court determines that you are not legally entitled to use this property, or until such time as circumstances support or necessitate our legal cessation of service temporarily or permanently. The scheduling procedures that we have been following for the last year on a collaborative basis to avoid congestion will continue.

We must of course reserve the right to update this Service Bulletin in the future.

Sincerely,

Modesto and Empire Traction Company,

A handwritten signature in blue ink, appearing to read "Jared Martin", with a long horizontal flourish extending to the right.

By Jared Martin, VP Operations

Exhibit 4

From: Sean Casey
To: [Jeff Robinson](#); [OperatingSupervisor](#); [Jared Martin](#); [Tracy M. Alves](#); [Matt Carne](#)
Cc: [Paul Nicholson](#); [Thad Konzen](#)
Subject: RE: Inbound Canola Train
Date: Monday, February 19, 2018 5:16:26 PM

Jeff –

We will do our best to get this train on property tonight; as always, this will depend on the UP. Our plan for spotting is to leave the rear 50 cars on the 1041 side (next to the 1040 tent), placing the remainder of the train to 1043. We will meet with you tomorrow regarding the 1043 switch, as we have turned it into a push-button-only switch (with no radio capability) and have applied a combination lock (combination is “1043”) to allow your people access to line it.

Sean Casey
Operations Manager
Modesto and Empire Traction Co.
641 S. McClure Rd.
P.O. Box 3106
Modesto, CA 95353
Office: 209-576-6705
Cell: 209-499-0695
Fax: 209-527-2854
Email: scasey@metrr.com

From: Jeff Robinson [<mailto:jeff@cv-ag.com>]
Sent: Monday, February 19, 2018 01:21 PM
To: Sean Casey <scasey@beardland.com>; OperatingSupervisor <OperatingSupervisor@beardland.com>; Jared Martin <jmartin@beardland.com>; Tracy M. Alves <talves@beardland.com>
Cc: Paul Nicholson <pnicholson@cvaggrinding.com>; Thad Konzen <thadkonzen@cvaggrinding.com>
Subject: Inbound Canola Train

Good afternoon,

It looks like GMP2MV16 is scheduled to arrive this evening around 0330. What is the plan to place this train in the loop so we can get started on it? Is it going to be pushed down the Codoni side or canal side?

Thank you,

Jeff Robinson
Transload Manager
Central Valley Ag Transload

330 Codoni Ave
Modesto, CA 95357

jeff@cv-ag.com

209-232-3569 / Direct
209-988-2994 / Mobile
209-544-9246 / Office
209-232-3579 / Fax

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Exhibit 5

From: Jared Martin
To: [Jeff Robinson](#)
Cc: [Sean Casey](#); [Tracy Alves](#); [OPERATINGSUPERVISOR](#)
Subject: Re: [W] Next Grain Train
Date: Wednesday, March 14, 2018 7:52:01 PM

It came in as a grain train and we will spot it as a grain train.

Sent from my iPhone

On Mar 14, 2018, at 4:46 PM, Jeff Robinson <jeff@cv-ag.com> wrote:

Good afternoon Jared,

Why not leave some of the cars on 1039 like I ordered?

Jeff

From: Jared Martin [<mailto:JMARTIN@METRR.COM>]
Sent: Wednesday, March 14, 2018 4:45 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Sean Casey <SCASEY@METRR.COM>; Tracy Alves <TALVES@METRR.COM>;
OPERATINGSUPERVISOR <OPERATINGSUPERVISOR@METRR.COM>
Subject: Re: [W] Next Grain Train

Afternoon Jeff,

We will spot the entire grain train with our 1800 job.

Jared

Sent from my iPhone

On Mar 14, 2018, at 4:20 PM, Jeff Robinson <jeff@cv-ag.com> wrote:

How many cars are going to be spotted on the loop?

From: Sean Casey [<mailto:SCASEY@METRR.COM>]
Sent: Wednesday, March 14, 2018 4:19 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>; Jared Martin
<JMARTIN@METRR.COM>; OPERATINGSUPERVISOR
<OPERATINGSUPERVISOR@METRR.COM>
Subject: [W] Next Grain Train

Jeff –

As an update, the next grain train will be spotted by our 18:00 Job when they come on duty, so you should have the train available for unloading by around 19:00-19:30.

Sean Casey
Operations Manager
Modesto and Empire Traction Co.
641 S. McClure Rd.
P.O. Box 3106
Modesto, CA 95353
Office: 209-576-6705
Cell: 209-499-0695
Fax: 209-527-2854
Email: scasey@metrr.com

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Exhibit 6



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

March 19, 2018

Via Email and First Class Mail

Mr. Robert A. Wimbush
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Dear Rob:

The purpose of this letter is to request that your client, Modesto Empire Traction Company ("MET") take immediate actions and implement a reasonable operating plan to fix ongoing serious service disruptions with respect to its delivery of unit trains to our client, Central Valley Ag Grinding, Inc. ("CVAG").

The issue arises with respect to delivery of UP and BNSF feed commodity unit trains to CVAG's unit train loop tracks 1041, 1042, and 1043 at Modesto, California. As MET knows, CVAG cannot accommodate a full 90+ car unit train on its tracks (consisting of approximately 9,400-9,600 feet of track) in one consignment/cut for unloading at the centrally located unloading pit. Unfortunately, MET has failed to implement an operating plan that reasonably meets CVAG's delivery and unloading requirements. Instead, MET has been insisting on flooding and gridlocking CVAG's loop tracks with longer unit trains delivered in one consignment/cut. MET has refused CVAG's repeated requests for placement of railcars in appropriate cuts for proper unloading, or to reasonably switch out empties to make space for unloading, with limited exceptions. The result is that trains cannot be reasonably unloaded, requiring some of the loaded railcars to be held by MET, and empty trains apparently returned in less than unit train consignments, causing significant business harm and safety issues.

For example, last Wednesday, March 14th, rather than deliver a train as ordered in reasonable train consignments/cuts for proper unloading, MET instead insisted that "[i]t came in as a grain train and we will spot it as a grain train" – in a single unit train cut. Last Monday, March 12th, without notice MET entered CVAG's property at night and pulled out all of the railcars placed on its separate manifest tracks 1038, 1039, and 1040, some of them awaiting immediate customer car-to-truck transloading/pick-up. The next morning, MET then requested CVAG to unlock derails and remove blue flags in order to store separate consignments/cuts of a portion of a unit train destined to CVAG's loop tracks. This inappropriate entry and forced temporary storage of a unit train on CVAG's manifest tracks took place during regular business hours when CVAG had employees, loaders, and

Mr. Rob Wimbush, Esq.

March 19, 2018

Page 2

third party truck drivers operating in the area, causing significant business conflicts, disruptions, and safety issues.

When MET turned plant trackage switching over to CVAG in February, it promised to work cooperatively with CVAG on scheduling and train service protocols to ensure that CVAG's service requirements were met, without interruption. That is clearly not occurring. Immediate corrective actions are necessary.

CVAG requests that MET implement immediately a reasonable operating plan to safely and adequately perform its service delivery and pick-up obligations to CVAG and MET's connecting railroad partners. CVAG's proposed operating plan for unit trains is enclosed, and was sent by CVAG to MET this afternoon. In summary, CVAG's plan requires MET to place railcars in two consignments/cuts, with the initial train cut of between 67-70 cars to be placed on track 1041 to the east side of the unloading pit, and the remaining cars to be placed after unloading of the initial train cut – with total unit train unloading/release anticipated in 60 hours. CVAG will continue to unload each train consignment/cut with its own railcar handling equipment. The train will be returned to origin as a single unit train.

CVAG's proposed operating plan is straightforward, reasonable, and consistent with the operating plans of other railroads in similar circumstances. While CVAG is happy to reasonably fine-tune its proposal to meet MET operating needs, it requests that the basic parameters of the operating plan be implemented immediately by MET to avoid continuing service delivery interruptions. Additionally, as MET knows, Union Pacific Railroad Company's ("UP") Agricultural Products division recently visited CVAG's facilities to review the current service situation. We are copying UP with this letter, and welcome their participation and input. While we hope it is not necessary, given the seriousness of the service situation, CVAG is prepared to go to the STB immediately to resolve the situation, either through the assistance of the STB's Office of Public Assistance, Government Affairs, and Compliance, or through more formal actions, if necessary.

On behalf of CVAG, we appreciate MET's immediate attention to this matter and look forward to mutually resolving the situation as soon as possible.

Sincerely,



Peter A. Pfohl

Enclosure

cc: Jeff Robinson, CVAG
Brad Thrasher, VP and Gen. Manager – Agricultural Products, UP
Craig V. Richardson, Esq., UP



Central Valley Ag Transport

330 Codoni Ave.
Modesto, CA 95357
(209) 544-9246 Office

Central Valley Ag Transport, Modesto Transload

Rail Operating Plan – 100 Car Canola Train

Prepared 3/16/2018

Equipment Description

Canola pellets are typically transported in covered hopper cars with three hoppers. These cars are between 58.8' to 60.08' in length. Railcars, once placed by the M&ET, will be moved by CVAG with a Rail King 330.

Area Description

See map below of tracks 1041, 1042, and 1043. The 1041 leg of the loop track stretches from a fixed derail to the east side of the unloading pit. The 1042 leg of the loop track goes from the west side of the unloading pit back to a switch that joins with the 1041 leg. Track 1043 switches out from the 1042 leg and extends to a proposed derail at our property line.

These cars would be opened over an unloading pit on the loop track, 1041/1042.





Central Valley Ag Transport

330 Codoni Ave.
Modesto, CA 95357
(209) 544-9246 Office

Unloading Plan

Once a unit train is interchanged from the UP or BNSF it should be pulled in on the south side of 1041/1042, through the derail, and delivered to the east side of the unloading pit. This space between the 1041/1042 derail and the east side of the unloading pit should accommodate approximately 77-80 loaded railcars. Receiving the cars in this way will provide visual cues of where to drop between the east side of the unloading pit and a safe distance inside the 1041/1042 derail. The remaining 20-23 cars would need to be stored to be switched in later.

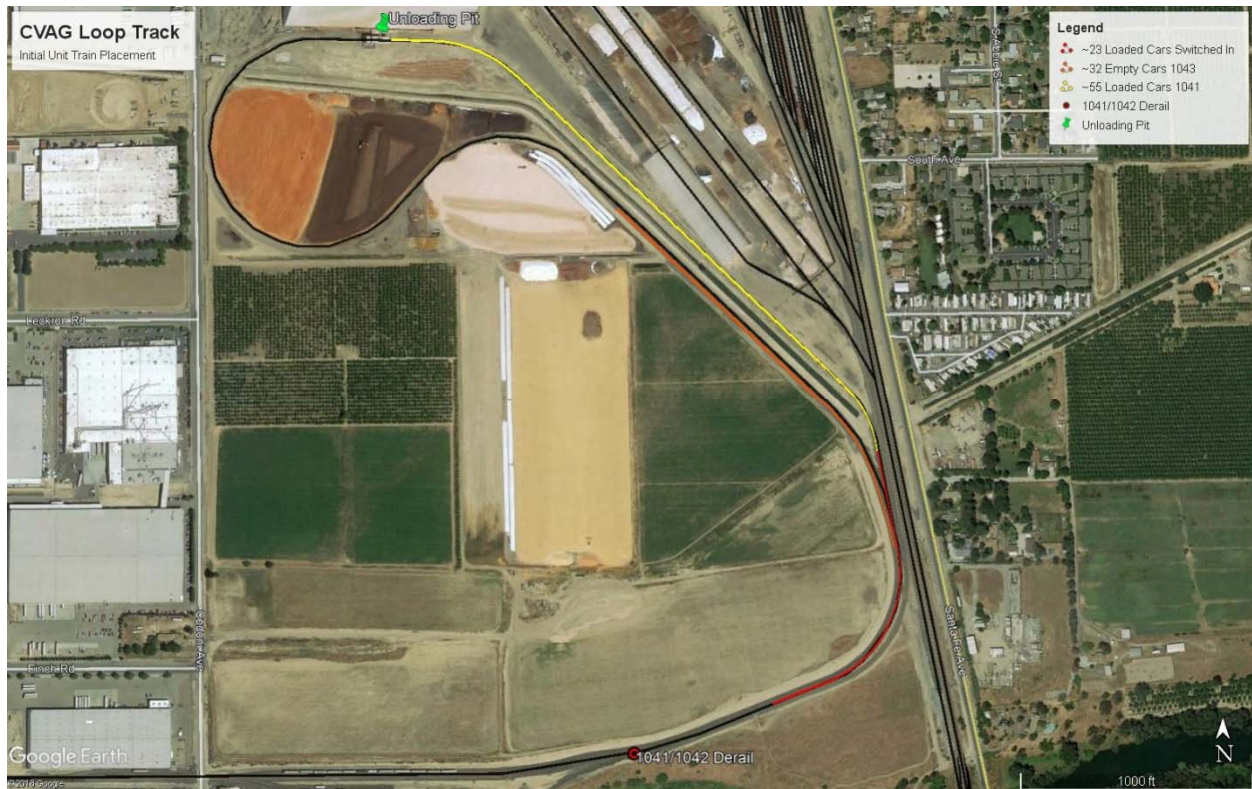




Central Valley Ag Transport

330 Codoni Ave.
Modesto, CA 95357
(209) 544-9246 Office

CVAG would be able to begin work on the train immediately, excluding Sundays, and will need to have the remaining 20-23 cars switched in to the south side of 1041 within the next 32 hours in order to keep the train moving. As the loaded cars cross the pit they will be pushed through the 1042/1043 switch to 1043 and parked a safe distance from the proposed derail at the property line. This track will hold approximately 32 cars. Once track 1043 is full it could be locked out so GBW Rail Services could conduct a Class 1 inspection.





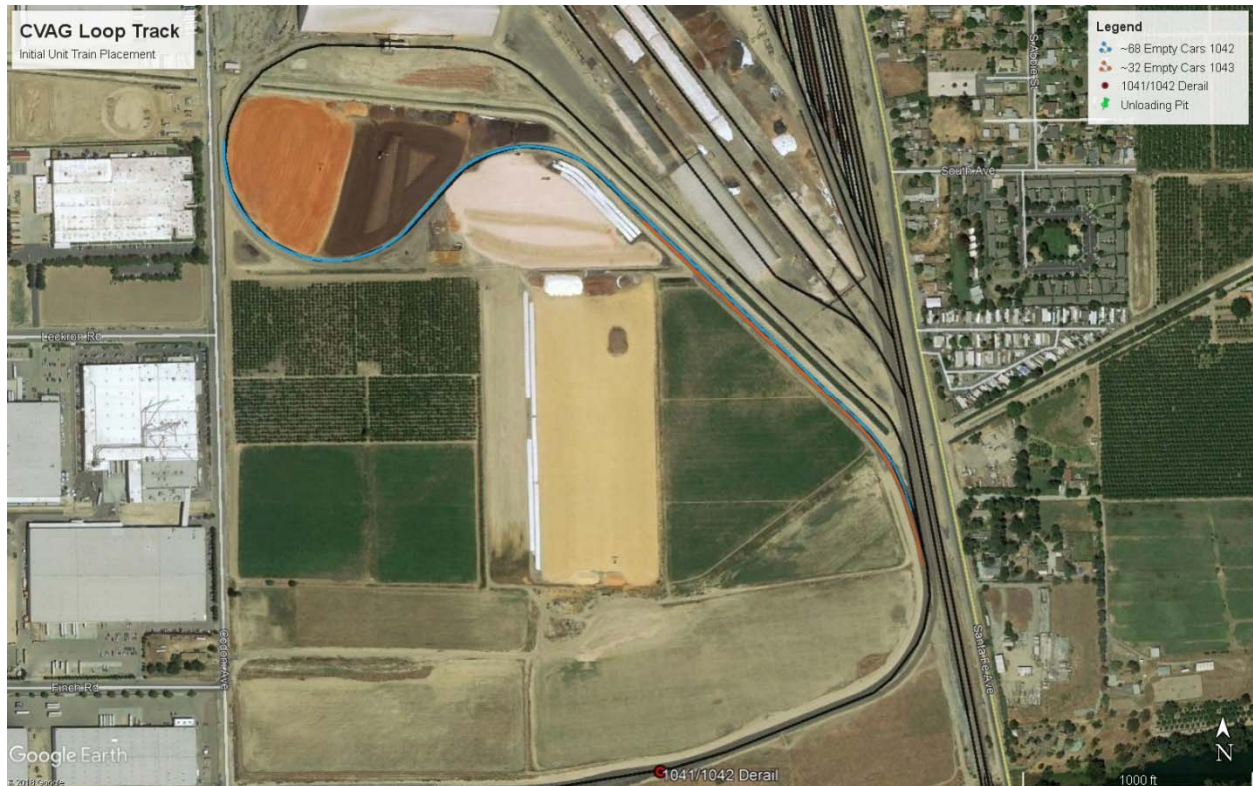
Central Valley Ag Transport

330 Codoni Ave.

Modesto, CA 95357

(209) 544-9246 Office

As CVAG continues to unload cars from the 1041 leg across the pit, the remaining empty cars will be deposited into the 1042 leg of 1041/1042 up to the switch. The train will be released with the train placed on 1042 and 1043.



**Central Valley Ag Transport**

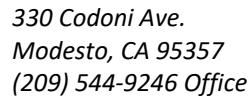
330 Codoni Ave.

Modesto, CA 95357

(209) 544-9246 Office

Summary

1. The M&ET will switch approximately 77-80 cars into the 1041 leg of the loop track to the east side of the unloading pit.
2. CVAG will begin unloading immediately after placement – except on Sundays.
3. The remaining 23 cars can be pushed into the south end of 1041 in the next 16-32 hours.
4. CVAG can complete the rest of the train after this switch is completed.
5. Our goal would be to complete the train and have it released in 45 hours.



Prepared 3/16/2018



Central Valley Ag Transport

330 Codoni Ave.

Modesto, CA 95357

(209) 544-9246 Office

Unloading Plan

Once a unit train is interchanged from the UP or BNSF it should be pulled in on the south side of 1041/1042, through the derail, and delivered to the east side of the unloading pit. This space between the 1041/1042 derail and the east side of the unloading pit should accommodate approximately 67-70 loaded railcars. Receiving the cars in this way will provide visual cues of where to drop between the east side of the unloading pit and a safe distance inside the 1041/1042 derail. The remaining 35-38 cars would need to be stored to be switched in later.

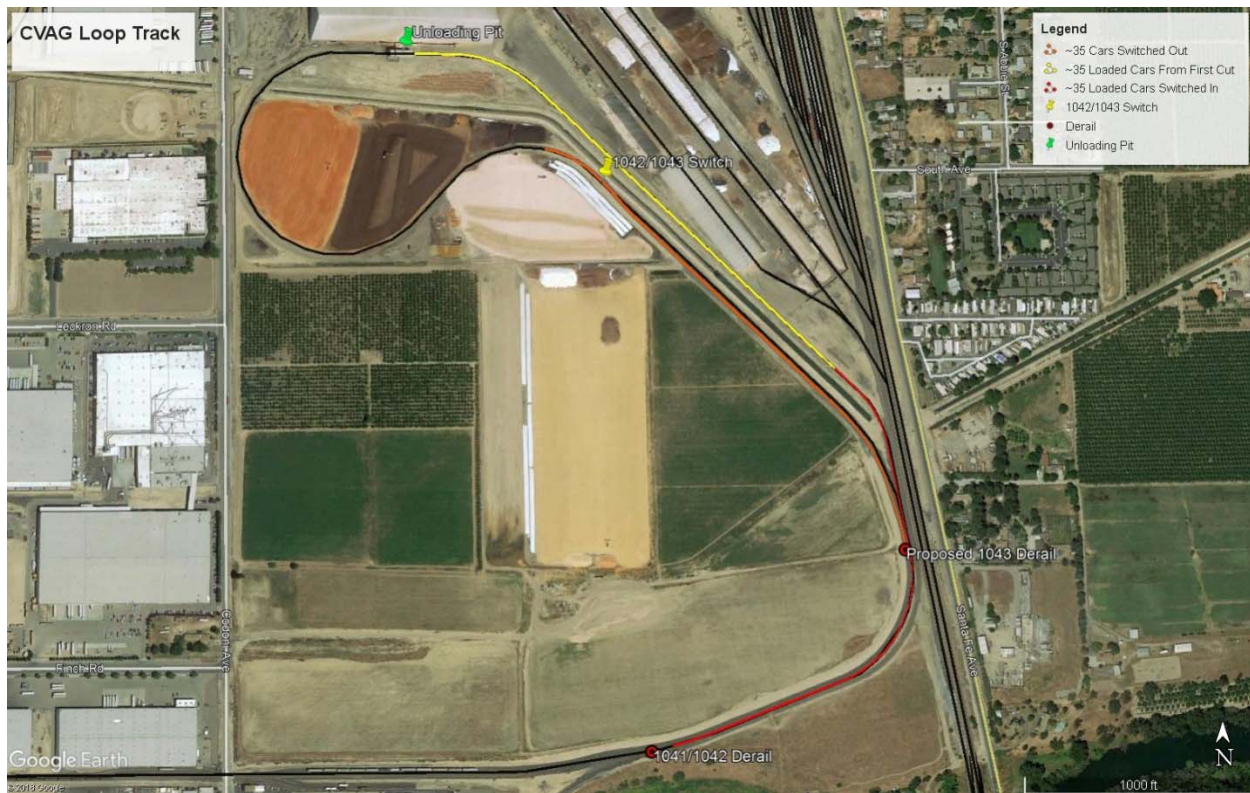




Central Valley Ag Transport

330 Codoni Ave.
Modesto, CA 95357
(209) 544-9246 Office

CVAG would be able to begin work on the train immediately, excluding Sundays, and will need to have the remaining 35-38 cars switched in to the south side of 1041 within the next 40 hours in order to keep the train moving. As the loaded cars cross the pit they will be pushed through the 1042/1043 switch to 1043 and parked a safe distance from the proposed derail at the property line. The empty cars would stretch through the 1042/1043 switch and would land in 1042. When the remaining 35-38 loaded cars are pushed into the south side of the 1041 leg, a second switch would need to be performed to pull the empty cars from 1043/1042. These would have to be stored somewhere on the M&ET's tracks until the rest of the train is ready to be released.





Central Valley Ag Transport

330 Codoni Ave.

Modesto, CA 95357

(209) 544-9246 Office

As CVAG continues to unload cars from the 1041 leg across the pit, the remaining empty cars will be deposited into the 1042 leg of 1041/1042 up to the switch. The train will be released with the train placed on 1042 and 1043, and 35-38 cars stored on an M&ET storage track.



**Central Valley Ag Transport**

330 Codoni Ave.

Modesto, CA 95357

(209) 544-9246 Office

Summary

1. The M&ET will switch approximately 67-70 cars into the 1041 leg of the loop track to the east side of the unloading pit.
2. CVAG will begin unloading immediately after placement – except on Sundays.
3. The remaining 23 cars can be pushed into the south end of 1041 in the next 22-40 hours.
4. CVAG can complete the rest of the train after this switch is completed.
5. Our goal would be to complete the train and have it released in 60 hours.

Exhibit 7

From: Jared Martin
To: [Jeff Robinson](#)
Cc: [Sean Casey](#); [OPERATINGSUPERVISOR](#); [Jonathan Akin](#); [Tracy Alves](#)
Subject: Re: Gluten Train
Date: Monday, March 19, 2018 9:08:16 PM

Jeff,

We will place 68 cars on 1041 or 1042. You tell us what side you would like them on. It's your call.... CVAG is paying for the additional service.

Jared

Sent from my iPhone

On Mar 19, 2018, at 5:47 PM, Jeff Robinson <jeff@cv-ag.com> wrote:

Thank you – but I think I messed that plan up. If we received the cars on the east side of the barn down 1041 as we unloaded we would trap the empties in by the 1041 / 1042 switch, right? That would make it pretty difficult to switch out the empties – you would probably have to pull the whole train?

We should probably take those cars from the 1041/1042 switch, around the teardrop side of the 1042 loop, right up to the WEST side of the unloading building. This should also give us ~68-70 cars. Please cram in as many cars as you can fit between the switch and the unloading pit without fouling the switch or pit. Then we will be able to deposit empties down the 1041 side all the way down to the derail. That should make it easier for you to pull the empties and deposit the remaining loaded cars right? See attached map.

Does that work?

Thank you,
Jeff

From: Jared Martin [<mailto:JMARTIN@METRR.COM>]
Sent: Monday, March 19, 2018 5:28 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Sean Casey <SCASEY@METRR.COM>; OPERATINGSUPERVISOR <OPERATINGSUPERVISOR@METRR.COM>; Jonathan Akin <JAKIN@METRR.COM>; Tracy Alves <TALVES@METRR.COM>
Subject: Re: Gluten Train

Hey Jeff,

Per my previous email, we can accommodate your request at this time. We will place the 68 cars on the loop and the remainder to a storage track.

Jared

Sent from my iPhone

On Mar 19, 2018, at 5:04 PM, Jeff Robinson <jeff@cv-ag.com> wrote:

Good afternoon,

So you're saying that you can accommodate placing as many cars that will fit between the 1041 derail, down the canal / small barn side of the loop, to the east side of the unloading pit (approximately 68 cars)? If so, let's do that. We should be ready to switch in the next ~35 cars approximately 20 hours from placement.

I would also like to request an outbound symbol be created for the release of this train. We should complete this train the evening of 3/22.

Thank you,
Jeff

From: Jared Martin [<mailto:JMARTIN@METRR.COM>]
Sent: Monday, March 19, 2018 3:44 PM
To: Jeff Robinson <jeff@cv-ag.com>; Sean Casey <SCASEY@METRR.COM>; OPERATINGSUPERVISOR <OPERATINGSUPERVISOR@METRR.COM>; Jonathan Akin <JAKIN@METRR.COM>; Tracy Alves <TALVES@METRR.COM>
Subject: RE: Gluten Train

Afternoon Jeff,

In general, for incoming unit trains, like this gluten train (GBPEMV12), if we have the capacity, without risking service problems to other customers or interfering with our rail network, to break up the train and place it on your trackage, we may be able to accommodate you. For clarification, you are requesting that the excess cars (beyond the 68 put on 1041) be stored by MET. We currently have some yard capacity to accommodate these railcars in an orderly fashion, but that may not always be the case, especially in view of the stress that unit trains place on the system.

CVAG's safest course remains to call for only those unit trains which do not require additional switching from the MET.

You will incur accessorial charges and tariffs in connection with this unit

train's switching, and demurrage. These charges and tariffs relate to ongoing provision of ancillary rail services by MET as a delivery carrier, and are not charges for your use of the Transload Area under the terminated Transload Agreement, or rent for the Premises under the terminated Lease.

Per the attached tariff schedule, our initial outline of these charges is as follows:

Anticipated demurrage charges:

Per tariff M&ET 9500, first 48 hours after constructive placement, or placement: \$0

Day three (3) – five (5): \$50 per day, per car

Day six (6) - fifteen days (15): \$100 per day, per car

Day sixteen (16) and above: \$250 per car, per day

Anticipated switching charges:

Per tariff M&ET 8000, switching \$250 per car

Of course, we are only making an educated guess at what services you will request for this train, so the final accessorial charges will vary. These fees add up quickly for unit trains. For example, the switching services alone for Friday's grain train totaled approximately \$24,500. Our anticipated switching charges for the new gluten train (GBPEMV12) are estimated to be at least \$35,000. Note, this does not include demurrage for this train.

We need you to understand these charges will apply to any service you request.

Here's the current tariff link: <http://metrr.com/sections/tariffs>

Please note that we are in the process of updating our accessorial charges and tariffs to set forth for unit trains. We will forward these to you once we post them on our website. They will then be effective 20 days later.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com

530 11th Street
Modesto, CA 95353

From: Jeff Robinson [<mailto:jeff@cv-ag.com>]
Sent: Monday, March 19, 2018 09:26 AM
To: Sean Casey <SCASEY@METRR.COM>; Jared Martin
<JMARTIN@METRR.COM>; OPERATINGSUPERVISOR
<OPERATINGSUPERVISOR@METRR.COM>; Jonathan Akin
<JAKIN@METRR.COM>; Tracy Alves <TALVES@METRR.COM>
Subject: RE: Gluten Train

Good morning,

I just received a notification that this train is departing Roseville. What time do you anticipate this train will be spotted and how will it be spotted?

Thank you,
Jeff

From: Jeff Robinson
Sent: Sunday, March 18, 2018 6:45 PM
To: Sean Casey <SCASEY@METRR.COM>; Jared Martin
<jmartin@beardland.com>; OPERATINGSUPERVISOR
<OPERATINGSUPERVISOR@METRR.COM>; Johnathan Akin
<jakin@beardland.com>; Tracy Alves <TALVES@METRR.COM>
Subject: Gluten Train

Good afternoon,

What's the plan for GBPEMV12? It's arriving tomorrow afternoon.
Another long one – 7,200 feet.

Can we take whatever will fit whatever will fit between the 1041 derail and the east side of the pit going down the 1041/canal side? It should be around 68 cars? We can work on those and will need to have the rest switched in later and some empties switched out.

Thank you,

Jeff Robinson
Transload Manager
Central Valley Ag Transload
330 Codoni Ave
Modesto, CA 95357
jeff@cv-ag.com
209-232-3569 / Direct

209-988-2994 / Mobile
209-544-9246 / Office
209-232-3579 / Fax

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Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

March 26, 2018

VIA EMAIL

Peter A. Pfohl, Esq.
Slover & Loftus LLP
1224 Seventeenth St. N.W.
Washington, D.C. 20036

Dear Pete:

This is in response to your letter on behalf of Central Valley Ag Grinding, Inc. ("CVAG") dated March 19, 2018. In that letter, CVAG pressed for a consistent and reliable service plan under which my client, Modesto and Empire Traction Company ("MET"), might accommodate delivery to CVAG of oversize unit trains that exceed in length the capacity of CVAG's trackage. I have been working diligently with MET since your letter (and your phone call with me the following day) to develop a workable service plan, mindful of CVAG's own proposals. Although your client's proposals were not workable as presented, they nevertheless served as useful models from which MET has based the service plans that we attach hereto.

MET disputes your characterization of MET's efforts to accommodate CVAG's oversize unit trains. MET has taken numerous steps to deal with CVAG's unit trains, and MET will not stand to be blamed for the logistical challenges that it faces in handling trains that CVAG lacks capacity to accept in one piece. MET has made, and will continue to make, reasonable accommodations for CVAG's overflow to the extent that MET has sufficient capacity to do so. However, as CVAG well knows, the challenges that MET faces in handling CVAG's oversize unit trains (and the costs that CVAG will incur as a consequence) could be avoided altogether if CVAG would reduce the size of its deliveries.

We note that CVAG's proffered operating plans involve the dedicated use of MET Track 1043 to support the delivery and placement of oversize unit trains. To be clear, while Tracks 1041 and 1042 are included as part of the Lease Agreement that is now the subject of dispute between your client and mine, Track 1043 *is not* included in the scope of that agreement. Track 1043 remains under MET's exclusive possession and control as my client repeatedly has pointed out to CVAG. While MET may at its discretion deploy Track 1043 to support its handling of oversize unit trains for CVAG, you and I have discussed previously that MET also uses that track in support of its service to other customers, and that MET plans to continue to exercise flexibility in the use of that track.

As we also discussed last week, accommodating CVAG's oversize unit trains entails considerable additional handling and consumes MET track capacity. While MET is

FLETCHER & SIPPEL LLC

Peter A. Pfohl, Esq.

March 26, 2018

Page 2

prepared to accommodate CVAG's unit trains despite the challenges of the same, CVAG must pay for the additional services and track capacity it consumes. MET is adjusting its accessorial services to better account for the demands and service characteristics of unit trains, and, accordingly, new tariff provisions will take effect as of April 9, 2018, that account for MET's unit train services to CVAG.

Finally, as a short line with limited track capacity, MET is concerned that the frequency of oversize unit train deliveries to CVAG may be such that they will strain MET's ability to accommodate the overflow cars from one unit train (as the balance of that train is being unloaded in keeping with the proposed service plans) while yet one or more additional unit train or trains are received in interchange from MET's line haul partners. Such additional unit trains cannot be delivered to CVAG until the earlier-delivered unit trains is released in full and pulled. Accordingly, you will see in the attached service plan that MET will impose in-transit unit train hold charges for excess unit train deliveries effective April 15, 2018. (This letter and the attached service plan constitute written notice of the new service and charges.) We strongly encourage CVAG to take steps to avoid resort to MET in-transit hold charges by monitoring its unit train logistics closely and taking steps to properly space deliveries.

MET will employ the service plan set forth herein effective immediately. We believe that it may be in CVAG's financial interests to see the accessorial charges scheme scheduled to take effect on April 9, 2018, take effect sooner than that in light of the comparably higher per-car intra-terminal switching fees that CVAG charges under existing tariff rates. If CVAG wants to see the new accessorial charges take effect sooner than April 9, please so notify me of your agreement to allow the new tariff provisions to take effect immediately, and we will proceeding accordingly.

I am available to discuss the service plans and MET's corresponding charges if you would like. The service plan and accessorial charges system that MET has developed contemplates an arrangement of indefinite duration. If, however, CVAG would like to explore alternative oversize unit train service arrangements and charges for a specified limited period of time going forward, please let me know.

Sincerely,



Robert A. Wimbish

Enclosure

cc: Jared Martin, MET
Steven J. Cramer, Wendel Rosen Black & Dean LLP
Brad Thrasher, UP
Craig V. Richardson, UP

Rail service plan for DDG and gluten unit trains exceeding 67 cars

The following service plan will govern MET's handling of DDG and gluten unit trains consigned to CVAG and destined for unloading from CVAG-occupied Tracks 1041 and 1042 ("T1041/1042"). This service plan will govern when CVAG has available capacity on T1041/1042 at the time a DDG/gluten train is received in interchange from BNSF or UP to receive at least 67 cars.

1. MET will place a 67-car block ("First 67") on Track 1041 with the first car of the block staged over the pit.
2. The balance of the cars of the unit train ("CUT-67") will be held on MET tracks of MET's choosing.
3. Upon completion of steps 1 and 2, all cars of the unit train will be deemed delivered, with CUT-67 designated as constructively placed.
4. Upon CVAG's release of empty cars from First 67 equal to the number of MET-held carloads constituting CUT-67 (the "Released Block") and placement of the Released Block on Track 1042, MET will pull the Released Block, store the Released Block on MET tracks of MET's choosing, and deliver the CUT-67 loads to Track 1041 (the 67 cars then on T1041/1042 will become "Second 67").
5. Upon CVAG's completion of unloading and placement of empty Second 67 to Track 1042, MET will pull Second 67, reassemble the unit train by combining Second 67 with the Released Block and preparing the reassembled unit train for interchange with the designated outbound railroad. For purposes of reassembling a unit train, MET may (and will be entitled to) enter upon Tracks 1041 and 1042 to minimize train movements and avoid congestion on MET's main line.
6. Demurrage will accrue on all cars held on MET-controlled tracks (i.e., tracks other than Tracks 1041 and 1042, which are the subject of the since-terminated Lease Agreement, and designated portions of Tracks 1038, 1039, and 1040 which were the subject of the since-terminated Transload Agreement – for which tracks MET reserves all claims concerning CVAG's use) until the entire unit train is unloaded and released to MET. Demurrage timeframes for the Released Block (once pulled pursuant to Step 4) will tack to the constructive placement of CUT-67.

Rail service plan for canola unit trains exceeding 77 cars

1. MET will place a 77-car block ("First 77") on Track 1041 with the first car of the block staged over the pit.
2. The balance of the cars of the unit train ("CUT-77") will be held on MET tracks of MET's choosing.

3. Upon completion of steps 1 and 2, all cars of the unit train will be deemed delivered, with CUT-77 designated as constructively placed.
4. Upon CVAG's release of empty cars from First 77 equal to the number of MET-held carloads constituting CUT-77 (the "Released Block") and placement of the Released Block on Track 1042, MET will pull the Released Block, store the Released Block on MET tracks of MET's choosing, and deliver the CUT-77 loads to Track 1041 (the 77 cars then on T1041/1042 will become "Second 77").
5. Upon CVAG's completion of unloading and placement of empty Second 77 to Track 1042, MET will pull Second 77, reassemble the unit train by combining Second 77 with the Released Block and preparing the reassembled unit train for interchange with the designated outbound railroad. For purposes of reassembling a unit train, MET may (and will be entitled to) enter upon Tracks 1041 and 1042 to minimize train movements and avoid congestion on MET's main line.
6. Demurrage will accrue on all cars held on MET-controlled tracks (i.e., tracks other than Tracks 1041 and 1042, which are the subject of the since-terminated Lease Agreement, and designated portions of Tracks 1038, 1039, and 1040 which were the subject of the since-terminated Transload Agreement – for which tracks MET reserves all claims concerning CVAG's use) until the entire unit train is unloaded and released to MET. Demurrage timeframes for the Released Block (once pulled pursuant to Step 4) will tack to the constructive placement of CUT-77.

CHARGES

Note: The above service plans are immediately subject to applicable switching charges and demurrage as set forth in existing MET accessorial service tariff.

Note (unit train in-transit storage fees): The above service plans contemplate that CVAG has sufficient capacity upon Tracks 1041 and 1042 to take immediate delivery of 67 DDG/gluten carloads or 77 canola carloads. In the event that CVAG's track is occupied by all or portions of a previously-delivered and as-yet-unreleased unit train and another inbound unit train is delivered in interchange to MET for delivery to CVAG, then, *effective April 15, 2018*, MET will, when tack capacity permits, hold the extra unit train(s) that it cannot deliver in accordance with the above service plans pending later delivery. The charge for such an in-transit hold will be \$200/car/day with the charge effective as of receipt of a unit train in interchange to MET, with additional charges accruing every 24 hours thereafter. No later than 24 hours following CVAG's release of a unit train (or portion thereof) already occupying CVAG's tracks, the applicable storage charges will cease for the excess unit train, and, thereafter MET will arrange to pull the released empty unit train and place the additional inbound unit train in accordance with the applicable service plan.

Effective immediately through April 8, 2018, the following charges will be assessed in connection with the above service plans:

Intra-terminal switch fee of \$275/car MET switches out and holds as part of the CUT-67 or CUT-77 block (Service Plan – Step 2)

Intra-terminal switch fee of \$275/car for MET pull and hold the Released Block and delivery of CUT-67 or CUT-77 (Service Plan – Step 4)

Demurrage (on all delivered/constructively placed cars):
first 48 hours – free
days 0-5 (after first 48 hours) – \$50/ car/ day;
days 6-15 (after first 48 hours) – \$100/ car/ day;
day 16 over \$250/ car/ day (private and rr equipment)

Effective April 9, 2018, applicable accessorial charges will be as follows:

Switch fee of \$200/car MET switches out and holds as part of the CUT-67 or CUT-77 block (Service Plan – Step 2)

Switch fee of \$200/car for MET pull and hold the Released Block and delivery of CUT-67 or CUT-77 (Service Plan – Step 4)

Unit train re-assembly fee – \$1250/ for each cut (Service Plan – Step 5)

Demurrage (on all delivered/constructively placed cars):
\$250/car after 48 hours free time

All of the foregoing charges and tariffs relate to MET's ongoing provision of services ancillary to its line haul services to and from CVAG; they are not charges for CVAG's continued use or occupancy of the Transload Area under the terminated Transload Agreement, or the Premises under the terminated Lease.

Example of tariff effective April 9:

Inbound Unit Train Placement and Outbound Reassembly. When MET receives in interchange an inbound Unit Train for delivery to a customer and there is insufficient track capacity at the designated point of delivery to accomplish such delivery (and MET is not at fault for the lack of delivery track capacity), MET may, where alternative track capacity is available on MET trackage, at its discretion, undertake to cut the train into smaller blocks of cars or otherwise reconfigure the Unit Train to accommodate the cars of the Unit Train pending delivery to the shipper subject to the following charge: \$200.00 per car, regardless of the number of cuts of the train, for handling of all blocks of cars that MET is required to move for off-loading and/or loading.

Example: MET receives in interchange for inbound delivery a canola unit train consisting of 100 freight cars and MET has determined that the customer's receiving track has available capacity to receive 77 of the cars. MET may deliver a 77-car cut and constructively place the balance of the Unit Train (23 excess cars) on MET trackage and an Initial Inbound Placement Charge would be \$4,600 (23 cars X \$200/car). In this case, there would also be Subsequent Inbound Placement Charges of \$9,2000 (23 cars X \$200/car X 2) representing the removal of 23 unloaded cars from the customer's facility (for holding on MET) and the delivery of the additional 23 loaded cars that MET has held. Total Inbound Placement Charges in this example would be \$13,800.00.

In addition,, under this example, the customer would incur a one-time Outbound Reassembly charge of \$1250 (1 X \$1250 to reassemble two cuts of cars back into Unit Train configuration) – to reassemble the 77-car block (as released from the customer's facility) and the 23 cars held on MET track.- To reassemble a Unit Train cut for purposes of delivery under the foregoing Inbound Placement provisions, the following charges will apply to prepare the Unit Train for outbound interchange: \$1,250.00 per cut to be re-assembled.

Total accessorial charges under this example would be \$15,050 per unit train excluding applicable demurrage.

Assessment of Charges for Inbound Unit Train Placement and Outbound Reassembly. MET may require a security deposit in the form of advance payment of the fees contemplated in Item 270 to ensure payment of the Inbound Unit Train Placement and Outbound Reassembly fees that may accrue due to customer's inability to receive the entire unit train intact. MET may require such security deposit to be made prior to delivery of an inbound unit train and such determination as to advance payment and/or security deposit is at MET's sole discretion.

The deposit must be paid in cash, certified check, cashier's check, wire transfer or money order before any further cars are delivered for loading or unloading. MET will refund the deposit or balance of the deposit to the extent the fees outlined in this section are not invoked with respect to delivery and placement of the unit train at customer's receiving tracks.



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

March 30, 2018

Via Email and First Class Mail

Mr. Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Dear Rob:

Thank you for your letter of March 26, 2018 enclosing Modesto and Empire Traction Company's ("MET's") revisions to the operating and service plan for delivery of unit trains to our client Central Valley Ag Grinding, Inc. ("CVAG").

In your letter, MET promises to "employ the service plan set forth herein effective immediately." While the parties remain in disagreement over a number of matters, CVAG is pleased that MET has agreed to implement an operating plan for service to CVAG consistent with the reasonable business requirements of both parties. As mentioned in our prior email, we understand that on March 19, 2018, MET reasonably delivered CVAG's train as requested in a manner consistent with CVAG's proposed operating plan, without blocking/fouling CVAG's unloading pit and switch. This allowed for the timely and efficient unloading and return of the railcars, as well as what appeared to be the efficient use of MET's crews, resources, and facilities.

CVAG has further communicated to MET a few modest revisions to MET's operating plan, summarized by CVAG operating personnel as follows:

The "First 67" and "First 77" should be staged on 1042 between the 1041/1042 switch and the west side of the unloading pit without fouling the switch or the unloading pit. Staging cars on the 1041 side would cause empty cars to be trapped behind the 1041/1042 switch and the tail end of the train on 1041. This would require the MET to move the entire train to switch out the empties. CVAG pointed this out to MET last week before the last train was placed.

CVAG also would not recommend staging the lead car directly over the pit and instead deliver the "First 67" and "First 77" so it is not fouling the 1041/1042 switch (there is a line the MET had created to indicate a safe distance to the switch) with the lead car just west of the unloading building. See attachment Re: Gluten Train as to how the train was handled last week and map, Initial Placement 03192018.jpg, that was sent to MET team.

The above-referenced attachments are enclosed. Please let us know if these minor operating plan implementing revisions create any issues for MET.

Additionally, we understand that MET departed from its operating plan with the delivery of Train GMP2MV 24 (canola train) on the afternoon of Wednesday, March 28th, instead electing to deliver the entire train onto the CVAG loop track in one consignment/cut for unloading. This created operational difficulties and confusion for both parties. CVAG assumes that this form of delivery was a mistake. While both parties may require reasonable departures from the MET operating plan from time-to-time as operational circumstances arise, if MET plans on departing from its operating plan, CVAG requests that reasonable notice and service accommodations be provided as necessary to allow for reasonable train unloading. CVAG will endeavor to similarly provide reasonable notice should it require departures from the normal operating plan.

As pertains to the other items addressed in your letter, CVAG further responds as follows:

Track 1043. MET has excluded Track 1043 from its operating plan stating that "Track 1043 *is not* included in the scope of that agreement" and that "MET also uses that track in support of its service to other customers." CVAG disagrees. Track 1043 was designed and constructed on the property to be used for CVAG unit trains, in practice the parties have always treated Track 1043 as plant trackage, and even after MET took actions to limit and restrict its service to CVAG in mid-February, it was *MET* that included 1043 as part of its own plan for unit train deliveries. MET recently assembled and placed several third party railcars on Track 1043, apparently in an attempt to demonstrate that the track has been or can be used for third party railcar storage. However, since construction, Track 1043 has rarely ever been used for temporary third party storage. MET's actions with respect to excluding CVAG from use of track 1043 is improper, and, combined with its other exclusionary practices, continue to raise significant concerns.

Operating Plan Inclusion of Accessorial Tariff Components. As part of its operating plan, MET includes a number of accessorial tariff-type items, including, but not limited to, demurrage, train storage fees, switch fees, train re-assembly fees, security deposits, and tariff implementation "examples." While CVAG appreciates knowing of MET's intentions with respect to how it intends to invoice CVAG for its services, these are items that should be addressed by common carrier tariff, they are not binding on CVAG, and they are not properly included in an operating plan. CVAG assumes, but has not confirmed, that these charges replicate what is in MET's tariffs. Please be advised that CVAG does not agree with MET's planned implementation of its accessorial charges, or the reasonableness of the listed charges, and it reserves all rights, including but not limited to, rights regarding MET's past and future tariff items and tariff implementation practices.

Size of Deliveries. Your letter complains of CVAG's delivery of "oversize unit trains," which you claim "entail considerable additional handling and consume MET track capacity." CVAG disagrees that its industry-standard size feed commodity trains are oversized or cannot be reasonably accommodated on its loop tracks, even with MET's forced restrictions. In fact, the train sizes are the same that MET has encouraged, incited, and requested of CVAG, and successfully delivered to CVAG for many years without issue. MET's recent decision to engage in exclusionary practices, requiring MET to bring in trains in two consignments/cuts to reasonably serve CVAG, does necessitate some operational changes. However, these are issues of MET's own making, and regardless, we believe that the parties have worked in good faith to work out a reasonable and relatively simple operating plan. Additionally, even with the track restrictions, CVAG has more than sufficient track to reasonably accommodate unit trains through deliveries made in conformance with the operating plan. It is certainly reasonable for CVAG to request, and for MET to agree to deliver, railcars in two limited consignments/cuts for proper unloading.

Finally, you have suggested that the parties might explore alternative arrangements and charges for a limited period of time going forward. We believe that, for now, the implementation of a consistent operating plan by MET is of most immediate importance and concern. CVAG is certainly open to a discussion of MET's adoption and implementation of its old and new tariff items, and possible alternatives, including alternative charges. However, we submit that the issue is probably best addressed separately, following CVAG's further consideration of MET's tariff items and terms, and review of any applicable MET invoices incorporating and applying the tariff terms.

Please let us know if you would like to discuss further any of the above further.

Sincerely,



Peter A. Pfohl

Enclosure

cc: Jeff Robinson, CVAG
Brad Thrasher, UP
Craig V. Richardson, UP

From: Robert A. Wimbish
To: [Peter Pfohl](#)
Cc: bradthrashe@up.com; cvrchar@up.com
Subject: RE: MET -- Response to your March 26th Ltr.
Date: Friday, April 6, 2018 5:09:03 PM
Attachments: [Letter to Pfohl 4.6.18.pdf](#)

Pete –

Attached is MET's response to your letter of March 30, 2018. If there are any remaining issues we need to hammer out to have a mutual understanding of the operating plan, please let me know.

I perceive that the accessorial charges issue may continue to escalate. That, unfortunately, is likely to continue unless or until CVAG accepts that it (CVAG) is responsible for paying for the switching and car storage accessorial services that MET is providing – and which are NOT part of the line haul transportation – and for which MET has billed, and will continue to bill, CVAG.

There is a genuine possibility here that, if CVAG refuses to pay the accessorial charges, MET will require CVAG – not CVAG's customers – to pay them up front. And the escalation for refusal beyond that point could get worse.

If you are still around today and want to discuss, please let me know, because I am gravely concerned that circumstances surrounding the unpaid accessorial service charges will make the rail service situation even more tense that it already is.

- Rob

Robert A. Wimbish
Fletcher & Sippel LLC
29 N. Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Tel: (312) 252-1504
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From: Peter Pfohl [mailto:pap@sloverandloftus.com]
Sent: Friday, March 30, 2018 5:09 PM
To: Robert A. Wimbish
Cc: bradthrasher@up.com; cvrichar@up.com; Jeff Robinson
Subject: MET -- Response to your March 26th Ltr.

Rob: Didn't intend to send so late in day before Holiday weekend, but wanted to get out response to your letter by the end of week. Happy to discuss any of the attached. Regards, Pete.

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
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ROBERT A. WIMBISH
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rwimbish@fletcher-sippel.com

April 6, 2018

VIA EMAIL

Peter A. Pfohl, Esq.
Slover & Loftus LLP
1224 Seventeenth St. N.W.
Washington, D.C. 20036

Dear Pete:

This is in response to your letter of March 30, 2018 (the "March 30 Letter") on behalf of Central Valley Ag Grinding ("CVAG"). Modesto and Empire Traction Company ("MET") has authorized me to reply as follows:

Operating Plan

I take it that the two indented paragraphs on the first page of your March 30 Letter reflect direct consultations between MET and CVAG representatives concerning execution of MET's unit train operating plan for CVAG unit trains. In the first indented paragraph, CVAG has requested that First 67 or First 77 be staged on Track 1042 between the Track 1041/1042 switch and the west side of the unloading pit without fouling the switch or the loading pit. MET agrees to this modification of its unit train operating plan, provided that it can confirm that, in practice, a First 67 or First 77 consistently fits between the unloading pit and the clearance of the Track 1041/1042 switch. If in practice a First 67 or a First 77 consistently fit between these two terminal points, MET reserves the right to reduce the delivery blocks – to, say, a "First 65" and a "First 75" to ensure that there is no overhang at either end.

In the second indented paragraph CVAG states that it "would not recommend" that MET stage the lead car of a First 67 or First 77 directly over the unloading pit, or that MET deliver such cars in a manner that fouls the Track 1041/1042 switch. As indicated in the foregoing paragraph, MET will endeavor to comply with CVAG's recommendation.

I have recommended to MET that it adhere to the operating plan whenever practicable. MET intends to deliver as consistently as it can under the operating plan, but there are likely to be situations where track capacity limitations resulting from traffic level fluctuations will require a departure from the mutually-preferred approach to unit train delivery. Where MET cannot deliver in keeping with the operating plan, MET intends to contact CVAG as soon as it is able to alert CVAG to whatever service adjustments MET will need to make to provide for delivery of a unit train (and an estimate of the applicable accessorial charges). But, both parties

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Peter A. Pfohl, Esq.

April 6, 2018

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appear to be adjusting to the particulars of the new operating plan, MET hopes to avoid deviating from that plan going forward whenever MET and CVAG conditions permit.

Track 1043

CVAG's position concerning the status of Track 1043 is noted. MET and CVAG disagree fundamentally concerning whether that track is included in CVAG's plant. This track was constructed roughly two years ago and was at no time included in CVAG's lease or license agreement. MET has designated and used track 1043 as one of its yard tracks, to the exclusion of all third parties, including CVAG. For its convenience and in the handling of traffic, MET at times has used track 1043 in support of CVAG. But the railroad also often has used other yard track to support CVAG traffic as circumstances dictate, just as MET has utilized Track 1043 for the support of other customers. The railroad disagrees entirely with CVAG's characterization of the railroad's use of Track 1043 as "improper" and "exclusionary." CVAG's suggestion that MET's use of the track for non-CVAG purposes is a contrivance is false and offensive.

Accessorial Charges

It is not clear what it means when CVAG's asserts that MET's accessorial service charges "are terms that should be addressed by common carrier tariff . . . not binding upon CVAG, and . . . not properly included in the operating plan." With one noted exception, the charges that MET has included in its operating plan correspond to items in its accessorial tariff publication – both the tariff in effect today and the revised tariff that will take effect on April 9, 2018 – all of which has been supplied to CVAG. The lone exception is the unit train storage charge that MET brought to CVAG's attention in the operating plan supplied to you on March 26, 2018. But even in that case, CVAG, through you, has been alerted in writing about the new storage charges, and they will not take effect until April 15, 2018, 20 days after MET supplied CVAG with written notice of the new charges. MET is currently revising its accessorial services tariff yet again to account for the storage charge, for the sake of consistency. There is nothing legally inappropriate in advising CVAG of new accessorial charges in a written instrument other than one formally entitled as a tariff, provided the charges do not take effect until 20 days have elapsed since written notice was supplied.

I have learned that CVAG appears to be treating MET's accessorial service charges for services rendered to CVAG as part of the line haul services that BNSF's and UP's shippers should pay, not CVAG. It appears that CVAG is telling its customers, with whom MET, as a handling carrier, typically has no dealings, that, if they ship unit trains to CVAG, those customers are required to pay MET for the accessorial services MET provides. That is incorrect, and it must stop. The extra switching that CVAG requires due to its capacity constraints, like demurrage, is something that MET supplies to CVAG. It is not part of the line

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Peter A. Pfohl, Esq.

April 6, 2018

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haul service, BNSF's and UP's customers are not required to pay MET, and, as such, the charges for these accessorial services will be billed in all cases to CVAG, and not to the third-party purchaser of BNSF's or UP's line haul service. Whether CVAG wishes to seek reimbursement or to build the additional costs into its own service pricing for customers is CVAG's prerogative; such arrangements are of no consequence to MET. In any event, we will not discuss accessorial service charges billing arrangements with CVAG's customers, but might consider doing so if a UP or BNSF shipper has agreed in advance with CVAG that it will pay for the oversize accessorial services in place of CVAG, and provides written proof of that arrangement. Even in such event however, CVAG would remain primarily liable for charges.

You provide no discernible basis for CVAG's general objection to the assessment of accessorial charges for MET's handling of unit trains that CVAG cannot accept absent switching services generally uncharacteristic of unit train service. But I infer from the discussion that CVAG has withheld, and will continue to withhold, payment for accessorial services that MET has rendered and will render. Please advise if I am mistaken, because if CVAG will not to honor accessorial service charge invoices, then I have instructed MET to require of CVAG advance payment for the provision of estimated accessorial service charges going forward as a prerequisite to any unit train delivery that CVAG lacks adequate track space to accept whole.

On the other hand, we are prepared to explain to you elements of past accessorial service charges and invoices if that would facilitate payment.

Oversize Unit Trains

I am familiar with the general composition, size, and handling requirements of an agricultural commodity unit train, as well as the general Class I railroad unit train service terms and accessorial charges. You have opted for the wrong reference point in questioning my use of the term "oversize." The fact is that CVAG cannot accept whole the unit trains that BNSF and UP are transporting to it without fouling MET trackage. Hence, in light of CVAG's insufficient track capacity, the unit trains at issue are "oversized." Helpfully, your March 30 Letter acknowledges that CVAG can accept unit trains only if delivery is "made in conformance with the operating plan," that is, only if the unit train is disassembled to permit piecemeal unloading of separate blocks.

The capacity issues you decry and blame on MET, however, are not of MET's "own making," a point hardly warranting discussion, since, as you should know, MET's operational changes were in direct, protective response to critical safety concerns stemming from MET's observation of CVAG's in-plant operations.

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Peter A. Pfohl, Esq.

April 6, 2018

Page 4

Review

My letter to you dated March 26, 2018, and the operating plan MET included therewith, as revised and clarified by the first paragraph under the heading "Operating Plan" in this letter (regarding Track 1042 staging), sets forth the operating plan that MET will endeavor to follow when it receives an oversize unit train in interchange from MET's Class I connections. MET will invoice CVAG for switching and other accessorial services necessary to accommodate unit trains that CVAG cannot accept whole. Where the service plan is to be followed, MET should be able to estimate in advance of delivery what the accessorial charges for switching and unit train re-assembly will be (not counting demurrage) under MET's then applicable accessorial service rates, and MET will advise CVAG in advance of delivery of the estimated charges. If CVAG is unwilling to pay the accessorial charges for MET's extra handling of unit trains that CVAG cannot receive whole, then MET will invoke its right not to supply such accessorial services to CVAG on credit and to demand payment from CVAG in advance of delivery, and MET may pursue other options under which it may prohibit oversize unit trains from being delivered to MET in interchange.

I realize that there are items in this letter, such as the status and function of Track 1043, upon which the parties fundamentally disagree, and it seems to me that CVAG harbors the mistaken opinion, which we obviously dispute, that MET had suspended in-plant switching for CVAG for reasons aside from valid safety concerns. If there is anything more for us to discuss where it appears that we can reach a broader accord on the issues, please let me know. I have found that in-person discussions with you, Pete, have been generally more productive.

Sincerely,



Robert A. Wimbish

cc: Jared Martin, MET
Steven J. Cramer, Wendel Rosen Black & Dean LLP
Brad Thrasher, UP
Craig V. Richardson, UP

Exhibit 8

From: Peter Pfohl
Sent: Wednesday, April 11, 2018 6:45 PM
To: 'Robert A. Wimbish'
Subject: FW: [W] Urgent Invoice Reminder

Rob: Our client just forwarded the below “urgent invoice reminder.” Obviously, we have timely sent our response letter that fully disputes the March 27th invoices. It appears that the below was sent without the benefit of your client’s (or your) review of our response letter. We request that the notice be rescinded under the circumstances.

This is obviously a serious matter. Please let us know at your earliest convenience whether the below message still applies under the circumstances. If so, please provide us with the basis for, and detailed information on the specific “ancillary services, including switching and demurrage” that MET is asserting might become applicable on the future train in the amount of \$50,000.00. Also, please provide the legal basis for MET’s assertion that it can collect in advance for services that have not been requested and as a precondition for continued rail service on matters that are in active dispute. Additionally, please provide us with the applicable tariff provision(s) allegedly authorizing MET to take such actions.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Tracy Alves [<mailto:TALVES@METRR.COM>]
Sent: Wednesday, April 11, 2018 5:56 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>; Jared Martin <JMARTIN@METRR.COM>
Subject: [W] Urgent Invoice Reminder

Jeff,

Our March 27, 2018 invoice’s for ancillary charges in the amount of \$139,425.00 are due today, April 11th. If you withhold payment, MET will no longer extend credit to CVAG, and will need to take immediate action to ensure payment for services. Consequently, if CVAG does not pay this (or any future tariff invoice) when due, we will require payment in advance prior to providing additional ancillary services.

Again, so there is not uncertainty, if you fail to pay the March 27, 2018 invoices in the amount of \$139,425.00 by close of business today, April 11, 2018, MET will require CVAG pay in advance for ancillary services, including switching and demurrage, before providing those services.

For example, we estimate the charges for the canola train arriving later this week to be \$50,000. If you do not timely pay the March 27, 2018 invoices, MET will not provide switching services for this canola train until we have in hand the estimated

ancillary charges of \$50,000. (We can provide a breakdown of the estimate if requested.) If CVAG fails to pay this deposit against charges, we will not provide ancillary services related to this train. If we can place the entire unit train on 1041/1042 without demurrage or switching, we would be prepared to do that, if you direct us to do so.

I'm providing this notice now to avoid what could be serious pipeline issues. Any switching request after 0001, April 12th must be prepaid. On property, I see GBCRMV 31, and enroute, G VBTMOD3 09.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com

530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

From: Jeff Robinson
To: [Tracy Alves](#)
Subject: RE: [W] RE: [W] G ALOMOD3 14

Good afternoon,

Thank you. Again, we ask that MET please accept payment and deliver this train as soon as possible. While it obviously takes longer, CVAG will comply with your request and hand deliver a check with the funds received as soon as possible.

On advice of counsel, please note that the payment here is without waiver of CVAG's objections to any current or future charges that might be assessed and the underlying tariff terms, or damages caused by CVAG's delay in delivery of this train. The payments in this instance shall not be used to establish liability on the part of CVAG for this train or any other trains.

Thank you,
Jeff

From: Tracy Alves [mailto:TALVES@METRR.COM]
Sent: Wednesday, April 25, 2018 3:50 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: [W] RE: [W] G ALOMOD3 14
Importance: High

Jeff, I just talked with Gavilon. I have instructed them to forward funds to you, CVAG, and CVAG in turn can hand deliver check to MET.

Once this is complete, assume tomorrow, We will communicate with BNSF to release the train. BNSF is looking at 48 hours to power the train.

MET should not be managing this payment process for CVAG in the future.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

From: Jeff Robinson [mailto:jeff@cv-ag.com]
Sent: Wednesday, April 25, 2018 3:29 PM
To: Tracy Alves

Subject: RE: [W] G ALOMOD3 14

Good afternoon Tracy,

Please accept payment and deliver the train as soon as possible. As for any additional train fees that may be made by MET with respect to this train, CVAG reserves the right to protest.

Thank you,

Jeff Robinson
Transload Manager
Central Valley Ag Transload
*330 Codoni Ave
Modesto, CA 95357*

jeff@cv-ag.com
*209-232-3569 / Direct
209-988-2994 / Mobile
209-544-9246 / Office
209-232-3579 / Fax*

From: Tracy Alves [<mailto:TALVES@METRR.COM>]
Sent: Wednesday, April 25, 2018 1:54 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: [W] G ALOMOD3 14
Importance: High

Jeff. I have been contacted by Gavilon regarding the Cotton seed train. BNSF is currently holding in their Fresno yard awaiting CVAG decision. Gavilon has indicated CVAG has shared the invoice for services for this train and has asked Gavilon to pay MET directly. After consideration, MET will accept payment from Gavilon on CVAG's behalf, for this train only. However, this does not relieve CVAG of additional accessorial charges that may occur due to the nature of this train. Please let me know asap if you would like to move forward with this option. Gavilon would like a decision quickly.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

From: Jeff Robinson
To: [Paul Konzen](#); [Peter Pfohl](#); jih@sdfreightrail.com; [Angela Schrimp de la Vergne](#)
Subject: Fwd: GBPEMV22
Date: Tuesday, April 24, 2018 5:13:53 PM
Attachments: [G BPEMV 22 estimate \(002\).pdf](#)
[ATT00001.htm](#)

Sent from my iPhone

Begin forwarded message:

From: Jared Martin <JMARTIN@METRR.COM>
Date: April 24, 2018 at 12:27:10 PM PDT
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>, Sean Casey <SCASEY@METRR.COM>
Subject: GBPEMV22

Afternoon Jeff,

We received your check number 30176 for train GBPEMV22 in the amount of \$10,000. Per the attached estimate, we will not accept partial payment to satisfy our prepayment requirement. The attached estimate requires a prepayment of \$18,450, and as such, we will need to receive this payment in full, to avoid placing the entire train on the loop. To avoid any confusion, we will return check number 30176, and await full payment.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com
530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

MET hereby issues to CVAG the following prepayment requirement for estimated accessorial charges in accordance with MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018, in the total amount of **\$18,450.00** with respect to train G BPEMV 22 scheduled to be delivered in interchange to MET on or about April 26, 2018.

This estimate is based upon, and replicates, MET's recent handling of train G BPEMV 12, a previously-handled 103-railcar unit train of Gluten.

If CVAG wishes to procure MET's services as set forth below, then MET must receive prepayment for the charges outlined herein before MET will provide any services beyond initial delivery to Tracks 1041/1042.

This estimate assumes that CVAG will have available capacity to accept the entire unit train within 24 hours of MET's receipt in interchange. If CVAG is unable to accept delivery of the entire train, then additional charges may be assessed stemming from added switching. MET is entitled to charge for all services rendered in accordance with applicable tariffs.

Unit Train Configuration Accessorial Charges

Placement of First 67 CVAG Tracks 1041/ 1042	No charge
Placement of remainder 43 cars, MET yard	No charge
Switching removal/relocation of 43 empty cars	\$8,600.00 (43 railcars x \$200/car)
Switching and Placement of 43 loads:	\$8,600.00 (43 railcars x \$200/ car)
Outbound unit train reassembly:	\$1,250.00

Total estimated switching and unit train reassembly charges = \$18,450.00

Again, the foregoing estimate applies accessorial charges contained in MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018. As with G BPEMV 12, MET will endeavor to deliver train G BPEMV 22 intact to Tracks 1041/1042 without fouling the CVAG unloader.

Based on experience with G BPEMV 12, MET does not contemplate that the new inbound gluten train will incur demurrage charges over free time as provided for in MET Freight Tariff 9500-A (Supplement 1-A), if it subsequently appears that changes in CVAG's service requirements are likely to trigger demurrage charges, MET will provide an estimate for the same and will request prepayment of estimated charges in keeping with present practice.

MET reserves the right to invoice for additional charges beyond those paid in advance, should CVAG require car switching beyond that described above, and should CVAG's service needs trigger demurrage charges beyond any previously estimated and prepaid. If actual switching and handling service charges are less than estimated, MET will credit CVAG accordingly.

Exhibit 9

From: Jared Martin
To: [Jeff Robinson](#)
Cc: [Paul Konzen](#); [Paul Nicholson](#); [Tracy Alves](#)
Subject: G BP2MV 28 and future operations
Date: Friday, April 27, 2018 5:49:44 PM
Attachments: [G BP2MV 28 estimate.docx](#)

Jeff/CVAG,

Please see attached estimate for inbound Canola train, G BP2MV 28 with an ETA of 4/30/2018. Pre-payment will be required for MET to provide timely switching services

In addition, MET is working with its Class I railroad partners to restrict shipments destined to CVAG to carload amounts that CVAG can handle at one time without the need for additional switching and handling by MET.

CVAG has generally rejected MET's accessorial switching prepayment requirements, or when it does make a prepayment, it has only done so at the 12th hour, after considerable delay and traffic disruption. MET needs to operate its railroad in a scheduled, orderly fashion, for the convenience and safety of all our customers and the Class 1 carriers. Your practice of requesting interchange of trains of a length greater than CVAG can unload without assistance from MET, while at the same time refusing to make the required advance payment for this assistance, has resulted in uncertainty, congestion, and instability on the MET rail system. We cannot allow this to continue.

As you know, the loop (Tracks 1041/1042) have carload unloading capacity of roughly 4,550 feet, beyond which MET would need to provide accessorial switching, and may also be required to hold CVAG's cars on MET's tracks.

By our calculation Tracks 1041/1042 have the capacity to allow CVAG to unload unassisted up to 67 four-pocket DDG covered hopper cars or 77 three-pocket (canola) covered hopper cars.

The inbound train that is the subject of our attached service estimate will be the last canola unit train exceeding 77 cars that MET will accept. To be clear, MET will accept and deliver blocks of canola cars not exceeding 77 cars, provided that MET has been able to confirm that Tracks 1041/1042 are free to accept such a shipment.

Also, because CVAG transloads cotton seed shipments from Tracks 1038/1039 (which have substantially less capacity than Tracks 1041/1042), MET will restrict its receipt of inbound cotton seed destined to CVAG to a maximum of 25 carloads at a time, subject to confirmation of available capacity on Tracks 1038 and 1039.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com
530 11th Street
Modesto, CA 95353

MET hereby issues to CVAG the following prepayment requirement for estimated accessorial charges in accordance with MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018, in the total amount of **\$18,450.00** with respect to train G BPEMV 22 scheduled to be delivered in interchange to MET on or about April 26, 2018.

This estimate is based upon, and replicates, MET's recent handling of train G BPEMV 12, a previously-handled 103-railcar unit train of Gluten.

If CVAG wishes to procure MET's services as set forth below, then MET must receive prepayment for the charges outlined herein before MET will provide any services beyond initial delivery to Tracks 1041/1042.

This estimate assumes that CVAG will have available capacity to accept the entire unit train within 24 hours of MET's receipt in interchange. If CVAG is unable to accept delivery of the entire train, then additional charges may be assessed stemming from added switching. MET is entitled to charge for all services rendered in accordance with applicable tariffs.

Unit Train Configuration Accessorial Charges

Placement of First 67 CVAG Tracks 1041/ 1042	No charge
Placement of remainder 43 cars, MET yard	No charge
Switching removal/relocation of 43 empty cars	\$8,600.00 (43 railcars x \$200/car)
Switching and Placement of 43 loads:	\$8,600.00 (43 railcars x \$200/ car)
Outbound unit train reassembly:	\$1,250.00

Total estimated switching and unit train reassembly charges = \$18,450.00

Again, the foregoing estimate applies accessorial charges contained in MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018. As with G BPEMV 12, MET will endeavor to deliver train G BPEMV 22 intact to Tracks 1041/1042 without fouling the CVAG unloader.

Based on experience with G BPEMV 12, MET does not contemplate that the new inbound gluten train will incur demurrage charges over free time as provided for in MET Freight Tariff 9500-A (Supplement 1-A), if it subsequently appears that changes in CVAG's service requirements are likely to trigger demurrage charges, MET will provide an estimate for the same and will request prepayment of estimated charges in keeping with present practice.

MET reserves the right to invoice for additional charges beyond those paid in advance, should CVAG require car switching beyond that described above, and should CVAG's service needs trigger demurrage charges beyond any previously estimated and prepaid. If actual switching and handling service charges are less than estimated, MET will credit CVAG accordingly.

From: [Peter Pfohl](#)
To: [Robert A. Wimbish](#)
Cc: [sanford.sexhus@bnsf.com](#); [Corey.Dencklau@gavilon.com](#)
Subject: RE: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California
Date: Monday, April 23, 2018 9:35:00 AM

Rob: thank you for sending a corrected MET prepay demand, and for further confirming that MET is "resolute in preventing this train from being interchanged" with BNSF in continuous carriage to CVAG absent CVAG's prepayment in full of MET's \$42,050 payment demands for delivery. CVAG also objects to and rejects this revised prepay demand as unlawful and inappropriate for the same reasons stated in our letter of April 22, 2018, and our previous letters and communications, which objections we incorporate here by reference.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [mailto:RWimbish@fletcher-sippel.com]
Sent: Sunday, April 22, 2018 8:36 PM
To: Peter Pfohl <pap@sloverandloftus.com>
Cc: [sanford.sexhus@bnsf.com](#); [Corey.Dencklau@gavilon.com](#)
Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Pete -

This is in response to your letter from earlier today.

You correctly note that the "Unit Train Configuration and Accessorial Charges" section of yesterday's estimate and prepayment requirement contained outdated references to holding cars on, and switching cars from, Tracks 1041/1042. That plan was superseded by CVAG's request that overflow cars from this train be held on MET tracks instead. That oversight created a distinction without difference, so I'm sure that you realize that the estimated charges do not change. The required prepay total is still \$42,050.

It took us a few minutes to revise the estimate to replace the erroneous references to Tracks 1041/1042 with "MET hold" (reflecting that the overflow cars will be held by MET, rather than on CVAG's track). The amount of switching involved is the same. And, while probably unnecessary, we're supplying a revised estimate showing that the material elements of

yesterday's estimate remain unchanged.

It seems that you've raised the same objections as before in today's letter. CVAG's position is unchanged.

So is MET's.

CVAG contends that protecting against interchange of this train absent full prepayment of charges is "improper." CVAG's withholding full prepayment while nevertheless demanding service from MET is improper.

If CVAG prepays the entire estimated charges of \$42,050, then MET will undertake the switching necessary to unload this entire train and return it reassembled to BNSF in one piece at the end of the unloading process. Absent such prepayment, MET is resolute in preventing this train from being interchanged to it, so as not to be taken advantage of.

- Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>

Sent: Sunday, April 22, 2018 5:56 PM

To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: RE: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET's fourth revised prepayment demand for Train GALOMOD314. As with our previous response letter, I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [<mailto:RWimbish@fletcher-sippel.com>]

Sent: Saturday, April 21, 2018 11:26 PM

To: Peter Pfohl <pap@sloverandloftus.com>

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Pete -

You have decided that it is appropriate here to include BNSF and Gavillon in this discussion, and I suppose it may be helpful for them to become involved and be fully informed as they may care to be, so I am copying them, also, in MET's response.

CVAG is expecting MET to provide extensive switching services, and to supply considerable track capacity, for trains that far exceed what CVAG is able to accept and efficiently unload. Personally, it seems to me that it would be much wiser for CVAG to accept that it cannot afford the cost that comes with shifting the brunt of its own capacity limitations and inefficiencies on MET, and, in so doing, to encourage or require CVAG's customers to reduce its shipment sizes to what CVAG can accommodate, thereby avoiding the need to dispute MET's switching and demurrage charges at all.

MET has carefully considered what is appropriate to charge for the switching services it provides to CVAG, and it has done so with regard to the rate schedules of many other carriers. Ultimately, and I speak for myself here, neither you nor your client have the authority to determine what MET charges or what CVAG pays. CVAG claims that MET's charges and prepayment requirements are "inappropriate and unwarranted." The law and applicable regulation are likely to show otherwise should it come to that. The charges are substantial because the demands made of MET are also substantial.

I realize that you must advocate as best you can for your client, but your claim that MET is refusing to serve CVAG is false, and relies on the telling of only part of the story. MET has always committed to serving CVAG in accordance with applicable tariff charges, and it remains committed to doing so. If CVAG is convinced that MET's conduct is illegal, it may prepay the estimated tariffs, obtain the requested services from MET, and then pursue relief in the appropriate venue, rather than refuse to pay and then blame MET for the suspended service that follows from CVAG's decision.

The following is MET's formal response to your letter of April 20, 2018. In connection with the following response, I am attaching a revised charges estimate and prepayment requirement.

Pete –

As I understand it, CVAG wants MET to deliver the first 25 cars of train GALOMOD314 to Tracks 1038/1039, and then hold the balance (76 carloads) on MET track, rather than deliver the balance to Tracks 1041/1042 as was the plan until late yesterday. This is an abrupt change of plans, and imposes logistical hardship upon MET, to say nothing of the fact that CVAG

seems to think that it's fine to expect MET suddenly to accept some 76 cars into its yard tracks with little warning.

Word is that another unit train is on its way for unloading on Tracks 1041/1042 – a train that may show up at about the same time as train GALOMOD314. It's unfortunate, to put it politely, that no one from CVAG bothered to alert MET of this.

MET will endeavor to accommodate both trains if possible, but this is a major demand of MET switching and car holding resources. The revised plan for train GALOMOD314 is attached, including a revised estimate of charges that CVAG must prepay. The estimate now includes charges for estimated demurrage, as the new plan for the cotton seed train is likely to exceed demurrage free time.

The required prepayment total is now \$42,050.

Despite your mistaken assertions to the contrary, MET's charges and its prepayment demands are appropriate and fully defensible. CVAG's refusal to prepay estimated charges and to demand that MET accept partial payment (and to extend credit to CVAG beyond that) is not. If CVAG will pay as required there will be no service disruption. Any service disruption would be entirely of CVAG's own making, as CVAG seems to have persuaded itself that it alone is the arbiter of what charges are appropriate and should be prepaid.

CVAG must prepay all the estimated charges, not some portion more to CVAG's liking. To be very clear, MET rejects CVAG's partial payment proposal.

MET will not allow CVAG to take abusive advantage of MET's services and facilities, and, accordingly, MET has instructed BNSF that MET will not accept interchange of train GALOMOD314 absent prepayment in full by CVAG. MET will take all steps necessary to bar the interchange of train GALOMOD314 unless and until it received prepayment in full. The choice is CVAG's.

Again, it is exceedingly troubling that CVAG has failed to alert MET to a new inbound unit train, which we understand to be train G-VBTMOD3-21A, a 100-car canola unit train. We assume, in the absence of any instruction from CVAG, that this train is destined to unloading on Tracks 1041/1042, hence the sudden, self-serving change in plans for train GALOMOD314. We will formulate a prepay estimate for G-VBTMOD3-21A as soon as is reasonably possible. But, once again, we will undertake no switching this train also, unless or until all estimated charges are paid in full.

Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>

Sent: Friday, April 20, 2018 5:02 PM

To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET modified mandatory prepayment demand for Train GALOMOD314. I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

Exhibit 10

From: [Peter Pfohl](#)
To: ["Robert A. Wimbish"](#)
Cc: [Audrey L. Brodrick](#); [Angela Schrimp de la Vergne \(aschrimp@damrell.com\)](#); [Steven J. Cramer](#)
Subject: RE: First Switch
Date: Friday, April 13, 2018 3:21:00 PM

Rob: We fully appreciate the desire to end the back and forth, but MET has been unrelenting on its demands for improper prepay. You state that MET is not threatening cessation of service without prepay, but at the same time say that MET will only "pick up released unit trains (if tendered to MET intact)." MET knows that it is impossible for CVAG to do so, and thus it is absolutely threatening cessation of service, which is against its prior commitments.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [mailto:RWimbish@fletcher-sippel.com]
Sent: Friday, April 13, 2018 2:55 PM
To: Peter Pfohl <pap@sloverandloftus.com>
Cc: Audrey L. Brodrick <ABrodrick@fletcher-sippel.com>; Angela Schrimp de la Vergne (aschrimp@damrell.com) <aschrimp@damrell.com>; Steven J. Cramer <scramer@wendel.com>
Subject: Re: First Switch

Please stop with the email onslaught, Pete. We understand that each side has a different and unyielding view of the prepayment issue, and there's really nothing more to discuss.

We are not threatening any cessation of service to CVAG, Pete, and I think you know that.

Provided space exists on CVAG's tracks, MET will endeavor to deliver unit trains intact to CVAG for unloading and will pick up released unit trains (if tendered to MET intact). If CVAG reconsiders its refusal to prepay for the estimated cost of accessorial services that MET is ready, willing and able to provide upon request (and, of course, prepayment), then we all can agree, I think, that CVAG's unloading process will be easier for CVAG. The current situation, however, is likely to require CVAG to take more time to unload a unit train, and that threatens a unit train backlog on MET that MET lacks the capacity to accommodate.

MET would impose an embargo in the event that CVAG is unable to process grain shipment unloading in such a manner that a backlog of grain shipments on MET accumulate behind

existing deliveries to CVAG, thus threatening service disruptions to other customers. The embargo would allow for CVAG to address the backlog, while avoiding harm to MET. As soon as the backlog is addressed, MET would ensure that grain deliveries to CVAG resume.

Accordingly, the answer to your question is "no," MET is not reneging on any previously offered service commitment.

Aside from CVAG's reconsideration of its refusal to prepay estimated accessorial charges -- and CVAG can advise MET directly if it does reconsider -- there is nothing more for you to contact me about in connection with this matter today.

- Rob

From: Peter Pfohl <pap@sloverandloftus.com>
Sent: Friday, April 13, 2018 12:41 PM
To: Robert A. Wimbish
Cc: Audrey L. Brodrick; Angela Schrimp de la Vergne (aschrimp@damrell.com)
Subject: RE: First Switch

Rob: As a follow-up, please review and consider the attached response from MET counsel to CVAG counsel in late January, requesting that CVAG withdraw its TRO petition addressing MET's service cessation threats on the basis that the application was unnecessary because MET would not cease service, and that MET "will instead file an unlawful detainer action and enforce and protect its rights through the judicial process." On MET's representations, CVAG withdrew its application. Please let us know as soon as possible if MET is reneging on its service representations and commitments of January 29, 2018.

Regards,

Pete

From: Peter Pfohl
Sent: Friday, April 13, 2018 1:04 PM
To: 'Robert A. Wimbish' <RWimbish@fletcher-sippel.com>
Cc: Audrey L. Brodrick <ABrodrick@fletcher-sippel.com>
Subject: RE: First Switch

Rob: In response to your note:

- MET's previous demand states that "If CVAG is unwilling or unable to pay the foregoing charge, MET will not withhold delivery, but will instead deliver the entire unit train to CVAG intact." This demand says nothing about refusal to remove empties that have been released by CVAG, without prepay.
- Your new demand states that "MET will require prepayment of the estimated charges for

any switching services CVAG requests beyond MET's loaded unit train delivery (intact) and pick up of the same train, intact and empty upon release from CVAG. This same practice will apply to demurrage." This new demand is simply another form of attempted forced prepay, which MET said it would not do in its demand of yesterday, and which we believe the STB has already discussed with you as inappropriate.

- Additionally, as stated in our response to the MET demand, any demand for prepay of these disputed charges is not provided for or allowed under MET's tariffs or governing precedent. Please provide tariff or other authority supporting MET's demand for prepay of disputed charges.
- CVAG is very concerned about MET's new cessation of service threat. We do not believe that MET's new threatened embargo has any merit. Also, if MET is going to seek to embargo traffic, it needs to do so for its entire terminal system in a non-targeted fashion, for all traffic, through appropriate customer notices and industry protocols. We suggest that if MET is concerned about "crippling congestion" on its system, it needs to reasonably deliver and serve CVAG to avoid congestion, as it has been able to do without issue even after February when MET turned over unloading responsibilities to CVAG.
- MET should invoice for services/charges it believes are appropriate for the delivery after delivery, as provided under the terms its tariff. Any disputes can then be orderly considered and addressed. If MET is right about its accessorial charge demands, it can obtain full recovery through normal dispute resolution processes. Again, MET's attempt to condition service, and threaten embargoes and cessation of service on the prepayment of validly disputed charges is highly inappropriate.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [<mailto:RWimbish@fletcher-sippel.com>]

Sent: Friday, April 13, 2018 12:27 PM

To: Peter Pfohl <pap@sloverandloftus.com>

Cc: Audrey L. Brodrick <ABrodrick@fletcher-sippel.com>

Subject: Re: First Switch

Pete -

I have received your email. Thank you for your prompt response.

I will promptly advise MET that CVAG has elected not to accept service under the operating plan. Accordingly, the next inbound train due to CVAG will be delivered intact when track space on CVAG permits. MET will recover the empty unit train intact once released by CVAG

If CVAG requires any post-delivery switching, such as removal of empty cars from CVAG's tracks upon unloading of a section of the unit train, any such switching and estimated demurrage must be prepaid. We will do our best to provide a prompt estimate of those charges when the service requests are placed.

To be clear, MET will require prepayment of the estimated charges for any switching services CVAG requests beyond MET's loaded unit train delivery (intact) and pick up of the same train, intact and empty upon release from CVAG. This same practice will apply to demurrage.

We are evaluating whether to require an advance payment of demurrage, such as a security deposit, to avoid the accumulation of unpaid demurrage going forward.

Finally, MET is concerned that CVAG's limitations will considerably extend the time frames for unit train unloading. As a short line with limited track capacity, MET will seek to avoid crippling congestion on its system. Accordingly, if current circumstances result in MET holding inbound unit trains that CVAG cannot accept, MET will have no choice but to embargo unit train service to CVAG pending CVAG's elimination of the backlog.

I would strongly recommend that CVAG take careful account of its track and unloading limitations and consider directing its customers to ship smaller blocks of grain cars. MET is exploring similar options to restrict interchange/receipt of inbound grain shipments to blocks that MET believes CVAG can reasonably accept and unload intact.

Rob Wimbish

Exhibit 11

From: Jeff Robinson <jeff@cv-ag.com>
Sent: Tuesday, April 24, 2018 5:15 PM
To: Paul Konzen; Peter Pfohl; Angela Schrimp; jjh@sdfreightrail.com
Subject: Fwd: GALOMOD314
Attachments: Charge Estimate G ALOMOD3 14 - April 22 (003).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: Jared Martin <JMARTIN@METRR.COM>
Date: April 24, 2018 at 12:35:44 PM PDT
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>, Sean Casey <SCASEY@METRR.COM>
Subject: GALOMOD314

Afternoon Jeff,

We received your check number 30175 for train GALOMOD314 in the amount of \$10,000. As explained in previous communications, we will not accept partial payment to satisfy our prepayment requirement. The attached Charge Estimate requires a prepayment of \$42,050, and as such, we will not accept this train on property without payment in full. To avoid any confusion, we will return check number 30175, and await full payment.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com
530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

ACCESSORIAL SERVICE ESTIMATE AND REQUIRED CHARGES PREPAYMENT

TRAIN G ALOMOD3-14

MET has learned of the impending receipt in interchange of train G ALOMOD3-14, which according to CVAG's Jeff Robinson, is a cotton seed unit train consisting of 102 carloads. G ALOMOD3-14 is scheduled to be delivered in interchange to MET on or about April 21, 2018. For this train, CVAG will be required to prepay estimated accessorial charges to MET in keeping with MET Freight Tariff 8000-B (Supplement 1-A), Item 270 and , effective April 9, 2018, in the total amount of **\$42,050**.

This estimate is based upon MET's switching-intensive handling of a similar agricultural products unit train for CVAG earlier this year. The contents of that train were unloaded in similar fashion from CVAG-occupied Tracks 1038/1039. MET charges are based upon applicable the tariff provisions referenced herein. If CVAG wishes to procure MET's services in accordance with the following plan, then MET must receive payment of the estimated charges by no later than the first day upon which MET's switching crews reasonably could be assigned to switch the first blocks of cars (empty) from Tracks 1038/1039. If the estimated charges are paid in advance, then MET will commit to provide the services set forth below.

The below estimate assumes that CVAG will have available capacity to hold all cars from this train on Tracks 1041/1042, except for those cars initially placed on Tracks 1038/1039. If CVAG lacks sufficient car holding capacity on Tracks 1041/1042, additional charges may be assessed stemming from additional switching and from demurrage.

Unit Train Configuration Accessorial Charges

Placement of First 12 on Track 1038:	No charge
Placement of First 13 on Track 1039:	No charge
Switch First 12 (empty) from Track 1038 to MET hold	\$2,400 (12 cars X \$200/car)
Switch First 13 (empty) from Track 1039 to MET hold	\$2,600 (13 cars X \$200/car)
Switch Second 12 (loads) from MET hold to Track 1038	\$2,400 (12 cars X \$200/car)
Switch Second 13 (loads) from MET hold to Track 1039	\$2,600 (13 cars X \$200/car)
Switch Second 12 (empty) from Track 1038 to MET hold	\$2,400 (12 cars X \$200/car)
Switch Second 13 (empty) from Track 1039 to MET hold	\$2,600 (13 cars X \$200/car)
Switch Third 13 (loads) from MET hold to Track 1038	\$2,600 (12 cars X \$200/car)
Switch Third 13 (loads) from MET hold to Track 1039	\$2,600 (13 cars X \$200/car)
Switch Third 13 (empty) from Track 1038 to MET hold	\$2,600 (12 cars X \$200/car)
Switch Third 13 (empty) from Track 1039 to MET hold	\$2,600 (13 cars X \$200/car)

Switch Fourth 13 (loads) from MET hold to Track 1038	\$2,600 (13 cars X \$200/car)
Switch Fourth 13 (loads) from MET hold to Track 1039	\$2,600 (13 cars X \$200/car)

Switch Fourth 13 (empty) from Track 1038	\$2,600 (12 cars X \$200/car)
Switch Fourth 13 (empty) from Track 1039	\$2,600 (13 cars X \$200/car)

Outbound unit train reconfiguration:	\$1,250
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Total estimated switching and unit train reassembly charges = \$37,050

MET reserves the right to invoice for additional charges for accessorial services rendered beyond those paid in advance. If actual switching and handling service charges are less than estimated here, MET will credit CVAG accordingly.

Demurrage

In light of CVAG's recent request of MET to hold the majority of this train on MET track while cars are pulled and placed at intervals on Tracks 1038/1039, it appears likely that demurrage will accrue to cars that cannot be timely placed and/or that are released back to MET pending reconfiguration of the unit train. (Please advise ASAP if CVAG wishes MET to return blocks of unloaded cars back to BNSF piecemeal once they have been unloaded, rather than to await unloading of the entire train.) Based upon the assumption that CVAG would prefer that MET hold released empties until the entire train has been unloaded and released, MET estimates that demurrage will amount to at least \$5,000 (50 cars X \$50/day post-free time X 2 days past free time) per Freight Tariff M&ET 9500-A (Supplement 1-A), Item 125.

Total estimated demurrage = \$5,000

MET will separately charge for actual demurrage in excess of the foregoing estimate, and will credit CVAG for prepayment of demurrage not actually accrued.

From: Robert A. Wimbish
To: [Peter Pfohl](#)
Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com
Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California
Date: Sunday, April 22, 2018 8:36:32 PM
Attachments: [Charge Estimate G ALOMOD3 14 - April 22.docx](#)

Pete -

This is in response to your letter from earlier today.

You correctly note that the "Unit Train Configuration and Accessorial Charges" section of yesterday's estimate and prepayment requirement contained outdated references to holding cars on, and switching cars from, Tracks 1041/1042. That plan was superseded by CVAG's request that overflow cars from this train be held on MET tracks instead. That oversight created a distinction without difference, so I'm sure that you realize that the estimated charges do not change. The required prepay total is still \$42,050.

It took us a few minutes to revise the estimate to replace the erroneous references to Tracks 1041/1042 with "MET hold" (reflecting that the overflow cars will be held by MET, rather than on CVAG's track). The amount of switching involved is the same. And, while probably unnecessary, we're supplying a revised estimate showing that the material elements of yesterday's estimate remain unchanged.

It seems that you've raised the same objections as before in today's letter. CVAG's position is unchanged.

So is MET's.

CVAG contends that protecting against interchange of this train absent full prepayment of charges is "improper." CVAG's withholding full prepayment while nevertheless demanding service from MET is improper.

If CVAG prepays the entire estimated charges of \$42,050, then MET will undertake the switching necessary to unload this entire train and return it reassembled to BNSF in one piece at the end of the unloading process. Absent such prepayment, MET is resolute in preventing this train from being interchanged to it, so as not to be taken advantage of.

- Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>
Sent: Sunday, April 22, 2018 5:56 PM
To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: RE: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET's fourth revised prepayment demand for Train GALOMOD314. As with our previous response letter, I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

From: Robert A. Wimbish [mailto:RWimbish@fletcher-sippel.com]

Sent: Saturday, April 21, 2018 11:26 PM

To: Peter Pfohl <pap@sloverandloftus.com>

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: Re: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Pete -

You have decided that it is appropriate here to include BNSF and Gavillon in this discussion, and I suppose it may be helpful for them to become involved and be fully informed as they may care to be, so I am copying them, also, in MET's response.

CVAG is expecting MET to provide extensive switching services, and to supply considerable track capacity, for trains that far exceed what CVAG is able to accept and efficiently unload. Personally, it seems to me that it would be much wiser for CVAG to accept that it cannot afford the cost that comes with shifting the brunt of its own capacity limitations and inefficiencies on MET, and, in so doing, to encourage or require CVAG's customers to reduce its shipment sizes to what CVAG can accommodate, thereby avoiding the need to dispute MET's switching and demurrage charges at all.

MET has carefully considered what is appropriate to charge for the switching services it provides to CVAG, and it has done so with regard to the rate schedules of many other carriers. Ultimately, and I speak for myself here, neither you nor your client have the authority to determine what MET charges or what CVAG pays. CVAG claims that MET's charges and prepayment requirements are "inappropriate and unwarranted." The law and applicable

regulation are likely to show otherwise should it come to that. The charges are substantial because the demands made of MET are also substantial.

I realize that you must advocate as best you can for your client, but your claim that MET is refusing to serve CVAG is false, and relies on the telling of only part of the story. MET has always committed to serving CVAG in accordance with applicable tariff charges, and it remains committed to doing so. If CVAG is convinced that MET's conduct is illegal, it may prepay the estimated tariffs, obtain the requested services from MET, and then pursue relief in the appropriate venue, rather than refuse to pay and then blame MET for the suspended service that follows from CVAG's decision.

The following is MET's formal response to your letter of April 20, 2018. In connection with the following response, I am attaching a revised charges estimate and prepayment requirement.

Pete –

As I understand it, CVAG wants MET to deliver the first 25 cars of train GALOMOD314 to Tracks 1038/1039, and then hold the balance (76 carloads) on MET track, rather than deliver the balance to Tracks 1041/1042 as was the plan until late yesterday. This is an abrupt change of plans, and imposes logistical hardship upon MET, to say nothing of the fact that CVAG seems to think that it's fine to expect MET suddenly to accept some 76 cars into its yard tracks with little warning.

Word is that another unit train is on its way for unloading on Tracks 1041/1042 – a train that may show up at about the same time as train GALOMOD314. It's unfortunate, to put it politely, that no one from CVAG bothered to alert MET of this.

MET will endeavor to accommodate both trains if possible, but this is a major demand of MET switching and car holding resources. The revised plan for train GALOMOD314 is attached, including a revised estimate of charges that CVAG must prepay. The estimate now includes charges for estimated demurrage, as the new plan for the cotton seed train is likely to exceed demurrage free time.

The required prepayment total is now \$42,050.

Despite your mistaken assertions to the contrary, MET's charges and its prepayment demands are appropriate and fully defensible. CVAG's refusal to prepay estimated charges and to demand that MET accept partial payment (and to extend credit to CVAG beyond that) is not. If CVAG will pay as required there will be no service disruption. Any service disruption would be entirely of CVAG's own making, as CVAG seems to have persuaded itself that it alone is the arbiter of what charges are appropriate and should be prepaid.

CVAG must prepay all the estimated charges, not some portion more to CVAG's liking. To be very clear, MET rejects CVAG's partial payment proposal.

MET will not allow CVAG to take abusive advantage of MET's services and facilities, and, accordingly, MET has instructed BNSF that MET will not accept interchange of train GALOMOD314 absent prepayment in full by CVAG. MET will take all steps necessary to bar the interchange of train GALOMOD314 unless and until it received prepayment in full. The choice is CVAG's.

Again, it is exceedingly troubling that CVAG has failed to alert MET to a new inbound unit train, which we understand to be train G-VBTMOD3-21A, a 100-car canola unit train. We assume, in the absence of any instruction from CVAG, that this train is destined to unloading on Tracks 1041/1042, hence the sudden, self-serving change in plans for train GALOMOD314. We will formulate a prepay estimate for G-VBTMOD3-21A as soon as is reasonably possible. But, once again, we will undertake no switching this train also, unless or until all estimated charges are paid in full.

Rob Wimbish

From: Peter Pfohl <pap@sloverandloftus.com>

Sent: Friday, April 20, 2018 5:02 PM

To: Robert A. Wimbish

Cc: sanford.sexhus@bnsf.com; Corey.Dencklau@gavilon.com

Subject: CVAG Reply to MET Prepay Demand on Train GALOMOD314, Modesto, California

Rob: Please find the attached response to MET modified mandatory prepayment demand for Train GALOMOD314. I am also cc'ing Messrs. Sexhus and Dencklau, whose companies are the line-haul carrier and shipper of this train.

Regards,

Pete

Peter A. Pfohl
Slover & Loftus, LLP
1224 17th Street NW
Washington, D.C. 20036
202-454-4419 (direct)
202-347-7170 (office main)

ACCESSORIAL SERVICE ESTIMATE AND REQUIRED CHARGES PREPAYMENT

TRAIN G ALOMOD3-14

MET has learned of the impending receipt in interchange of train G ALOMOD3-14, which according to CVAG's Jeff Robinson, is a cotton seed unit train consisting of 102 carloads. G ALOMOD3-14 is scheduled to be delivered in interchange to MET on or about April 21, 2018. For this train, CVAG will be required to prepay estimated accessorial charges to MET in keeping with MET Freight Tariff 8000-B (Supplement 1-A), Item 270 and , effective April 9, 2018, in the total amount of **\$42,050**.

This estimate is based upon MET's switching-intensive handling of a similar agricultural products unit train for CVAG earlier this year. The contents of that train were unloaded in similar fashion from CVAG-occupied Tracks 1038/1039. MET charges are based upon applicable the tariff provisions referenced herein. If CVAG wishes to procure MET's services in accordance with the following plan, then MET must receive payment of the estimated charges by no later than the first day upon which MET's switching crews reasonably could be assigned to switch the first blocks of cars (empty) from Tracks 1038/1039. If the estimated charges are paid in advance, then MET will commit to provide the services set forth below.

The below estimate assumes that CVAG will have available capacity to hold all cars from this train on Tracks 1041/1042, except for those cars initially placed on Tracks 1038/1039. If CVAG lacks sufficient car holding capacity on Tracks 1041/1042, additional charges may be assessed stemming from additional switching and from demurrage.

Unit Train Configuration Accessorial Charges

Placement of First 12 on Track 1038:	No charge
Placement of First 13 on Track 1039:	No charge
Switch First 12 (empty) from Track 1038 to MET hold	\$2,400 (12 cars X \$200/car)
Switch First 13 (empty) from Track 1039 to MET hold	\$2,600 (13 cars X \$200/car)
Switch Second 12 (loads) from MET hold to Track 1038	\$2,400 (12 cars X \$200/car)
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Switch Fourth 13 (loads) from MET hold to Track 1039	\$2,600 (13 cars X \$200/car)

Switch Fourth 13 (empty) from Track 1038	\$2,600 (12 cars X \$200/car)
Switch Fourth 13 (empty) from Track 1039	\$2,600 (13 cars X \$200/car)

Outbound unit train reconfiguration:	\$1,250
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Total estimated switching and unit train reassembly charges = \$37,050

MET reserves the right to invoice for additional charges for accessorial services rendered beyond those paid in advance. If actual switching and handling service charges are less than estimated here, MET will credit CVAG accordingly.

Demurrage

In light of CVAG's recent request of MET to hold the majority of this train on MET track while cars are pulled and placed at intervals on Tracks 1038/1039, it appears likely that demurrage will accrue to cars that cannot be timely placed and/or that are released back to MET pending reconfiguration of the unit train. (Please advise ASAP if CVAG wishes MET to return blocks of unloaded cars back to BNSF piecemeal once they have been unloaded, rather than to await unloading of the entire train.) Based upon the assumption that CVAG would prefer that MET hold released empties until the entire train has been unloaded and released, MET estimates that demurrage will amount to at least \$5,000 (50 cars X \$50/day post-free time X 2 days past free time) per Freight Tariff M&ET 9500-A (Supplement 1-A), Item 125.

Total estimated demurrage = \$5,000

MET will separately charge for actual demurrage in excess of the foregoing estimate, and will credit CVAG for prepayment of demurrage not actually accrued.

Exhibit 12

From: Jeff Robinson
To: ["Tracy Alves"](#)
Subject: RE: [W] G VBTMOD3 21 Estimate

Tracy,

After consideration and discussion with CVAG counsel, CVAG will be hand delivering a check to you shortly in the amount requested, in order to keep this train running. Under further guidance of counsel, please note that CVAG makes this payment as a form of security under protest, and without waiver of its objections to the charges and underlying tariff terms. CVAG payment under protest in this instance shall not be used to establish liability on the part of CVAG for this train or any other trains.

Thank you,

Jeff Robinson
Transload Manager
Central Valley Ag Transload
*330 Codoni Ave
Modesto, CA 95357*

jeff@cv-ag.com
*209-232-3569 / Direct
209-988-2994 / Mobile
209-544-9246 / Office
209-232-3579 / Fax*

From: Tracy Alves [mailto:TALVES@METRR.COM]
Sent: Monday, April 23, 2018 12:03 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: [W] G VBTMOD3 21 Estimate

This was developed in close connection with our legal counsel. Please share with your team.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | |
209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

MET hereby issues to CVAG the following prepayment requirement for estimated accessorial charges in accordance with MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018, in the total amount of **\$11,250.00** with respect to train G VBTMOD3 21, scheduled to be delivered in interchange to MET on or about April 23, 2018.

This estimate is based upon, and replicates, MET's recent handling of train G VBTMOD3 09, a previously-handled 100-railcar unit train of canola.

If CVAG wishes to procure MET's services as set forth below, then MET must receive prepayment for the charges outlined herein before MET will provide any services beyond initial delivery to Tracks 1041/1042.

This estimate assumes that CVAG will have available capacity to accept the entire unit train within 24 hours of MET's receipt in interchange. If CVAG is unable to accept delivery of the entire train, then additional charges may be assessed stemming from added switching. MET is entitled to charge for all services rendered in accordance with applicable tariffs.

Unit Train Configuration Accessorial Charges

Placement of unit train on CVAG Tracks 1041/ 1042	No charge
Switching removal/relocation of 50 empty cars	\$10,000.00 (50 railcars x \$200/car)
Outbound unit train reassembly:	\$1,250.00

Total estimated switching and unit train reassembly charges = \$11,250.00

Again, the foregoing estimate applies accessorial charges contained in MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018. As with G VBTMOD3 09, MET will endeavor to deliver train G VBTMOD3 21 intact to Tracks 1041/1042 without fouling the CVAG unloader.

Based on experience with G VBTMOD3 09, MET does not contemplate that the new inbound canola train will incur demurrage charges over free time as provided for in MET Freight Tariff 9500-A (Supplement 1-A), if it subsequently appears that changes in CVAG's service requirements are likely to trigger demurrage charges, MET will provide an estimate for the same and will request prepayment of estimated charges in keeping with present practice.

MET reserves the right to invoice for additional charges beyond those paid in advance, should CVAG require car switching beyond that described above, and should CVAG's service needs trigger demurrage charges beyond any previously estimated and prepaid. If actual switching and handling service charges are less than estimated, MET will credit CVAG accordingly.

Exhibit 13



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

April 20, 2018

Via Email and First Class Mail

Mr. Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Re: MET Revised Prepay Demands on Train GALOMOD314

Dear Rob:

On behalf of our client, Central Valley Ag Grinding, Inc. ("CVAG"), CVAG rejects the "modified mandatory prepayment requirement" of Modesto & Empire Traction Company ("MET") sent early this morning, which demand is enclosed.

Through its prepay demand, MET insists that it will not reasonably deliver the above-referenced 102 car train to CVAG's Modesto, California facility unless CVAG tenders payment, in advance, of \$37,050. MET's "final and non-negotiable" demand is unprecedented and unwarranted. MET has delivered similar trains under similar operating conditions in the past to CVAG without condition and at no additional charge to CVAG. MET's demand modifies a similar \$45,800 train delivery prepay demand for this same train made by MET in the early morning hours yesterday, and its previous similar general demands of prepay of up to \$50,000 per train. MET's demand is unwarranted under MET tariffs and governing precedent.

MET's prepay demand consists of 176 individual charges of \$200/car to deliver to CVAG the 102 car train in three consignments/cuts of 25-26 cars to CVAG tracks 1038/1039. Broken down, MET's demand consists of \$15,200 in charges for delivery of 76 individual loaded cars to CVAG (76 loaded cars x \$200/car = \$15,200), and an additional \$20,000 in charges for MET's return of 100 empty cars to its staging tracks (100 empty cars x \$200/car = \$20,000). In addition, CVAG seeks an "outbound unit train reconfiguration" charge of \$1,200. On top of these charges, MET reserves the right to invoice CVAG for unspecified additional services, as well as for any possible demurrage charges that may accrue. CVAG strenuously disagrees that MET has the right to impose these charges, that appear to replicate, and likely vastly exceed the amounts it already receives for its services under its handling line arrangements with its connecting Class I carriers.

On behalf of CVAG, we fully responded to MET's previous demands of a similar nature, as well as its recent line embargo threats, in a number of communications,

including by letters dated March 30, 2018 and April 11, 2018, and in various emails including but not limited to those dated March 30, 2018, April 11, 2018, April 12, 2018, April 13, 2018, and April 19, 2018. We incorporate by reference herein these previous objections and protests that also apply here with respect to MET's latest prepay demands. As discussed, CVAG does not dispute the right of MET to assess valid and reasonable charges for rail service. However, CVAG disputes the aforementioned demands with respect to this train as the assessed charges are defective, improper, vastly excessive, and unreasonable, including under 49 U.S.C. § 11101 and 49 U.S.C. § 10702.

While CVAG does not accept MET's latest demand, and reserves its rights to dispute any and all charges and assessments with respect to this and future trains, CVAG renews its request that the parties enter into a "keep the trains running" interim agreement with respect to this train. The parties successfully employed such an arrangement earlier this week with respect to train GVBTMOD309. Unfortunately, MET has thus far rejected this approach with respect to the cotton train and future trains, insisting that its prepayment demand "terms are final and non-negotiable."

Under the circumstances, and in order to keep the trains running, MET has left CVAG with little choice but to cede to its improper demands and pay in advance certain of the amounts sought, under protest. Therefore, funds in the amount of \$10,000 will be wired to your account, or hand delivered by check, whichever MET prefers, as security for the expense of any possible legitimate additional special switching activity associated with this train. This amount significantly exceeds current charges of the short line industry, including other carriers in California, which have adopted special switching service for reimbursement for any such incidents of \$675 - \$1,100 for 1-3 hours, and \$1,800 - \$2,500 per 8 hours of service. As noted, the referenced inbound cotton train will need to be delivered in three consignments/cuts in three successive days after initial delivery of the first cut. With this \$10,000 prepayment, in combination with the \$10,000 prepayment made by CVAG on train CVBTMOD309 earlier this week, MET will have made prepayments to MET totaling \$20,000 as reasonable security, on top of the haulage fees MET is already receiving from its connecting Class I carriers. These amounts far exceed MET's costs for any additional services it may be providing. CVAG also acknowledges that receipt and deposit by MET of these amounts shall be without prejudice to MET's right to later seek any additional payments or amounts, etc. that it believes reasonable, so MET's collection rights are fully preserved.

These payments are being made under protest and shall not be used to establish liability on the part of CVAG, or for any other purpose inconsistent with CVAG's position that MET has no right to charge these excessive and inappropriate fees, impose any such "self-help" conditions, including prepay, or cease servicing CVAG in the face of a bona-fide dispute over the disputed charges.

Robert A. Wimbish, Esq.
April 20, 2018
Page 3

Finally, MET's current operating plan for this train envisions use of CVAG tracks 1041/1042 as MET staging tracks for delivery, with the train then delivered in three subsequent 25-26 car consignments/cuts to CVAG unloading tracks 1038/1039. CVAG only offered use of 1041/1042 to (i) reasonably accommodate MET acknowledged preferences with respect similar prior cotton trains (with no resulting MET charges), and (ii) limit the time the cars are held on MET tracks. However, since MET apparently now intends to use staging on CVAG tracks 1041/1042 only as a means to seek to extract significant, unwarranted charges for reasonable delivery, **CVAG no longer agrees to the use of tracks 1041/1042 for MET train staging of the referenced inbound cotton train.** Instead, MET should deliver the first 25 cars to 1038/1039, and constructively place the rest of the train on MET controlled tracks. MET can then seek to assess demurrage, if warranted, under the terms of MET's tariff 9500, at the end of the month.

As we have previously discussed, any rail service interruption or line embargo by MET will have a devastating impact on CVAG and its ability to meet the needs of the California dairy industry which relies on its transload services for the involved feed commodities received by CVAG, with limited or no other service options. Should any cessation or diminution in service occur, CVAG intends to hold MET fully liable for all damages that result from its improper conduct.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Pfohl", with a long horizontal flourish extending to the right.

Peter A. Pfohl
An Attorney for
Central Valley Ag Grinding, Inc.

Enclosure

cc: Corey Dencklau, Vice President & General Manager, Ingredients, Gaviion (via email)
Sam Sexhus, Group Vice President, Ag Products, BNSF (via email)

Peter Pfohl

From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Sent: Friday, April 20, 2018 12:02 AM
To: Peter Pfohl
Subject: Train G ALOMOD3-14
Attachments: Charge Estimate G ALOMOD3 14 - April 19.docx

Pete -

After a thorough re-assessment of its accessorial services tariff and resource-intensive demands of handling trains such as the current inbound cottonseed unit train as CVG would require, MET has modified its original accessorial services estimate and mandatory prepayment requirements for train G ALOMOD3-14.

I have attached the revised services estimate and prepayment conditions.

The revised estimate departs from the previous estimate in one important regard -- MET has agreed to reduce its charge for unit train reconfiguration to a single, per-train fee of \$1,250, rather than a per-cut fee of \$1,250, resulting in a considerable reduction in total charges. The switching charges component, however, remains as originally estimated. MET will retain for the time being its decision not to supply accessorial services to CVAG on credit.

After careful consideration, including an assessment of recent protests on behalf of CVAG, MET has instructed me to advise you that the attached terms are final and non-negotiable.

In addition, MET has considered whether the switching services that CVAG has in the past requested of MET, and that CVAG may consider in the future ordering from MET, properly qualify as "special switching services," differently calculated and assessed. They do not so qualify.

Unless CVAG or its customer elect to make any enroute adjustments before inbound train G ALOMOD3-14 is delivered in interchange to MET or agree to prepay for estimated services, please advise your client that, upon interchange delivery, MET will retrieve the unit train, deliver 12 loads to Track 1038, deliver a separate 13 loads to Track 1039, and deliver the balance of the train to CVAG on Tracks 1041/1042, all without charge in accordance with CVAG's, thereby fulfilling MET's service obligations as a handling carrier. Any subsequent request for intra-terminal switching services to re-allocate cars from train G ALOMOD3-14 among Tracks 1038, 1039 and 1041/1042 would be subject to non-negotiable, pre-paid \$200/car intra-terminal switching charges.

Also, the same intra-terminal switching tariff rates and prepayment requirements will apply to all future unit trains destined for unloading on Tracks 1041/1042 for which CVAG requires post-delivery switching by MET. However, MET intends to -- (1) revise its current unit train demurrage rules; (2) significantly reduce its unit train demurrage charges; and (3) rescind its in-transit hold tariff provision. MET is in the process of re-examining how it will in the future charge for holding unit train excess that a customer such as CVAG is either unable to accept or that the customer requests MET to hold on its own tracks, although MET wishes ultimately to discourage such practices, which consume limited MET track resources. MET will advise you and CVAG as soon as MET has arrived upon these contemplated accessorial and demurrage tariff revisions.

You had asked about a uniform and predictable policy for unit trains destined for CVAG unloading on Tracks 1041/1042. In response to your inquiry, MET advises that it will, upon timely request, provide an estimate of its switching and applicable hold charges which MET may (once they take effect) assess in lieu of unit train demurrage, should CVAG order any such services from MET. MET will adhere to the previously agreed-upon operating plan in estimating handling services and charges where appropriate, which also enables CVAG to compute the likely charges for itself. Of course, CVAG may opt for different, or fewer, accessorial services than the parties discussed previously, in which case it should still be fairly easy for CVAG to undertake its own cost estimates. And MET will require prepayment of estimated charges as a prerequisite to service. Here, too, MET's position is firm.

I believe that the foregoing makes very clear MET's position and its expectations. If CVAG requires accessorial services going forward and makes a timely request and prepayment of the estimated charges, then MET will endeavor to provide such services in a timely manner in keeping with ordinary operating practices.

- Rob Wimbish

ACCESSORIAL SERVICE ESTIMATE AND REQUIRED CHARGES PREPAYMENT

TRAIN G ALOMOD3-14

MET has learned of the impending receipt in interchange of train G ALOMOD3-14, which according to CVAG's Jeff Robinson, is a cotton seed unit train consisting of 102 carloads. G ALOMOD3-14 is scheduled to be delivered in interchange to MET on or about April 21, 2018. For this train, CVAG will be required to prepay estimated accessorial charges to MET in keeping with MET Freight Tariff 8000-B (Supplement 1-A), Item 270 and , effective April 9, 2018, in the total amount of \$37,050.

This estimate is based upon MET's switching-intensive handling of a similar agricultural products unit train for CVAG earlier this year. The contents of that train were unloaded in similar fashion from CVAG-occupied Tracks 1038/1039. MET charges are based upon applicable the tariff provisions referenced herein. If CVAG wishes to procure MET's services in accordance with the following plan, then MET must receive payment of the estimated charges by no later than the first day upon which MET's switching crews reasonably could be assigned to switch the first blocks of cars (empty) from Tracks 1038/1039. If the estimated charges are paid in advance, then MET will commit to provide the services set forth below.

The below estimate assumes that CVAG will have available capacity to hold all cars from this train on Tracks 1041/1042, except for those cars initially placed on Tracks 1038/1039. If CVAG lacks sufficient car holding capacity on Tracks 1041/1042, additional charges may be assessed stemming from additional switching and from demurrage.

Unit Train Configuration Accessorial Charges

Placement of First 12 on Track 1038:	No charge
Placement of First 13 on Track 1039:	No charge
Switch First 12 (empty) from Track 1038 to 1041/1042	\$2,400 (12 cars X \$200/car)
Switch First 13 (empty) from Track 1039 to 1041/1042	\$2,600 (13 cars X \$200/car)
Switch Second 12 (loads) from Track 1041/1042 to Track 1038	\$2,400 (12 cars X \$200/car)
Switch Second 13 (loads) from Track 1041/1042 to Track 1039	\$2,600 (13 cars X \$200/car)
Switch Second 12 (empty) from Track 1038 to 1041/1042	\$2,400 (12 cars X \$200/car)
Switch Second 13 (empty) from Track 1039 to 1041/1042	\$2,600 (13 cars X \$200/car)
Switch Third 13 (loads) from Track 1041/1042 to Track 1038	\$2,600 (12 cars X \$200/car)
Switch Third 13 (loads) from Track 1041/1042 to Track 1039	\$2,600 (13 cars X \$200/car)
Switch Third 13 (empty) from Track 1038 to 1041/1042	\$2,600 (12 cars X \$200/car)
Switch Third 13 (empty) from Track 1039 to 1041/1042	\$2,600 (13 cars X \$200/car)

Switch Fourth 13 (loads) from Track 1041/1042 to Track 1038	\$2,600 (13 cars X \$200/car)
Switch Fourth 13 (loads) from Track 1041/1042 to Track 1039	\$2,600 (13 cars X \$200/car)

Switch Fourth 13 (empty) from Track 1038 to 1041/1042	\$2,600 (12 cars X \$200/car)
Switch Fourth 13 (empty) from Track 1039 to 1041/1042	\$2,600 (13 cars X \$200/car)

Outbound unit train reconfiguration:	\$1,250
--------------------------------------	---------

Total estimated switching and unit train reassembly charges = \$37,050

MET reserves the right to invoice for additional charges for accessorial services rendered beyond those paid in advance. If actual switching and handling service charges are less than estimated here, MET will credit CVAG accordingly.

Demurrage

CVAG has advised that it plans to hold all cars not then placed on Tracks 1038/1039 – 76 to 77 cars at any one time during the planned unloading process – on Tracks 1041/1042, rather than to require that such cars be held on MET tracks. Provided adequate space exists on Tracks 1041/1042 at the time of initial delivery and placement, such that no cars are held on MET-controlled tracks, then no demurrage will accrue. Accordingly, MET estimates demurrage to be zero.

MET will separately charge for actual demurrage in excess of the foregoing estimate, and will credit CVAG for prepayment of demurrage not actually accrued.

Exhibit 14

From: Jeff Robinson <jeff@cv-ag.com>
Sent: Tuesday, April 24, 2018 5:14 PM
To: Paul Konzen; Peter Pfohl; jjh@sdfreightrail.com; Angela Schrimp de la Vergne
Subject: Fwd: GBPEMV22
Attachments: G BPEMV 22 estimate (002).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: Jared Martin <JMARTIN@METRR.COM>
Date: April 24, 2018 at 12:27:10 PM PDT
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>, Sean Casey <SCASEY@METRR.COM>
Subject: GBPEMV22

Afternoon Jeff,

We received your check number 30176 for train GBPEMV22 in the amount of \$10,000. Per the attached estimate, we will not accept partial payment to satisfy our prepayment requirement. The attached estimate requires a prepayment of \$18,450, and as such, we will need to receive this payment in full, to avoid placing the entire train on the loop. To avoid any confusion, we will return check number 30176, and await full payment.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com
530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

MET hereby issues to CVAG the following prepayment requirement for estimated accessorial charges in accordance with MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018, in the total amount of **\$18,450.00** with respect to train G BPEMV 22 scheduled to be delivered in interchange to MET on or about April 26, 2018.

This estimate is based upon, and replicates, MET's recent handling of train G BPEMV 12, a previously-handled 103-railcar unit train of Gluten.

If CVAG wishes to procure MET's services as set forth below, then MET must receive prepayment for the charges outlined herein before MET will provide any services beyond initial delivery to Tracks 1041/1042.

This estimate assumes that CVAG will have available capacity to accept the entire unit train within 24 hours of MET's receipt in interchange. If CVAG is unable to accept delivery of the entire train, then additional charges may be assessed stemming from added switching. MET is entitled to charge for all services rendered in accordance with applicable tariffs.

Unit Train Configuration Accessorial Charges

Placement of First 67 CVAG Tracks 1041/ 1042	No charge
Placement of remainder 43 cars, MET yard	No charge
Switching removal/relocation of 43 empty cars	\$8,600.00 (43 railcars x \$200/car)
Switching and Placement of 43 loads:	\$8,600.00 (43 railcars x \$200/ car)
Outbound unit train reassembly:	\$1,250.00

Total estimated switching and unit train reassembly charges = \$18,450.00

Again, the foregoing estimate applies accessorial charges contained in MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018. As with G BPEMV 12, MET will endeavor to deliver train G BPEMV 22 intact to Tracks 1041/1042 without fouling the CVAG unloader.

Based on experience with G BPEMV 12, MET does not contemplate that the new inbound gluten train will incur demurrage charges over free time as provided for in MET Freight Tariff 9500-A (Supplement 1-A), if it subsequently appears that changes in CVAG's service requirements are likely to trigger demurrage charges, MET will provide an estimate for the same and will request prepayment of estimated charges in keeping with present practice.

MET reserves the right to invoice for additional charges beyond those paid in advance, should CVAG require car switching beyond that described above, and should CVAG's service needs trigger demurrage charges beyond any previously estimated and prepaid. If actual switching and handling service charges are less than estimated, MET will credit CVAG accordingly.

Exhibit 15

From: SUBSCRIPTIONS
Subject: NOTIFY AND CP LIST NO 333083
Date: Tuesday, April 24, 2018 11:47:20 PM

For: GAVILOINGLLC
Care of Party: CENTRAVALAGG Attn: JEFF ROBINSON
From: BNSF Railway Company Customer Support

NOTIFY AND CP LIST NO. 333083 on 04/24/18 at 20:31

You are hereby notified that the train(s) shown below are consigned or ordered to or by you are in your care, are being held enroute due to customer congestion. These cars are subject to demurrage and storages rules published in tariffs lawfully on file.

** If you take exception to this notice or disagree with**
** our assessment of your facility please contact **
** Grain Contact Toll Free Number 1-800-234-9396 and **
** follow the prompts and for Coal and Other unit Trains**
** Contact 1-888-428-2673 option 3, 3, 3 **

Director
Customer Support

---Car--- Car L CP Permit/ Origin Origin Ship/ Waybil PWbil Net Currn
InitNumber Knd E MoDy Content 333 State Request Numb Number IMoDy Cwgt Stn

CRDX 913 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1888 FRESCA
CRDX 918 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1889 FRESCA
CRDX 922 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1896 FRESCA
CRDX 927 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1865 FRESCA
CRDX 936 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
CRDX 939 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
CRDX 940 GTB L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1889 FRESCA
MWCX100027 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1980 FRESCA
MWCX100032 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1968 FRESCA
MWCX100571 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1849 FRESCA
MWCX100574 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1950 FRESCA
MWCX100783 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1932 FRESCA
MWCX100819 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1978 FRESCA
MWCX100824 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1983 FRESCA
MWCX100829 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1935 FRESCA
MWCX100834 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1974 FRESCA
MWCX100835 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1921 FRESCA
MWCX100844 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1937 FRESCA
MWCX101242 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1988 FRESCA
MWCX101244 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1935 FRESCA
MWCX101245 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1932 FRESCA
MWCX101247 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1978 FRESCA
MWCX101249 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1992 FRESCA

MWCX101251 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1939 FRESCA
MWCX101254 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1932 FRESCA
MWCX101462 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1911 FRESCA

MWCX101468 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1866 FRESCA
MWCX101471 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1941 FRESCA
MWCX101479 GPN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1914 FRESCA
MWCX101664 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1870 FRESCA
MWCX101690 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1853 FRESCA
MWCX102011 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1867 FRESCA
MWCX102019 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1886 FRESCA
MWCX102029 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1879 FRESCA
MWCX102030 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1884 FRESCA
MWCX102035 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1882 FRESCA
MWCX102040 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
MWCX102046 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1870 FRESCA
MWCX102048 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1882 FRESCA
MWCX102058 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1874 FRESCA
MWCX102059 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1889 FRESCA
MWCX102066 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
MWCX102069 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1936 FRESCA
MWCX102073 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1946 FRESCA
MWCX102078 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1921 FRESCA
MWCX102079 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1926 FRESCA
MWCX102086 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1948 FRESCA
MWCX102097 WS4 L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1943 FRESCA
MWCX102343 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1883 FRESCA
MWCX102344 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1881 FRESCA
MWCX102346 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1889 FRESCA
MWCX102347 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1882 FRESCA
MWCX102349 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
MWCX102350 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1885 FRESCA
MWCX102351 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1883 FRESCA
MWCX102353 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1883 FRESCA
MWCX102354 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1878 FRESCA
MWCX102356 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1884 FRESCA
MWCX102357 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1882 FRESCA
MWCX102358 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1886 FRESCA
MWCX102364 GWN L 0424 CTTNSD ALTUS OK GAVILOINGLLC 855563 P0414 1887 FRESCA
CP ACCOUNT UNIT TRAIN HELD SHORT OF BILLED DESTINATION
THE MET IS REFUSING TRAIN DUE TO CONTRACTUAL AGREEMENTS WITH THE
CUSTOMER. THE MET IS NOT GETTING PAID TO SWITCH THE UNIT TRAINS
INTO THE CUSTOMERS FACILITY.
JARED IS ONE OF THE CONTACTS I TALKED TO THIS MORNING. 209 543
5943 CASE-2453143

Unit Train Id : --

Lead Car : CRDX 927
Current location : FRESNO , CA
Total train(s) for constructive placement : 1

Total Loaded cars for constructive placement: 61

Prior CP Notice, if any, takes precedence for CP records.

Exhibit 16

From: Jeff Robinson <jeff@cv-ag.com>
Sent: Wednesday, April 25, 2018 6:29 PM
To: Tracy Alves
Subject: RE: [W] G ALOMOD3 14

Good afternoon Tracy,

Please accept payment and deliver the train as soon as possible. As for any additional train fees that may be made by MET with respect to this train, CVAG reserves the right to protest.

Thank you,

Jeff Robinson
Transload Manager
Central Valley Ag Transload
330 Codoni Ave
Modesto, CA 95357

jeff@cv-ag.com
209-232-3569 / Direct
209-988-2994 / Mobile
209-544-9246 / Office
209-232-3579 / Fax

From: Tracy Alves [<mailto:TALVES@METRR.COM>]
Sent: Wednesday, April 25, 2018 1:54 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: [W] G ALOMOD3 14
Importance: High

Jeff. I have been contacted by Gavilon regarding the Cotton seed train. BNSF is currently holding in their Fresno yard awaiting CVAG decision.

Gavilon has indicated CVAG has shared the invoice for services for this train and has asked Gavilon to pay MET directly. After consideration, MET will accept payment from Gavilon on CVAG's behalf, for this train only. However, this does not relieve CVAG of additional accessorial charges that may occur due to the nature of this train.

Please let me know asap if you would like to move forward with this option. Gavilon would like a decision quickly.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

From: Tracy Alves
To: [Jeff Robinson](#)
Subject: [W] RE: [W] RE: [W] G ALOMOD3 14
Date: Thursday, April 26, 2018 11:10:25 AM

Good morning Jeff. Once we receive funds from CVAG for G ALOMOD3 14, we will give BNSF the approval to send this train to MET.

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

From: Jeff Robinson [mailto:jeff@cv-ag.com]
Sent: Wednesday, April 25, 2018 5:22 PM
To: Tracy Alves
Subject: RE: [W] RE: [W] G ALOMOD3 14

Good afternoon,

Thank you. Again, we ask that MET please accept payment and deliver this train as soon as possible. While it obviously takes longer, CVAG will comply with your request and hand deliver a check with the funds received as soon as possible.

On advice of counsel, please note that the payment here is without waiver of CVAG's objections to any current or future charges that might be assessed and the underlying tariff terms, or damages caused by CVAG's delay in delivery of this train. The payments in this instance shall not be used to establish liability on the part of CVAG for this train or any other trains.

Thank you,
Jeff

From: Tracy Alves [mailto:TALVES@METRR.COM]
Sent: Wednesday, April 25, 2018 3:50 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: [W] RE: [W] G ALOMOD3 14
Importance: High

Jeff, I just talked with Gavilon. I have instructed them to forward funds to you, CVAG, and CVAG in

turn can hand deliver check to MET.

Once this is complete, assume tomorrow, We will communicate with BNSF to release the train. BNSF is looking at 48 hours to power the train.

MET should not be managing this payment process for CVAG in the future.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | |
209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

From: Jeff Robinson [<mailto:jeff@cv-ag.com>]

Sent: Wednesday, April 25, 2018 3:29 PM

To: Tracy Alves

Subject: RE: [W] G ALOMOD3 14

Good afternoon Tracy,

Please accept payment and deliver the train as soon as possible. As for any additional train fees that may be made by MET with respect to this train, CVAG reserves the right to protest.

Thank you,

Jeff Robinson

Transload Manager

Central Valley Ag Transload

330 Codoni Ave

Modesto, CA 95357

jeff@cv-ag.com

209-232-3569 / Direct

209-988-2994 / Mobile

209-544-9246 / Office

209-232-3579 / Fax

From: Tracy Alves [<mailto:TALVES@METRR.COM>]

Sent: Wednesday, April 25, 2018 1:54 PM

To: Jeff Robinson <jeff@cv-ag.com>

Cc: Tracy Alves <TALVES@METRR.COM>

Subject: [W] G ALOMOD3 14

Importance: High

Jeff. I have been contacted by Gavilon regarding the Cotton seed train. BNSF is currently holding in their Fresno yard awaiting CVAG decision.

Gavilon has indicated CVAG has shared the invoice for services for this train and has asked Gavilon to pay MET directly. After consideration, MET will accept payment from Gavilon on CVAG's behalf, for this train only. However, this does not relieve CVAG of additional accessorial charges that may occur due to the nature of this train.

Please let me know asap if you would like to move forward with this option. Gavilon would like a decision quickly.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)

talves@metrr.com

530 11th Street

Modesto, CA 95353

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Exhibit 17

From: Jeff Robinson
To: ["Tracy Alves"](#)
Cc: ["Jared Martin"](#)
Subject: RE: [W] Inbound Pipeline

Tracy,

Response to your questions on CVAG's plans below in red

Jeff

From: Tracy Alves <TALVES@METRR.COM>
Sent: Thursday, April 26, 2018 1:16 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>; Jared Martin <JMARTIN@METRR.COM>
Subject: [W] Inbound Pipeline
Importance: High

Jeff, below is what I show enroute for CVAG:

- GBPEMV 22 - Placing on 1041/ 1042 today

MET has delivered this train in a manner that is designed to purposely foul the unloading pit, and ensure train unloading gridlock. This will cause further delay of a train that could have otherwise been completed early Sunday morning. We have begun unloading what cars we can reach and will need additional, timely switches in order to complete this train by Sunday afternoon. If you will provide switching, this can also serve as 72-hour notice of completion of this train Sunday evening with a Monday departure.

- GMP2MV 28 Cargill, via UP from Canada. ETA Monday, 4/30

MET has not indicated to CVAG whether it will interchange this train with UP yet. MET has not placed any demands on CVAG for this train yet. This train can be easily handled the same way as the last canola train, with delivery in one cut (1042), and with two cuts of the empties on the backside on 1041.

CVAG will be hand delivering to MET a check in the amount of \$10,000, prior to delivery for this train in order to keep the trains running and timely delivered, under the same guidance of counsel conditions previously stated, that this payment is being made as a form of security under protest, and without waiver of its objections to any current or future charges that might be assessed and the underlying tariff terms.

- GALOMOD3 14 Cottonseed train. ETA Saturday 4/28

This train is not being handled on the loop tracks. The train has been previously addressed, and matters should be fully resolved, although it has been delayed by almost a week by MET's failure to interchange the train with BNSF, causing further congestion.

MET needs CVAG to share their operating plan as well as prepayment obligations based upon this plan. MET did receive payment for the Cotton seed train, G ALOMOD 314. As you are aware, we do not have capacity for all of this volume. Will you be diverting? We need a clear understanding of your plan asap.

CVAG does not believe that diversion is necessary at this time, if MET can provide the remaining switches to complete this train. Train GBPEMV22, if switched out as requested, can be finished Sunday afternoon in time for delivery of train GMP2MV28. If there are congestion issues, CVAG requests that MET cooperate with CVAG as it has in the past.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | |
209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

This email was scanned by BitDefender.

Exhibit 18

From: Jeff Robinson
To: [Jared Martin](#)
Cc: [Tracy Alves](#)
Subject: RE: [W] Inbound Pipeline

Jared: Just received a message from Tracy on this as well. This responds to both of your messages.

As previously advised, CVAG is unable to pay MET's demands. However, in this instance, its customer ADM/JD Heiskell have agreed to assist in payment, under protest, to keep the train moving. We will hand deliver the check covering MET's full demand in the amount of \$18,450 immediately.

We ask that MET please accept payment and to process this train as soon as possible, commencing with today's switching discussed below.

On advice of counsel, please note that the payment here is without waiver of CVAG's objections to any current or future charges that might be assessed and the underlying tariff terms, or damages caused by CVAG's delay in delivery of this train. The payments in this instance shall not be used to establish liability on the part of CVAG for this train or any other trains.

Thank you,
Jeff

From: Jared Martin [mailto:JMARTIN@METRR.COM]
Sent: Friday, April 27, 2018 8:34 AM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>
Subject: Re: [W] Inbound Pipeline

Morning Jeff,

At this time we do not plan on providing any services until the required payment is made. If we receive payment, we will complete the requested switch within 24hours. No, we have not setup an outbound symbol.

Please let us know when payment will be made allowing us to plan accordingly.

Have a nice morning,

Jared

Sent from Jared's iPhone

On Apr 27, 2018, at 8:23 AM, Jeff Robinson <jeff@cv-ag.com> wrote:

Good morning,

We will be running out of space to unload on 1041 around 1230. We will have 30 empty cars ready and will need to have them switched out as soon as possible to stay on time. The 12 cars that were fouling the pit are on the end and will need to be placed back in the loop. In order to get this train completed by Sunday afternoon we will need another switch Saturday afternoon around 1230 for 37 cars. From there we should complete the rest of the train around 1400, 4/29. Has an outbound symbol been set up yet?

Thank you,
Jeff

From: Jeff Robinson
Sent: Thursday, April 26, 2018 8:19 PM
To: Tracy Alves <TALVES@METRR.COM>
Cc: Jared Martin <JMARTIN@METRR.COM>
Subject: RE: [W] Inbound Pipeline

Tracy,

Response to your questions on CVAG's plans below in red

Jeff

From: Tracy Alves <TALVES@METRR.COM>
Sent: Thursday, April 26, 2018 1:16 PM
To: Jeff Robinson <jeff@cv-ag.com>
Cc: Tracy Alves <TALVES@METRR.COM>; Jared Martin <JMARTIN@METRR.COM>
Subject: [W] Inbound Pipeline
Importance: High

Jeff, below is what I show enroute for CVAG:

- GBPEMV 22 - Placing on 1041/ 1042 today

MET has delivered this train in a manner that is designed to purposely foul the unloading pit, and ensure train unloading gridlock. This will cause further delay of a train that could have otherwise been completed early Sunday morning. We have begun unloading what cars we can reach and will need additional, timely switches in order to complete this train by Sunday afternoon. If you will provide switching, this can also serve as 72-hour notice of completion of this train Sunday evening with a Monday departure.

- GMP2MV 28 Cargill, via UP from Canada. ETA Monday, 4/30

MET has not indicated to CVAG whether it will interchange this train with UP yet. MET has not placed any demands on CVAG for this train yet. This train can be easily handled the same way as the last canola train, with delivery in one cut (1042), and with two cuts of the empties on the backside on 1041.

CVAG will be hand delivering to MET a check in the amount of \$10,000, prior to delivery for this train in order to keep the trains running and timely delivered, under the same guidance of counsel conditions previously stated, that this payment is being made as a form of security under protest, and without waiver of its objections to any current or future charges that might be assessed and the underlying tariff terms.

- GALOMOD3 14 Cottonseed train. ETA Saturday 4/28

This train is not being handled on the loop tracks. The train has been previously addressed, and matters should be fully resolved, although it has been delayed by almost a week by MET's failure to interchange the train with BNSF, causing further congestion.

MET needs CVAG to share their operating plan as well as prepayment obligations based upon this plan. MET did receive payment for the Cotton seed train, G ALOMOD 314. As you are aware, we do not have capacity for all of this volume. Will you be diverting? We need a clear understanding of your plan asap.

CVAG does not believe that diversion is necessary at this time, if MET can provide the remaining switches to complete this train. Train GBPEMV22, if switched out as requested, can be finished Sunday afternoon in time for delivery of train GMP2MV28. If there are congestion issues, CVAG requests that MET cooperate with CVAG as it has in the past.

Regards,

Tracy Alves | Modesto and Empire M&ET | VP Rail Sales and Marketing | 209-557-2705 (office) | | 209-281-7948 (mobile)
talves@metrr.com
530 11th Street
Modesto, CA 95353

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Exhibit 19

From: Jared Martin <JMARTIN@METRR.COM>
Sent: Friday, April 27, 2018 5:49 PM
To: Jeff Robinson
Cc: Paul Konzen; Paul Nicholson; Tracy Alves
Subject: G BP2MV 28 and future operations
Attachments: G BP2MV 28 estimate.docx

Jeff/CVAG,

Please see attached estimate for inbound Canola train, G BP2MV 28 with an ETA of 4/30/2018. Pre-payment will be required for MET to provide timely switching services

In addition, MET is working with its Class I railroad partners to restrict shipments destined to CVAG to carload amounts that CVAG can handle at one time without the need for additional switching and handling by MET. CVAG has generally rejected MET's accessorial switching prepayment requirements, or when it does make a prepayment, it has only done so at the 12th hour, after considerable delay and traffic disruption. MET needs to operate its railroad in a scheduled, orderly fashion, for the convenience and safety of all our customers and the Class 1 carriers. Your practice of requesting interchange of trains of a length greater than CVAG can unload without assistance from MET, while at the same time refusing to make the required advance payment for this assistance, has resulted in uncertainty, congestion, and instability on the MET rail system. We cannot allow this to continue.

As you know, the loop (Tracks 1041/1042) have carload unloading capacity of roughly 4,550 feet, beyond which MET would need to provide accessorial switching, and may also be required to hold CVAG's cars on MET's tracks.

By our calculation Tracks 1041/1042 have the capacity to allow CVAG to unload unassisted up to 67 four-pocket DDG covered hopper cars or 77 three-pocket (canola) covered hopper cars.

The inbound train that is the subject of our attached service estimate will be the last canola unit train exceeding 77 cars that MET will accept. To be clear, MET will accept and deliver blocks of canola cars not exceeding 77 cars, provided that MET has been able to confirm that Tracks 1041/1042 are free to accept such a shipment.

Also, because CVAG transloads cotton seed shipments from Tracks 1038/1039 (which have substantially less capacity than Tracks 1041/1042), MET will restrict its receipt of inbound cotton seed destined to CVAG to a maximum of 25 carloads at a time, subject to confirmation of available capacity on Tracks 1038 and 1039.

Jared Martin | Modesto and Empire Traction Company (M&ET)
VP Operations | 209-576-6706 (office) 209-543-5943 (mobile)
jmartin@metrr.com
530 11th Street
Modesto, CA 95353

MET hereby issues to CVAG the following prepayment requirement for estimated accessorial charges in accordance with MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018, in the total amount of **\$11,250.00** with respect to train G MP2MV 28, a 100-car unit train of canola scheduled to be delivered in interchange to MET on or about April 30, 2018.

This estimate is based upon MET's recent handling of train G VBTMOD3 21, a 100-car unit train of canola delivered to CVAG.

If CVAG wishes to procure MET's services as set forth below, then MET must receive prepayment for the charges outlined herein before MET will provide any services beyond initial delivery to Tracks 1041/ 1042.

This estimate assumes that CVAG will have available capacity to accept the entire unit train within 24 hours of MET's receipt in interchange. If CVAG is unable to accept delivery of the entire train, then additional charges may be assessed stemming from added switching. MET is entitled to charge for all services rendered in accordance with applicable tariffs.

Unit Train Configuration Accessorial Charges

Placement of unit train on Tracks 1041/ 1042	No charge
Switching removal / relocation of 50 empty cars	\$10,000.00 (50 railcars x \$200/car)
Outbound unit train reassembly:	\$1,250.00

Total estimated switching and unit train reassembly charges = \$11,250.00

Again, the foregoing estimate applies accessorial charges contained in MET Freight Tariff 8000-B (Supplement 1-A), Item 270, effective April 9, 2018. As with G VBTMOD3 21, MET will endeavor to deliver train G MP2MV 28 intact to Tracks 1041/ 1042 without fouling the CVAG unloader.

Based on experience with G VBTMOD3 21, MET does not contemplate that the new inbound canola train will incur demurrage charges over free time as provided for in MET Freight Tariff 9500-A (Supplement 1-A), if it subsequently appears that changes in CVAG's service requirements are likely to trigger demurrage charges, MET will provide an estimate for the same and will request prepayment of estimated charges in keeping with present practice.

MET reserves the right to invoice for additional charges beyond those paid in advance, should CVAG require car switching beyond that described above, and should CVAG's service needs trigger demurrage charges beyond any previously estimated and prepaid. If actual switching and handling service charges are less than estimated, MET will credit CVAG accordingly.