

245836

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 31, 2018
Part of
Public Record

Docket No. NOR 42159

CENTRAL VALLEY AG GRINDING, INC. AND
CENTRAL VALLEY AG TRANSPORT INC.
vs.
MODESTO AND EMPIRE TRACTION COMPANY

**MODESTO AND EMPIRE TRACTION COMPANY'S ANSWER
TO UNREASONABLE PRACTICE COMPLAINT OF COMPLAINANTS**

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**ATTORNEYS FOR MODESTO AND EMPIRE
TRACTION COMPANY**

Dated: May 31, 2018

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Defendant Modesto and Empire Traction Company ("MET"), by its attorneys and
for its Answer to the Unreasonable Practice Complaint of Complainants, states as follows:

1. Plaintiff Central Valley Ag Transport, Inc. is a California corporation organized and existing under the laws of the State of California and qualified to do business in California, with its principal place of business in Stanislaus County, California.

ANSWER: MET lacks knowledge sufficient in which to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of Plaintiff's Complaint, and therefore makes no response thereto, but demands strict proof thereof.

2. Plaintiff Central Valley Ag Transport, Inc. is a California corporation organized and existing under the laws of the State of California and qualified to do business in California, with its principal place of business in Stanislaus County, California.

ANSWER: MET lacks knowledge sufficient in which to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of Plaintiff's Complaint, and therefore makes no response thereto, but demands strict proof thereof.

3. CVAG is a railroad receiver, and has operated and continues to operate a transload facility located on approximately 80 acres of land at 330 Codoni Avenue in Modesto, Stanislaus County, California, which it leases from Defendant MET (the "Modesto Facility"). CVAG receives and unloads trains carrying agricultural feed ingredients and commodities, stores

and/or warehouses those commodities, and makes them available for pick up either by feed mills or suppliers, or by dairy farmers themselves.

ANSWER: MET denies that the transload facility is located on approximately 80 acres of land. MET denies that CVAG is currently leasing the Modesto Facility. The agreements under which MET provided CVAG possession of portions of the Modesto Facility, separate Lease and Transload Agreements, have terminated and MET is seeking to recover possession of the Modesto Facility in California state court. MET does not have information to confirm or deny that dairy farmers pick up animal feed ingredients directly from the Modesto Facility, and therefore, neither admits nor denies, but demands strict proof thereof. MET is aware that CVAG has engaged in bringing product into the Modesto Facility by truck, and has attempted to bring hazardous materials into the Modesto Facility by rail.

4. Defendant MET is a California corporation that at all relevant times mentioned herein was and is doing business in Stanislaus County, California. MET operates a short line railroad near the City of Modesto at a facility commonly known as the Beard Industrial District. In its capacity as a short line railroad, MET serves as the handling line carrier for Class I railroads, including UP and BNSF. MET also leases land to tenants, like CVAG, who are the final destinations for shipments originated and/or transported, by the Class I railroads, and the receivers of the commodities.

ANSWER: MET admits the allegations contained in paragraph 4 of the Complaint.

5. MET is a common carrier railroad engaged in the transportation of freight in railroad interline-service in interstate commerce. MET is thus subject to the jurisdiction of the Board under the ICC Termination Act of 1995, as amended, 49 U.S.C. §§ 10101, et seq. ("ICCTA"). ICCTA requires that MET provide service on reasonable request, and prohibits MET from engaging in unreasonable practices and refusing to engage in the continuous carrier of freight.

ANSWER: MET admits that it is a common carrier railroad engaged in the transportation of freight in railroad interline-service in interstate commerce. The remaining

allegations contained in Paragraph 5 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

MET's Tariff Charges

6. On December 11, 2017, MET issued Freight Tariff M&ET 8000-B, Switching and Accessorial Charges and Locations on the Modesto and Empire Traction Company, effective January 1, 2018 ("MET Accessorial Tariff"). MET has subsequently revised its Accessorial Tariff two times, first through Freight Tariff M&ET 8000-B (Supplement 1-A), effective April 9, 2018, and second through Freight Tariff M&ET that it may soon revise its Accessorial Tariff yet again. The Accessorial Tariff, as revised, is referred to herein as the "Revised Accessorial Tariff").

ANSWER: MET admits the allegations contained in paragraph 6 of the Complaint.

7. Also on December 11, 2017, MET issued Freight Tariff 9500-A, Demurrage Rules and Charges Applying at Locations on the Modesto and Empire Traction Company ("MET Demurrage Tariff"), effective January 1, 2018. So far, MET's Demurrage Tariff has been revised only once, through Freight Tariff M&ET 9500-A (Supplement 1-A), effective April 9, 2018, but MET has informed CVAG that it may soon further revise its Demurrage Tariff. The MET Demurrage Tariff, as revised, is referred to herein as the "Revised Demurrage Tariff." Collectively, MET's tariffs, as revised, are referred to herein as the "Tariffs."

ANSWER: MET admits the allegations contained in paragraph 7 of the Complaint.

MET's Revised Accessorial Tariff Items

8. Among other things, MET's April 9, 2018 Revised Accessorial Tariff added a new definition for "Unit Train," (Supplement 1-A at 10), and established new "Unit Train Configuration Charges" for "Inbound Placement" of unit trains at Item 270. This provision provides that "M&ET may, where alternative track capacity is available on M&ET 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."

ANSWER: MET admits the allegations contained in paragraph 8 of the Complaint.

9. The Revised Accessorial Tariff then subjects the unit train to a per car charge of \$200.00 for train placement. MET's tariff provides the following example of its Inbound Placement charges:

For example, if M&ET receives in interchange for inbound delivery a unit train consisting of 100 freight cars and the customer's receiving tracks have available capacity for only 80 of the cars, then M&ET may deliver an 80-car cut and constructively place the balance of the Unit Train (20 excess cars) on M&ET trackage and this Initial Inbound Placement Charge would be \$4,000 (20 cars X \$200/car). In this case there would be a Subsequent Inbound Placement Charge of \$16,000 (80 cars on M & ET trackage and the delivery of the 20 cars that customer was not able to initially accommodate on its delivery track. Total Inbound Placement Charge in this example would be \$20,000.00.

ANSWER: MET admits the allegations contained in paragraph 9 of the

Complaint.

10. Also, new item 270 added an "Outbound Reassembly" charge "[t]o reassemble a Unit Train cut for purposes of delivery . . . to prepare the Unit Train for outbound interchange." The "Outbound Reassembly" charge is \$1,250.00 per cut to be reassembled. For example, if an inbound unit train was re-configured into two separate cuts due to customer capacity, customer will be charged \$2,500 to reassemble the unit train for outbound interchange."

ANSWER: MET denies the allegations contained in paragraph 10 of the

Complaint.

11. In addition, Item 270 added another new fee item entitled "unit Train Configuration Charges" that provided MET with broad discretion to require security deposits. This provision provides:

M&ET may require a security deposit in the form of advance payment of the fees contemplated in Item 270 to ensure payment of the Inbound Placement Fees and Outbound Reassembly fees outlined in this Item 270 that may accrue due to customer's inability to handle the entire unit train at its receiving tracks. M&ET 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 to M&ET'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. M&ET 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.

ANSWER: MET admits the allegations contained in paragraph 11 of the

Complaint.

12. Further, Item 270 renamed "Unit Train Configuration Charges" to "Special Unit Train Charges," and modified the Item to include "In-transit Storage Fees-Separate from the Unit Train Configuration Fees." Under the Item, in addition to Unit Train Configuration Fees, new storage fees are required to be assessed, in part, as follows:

In the event customer'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 M&ET for delivery to customer and, when M&ET has track capacity to do so, M&ET holds said unit train on its tracks pending later delivery to customer, M&ET shall assess to customer an In-Transit Storage Fee.

The assessments for the new In-Transit Storage Fee-Separate from the Unit Train Configuration Fees are \$200 per car, per day, "as of receipt of a unit train in interchange . . . when delivery to customer is not possible due to track occupation." Also, under the Item, "M&ET is under no obligation to hold the additional unit train on its own tracks."

ANSWER: MET admits the allegations contained in paragraph 12 of the

Complaint.

13. As part of MET's April 23, 2018 Revised Accessorial Tariff, MET revised Item 270 further, and included a new "Special Unit Train Charges Security Deposit" provision. Under this item, MET purported to endow itself with broad discretion to impose security deposits, "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."

ANSWER: MET admits that Item 270 is quoted correctly. The remaining allegations contained in Paragraph 13 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

MET's Revised Demurrage Tariff Items

14. Under MET's April 9, 2018 Revised Demurrage Tariff, among other things, MET changed its constructive placement notification requirements (Supplement 1-A and 5), added a new definition for "Unit Train Configuration" (Supplement 1-A at 7), and established new "Demurrage Charges for Unit Trains," at Item 125, departing significantly from MET's demurrage charges for other trains. These changes include, among other things, a \$250 per car per day debit accrued on any car as part of a Unit Train. These charges apply in addition to any and all of MET's Revised Accessorial Tariff charges.

ANSWER: MET admits the allegation as to the amount of charges, but denies the characterization of charges.

15. MET's April 9, 2018 Revised Demurrage Tariff also modified Item 170, entitled "Demurrage – Security Deposits for Charges," in significant respects. This included language providing MET with discretion to demand security deposits even in the absence of any unpaid charges or late payments, in contrast to the prior language that allowed such deposits only where an affected entity "has failed to pay undisputed demurrage charges when due." The Item also dramatically increased the maximum security deposit assessments that MET can assess, and removed prior language that restricted security deposits.

ANSWER: MET admits the quoted sections are correctly quoted. The remaining allegations contained in Paragraph 15 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

CVAG's Transportation Service

16. The vast majority of CVAG's business at its Modesto Facility consists of receiving, storing, and transloading agricultural feed ingredients and commodities supplied to nearly 500 dairies in the Central and North San Joaquin Valleys of California.

ANSWER: MET lacks knowledge sufficient in which to form a belief as to the truth or falsity of the allegations contained in paragraph 16 of the Complaint, and therefore makes no response thereto, but demands strict proof thereof.

17. CVAG's Modesto Facility receives railroad service on unit train loop tracks designed and built by MET to allow and accommodate up to 110-car animal feed unit trains of up to 7,800 feet.

ANSWER: MET admits that the tracks were built by MET, but denies that CVAG can itself accommodate up to 110-car unit trains. MET admits that depending on a variety of circumstances, the loop track may be able to accommodate up to 110-car unit trains if CVAG pays MET for accessorial charges needed for such accommodation, but denies that under all circumstances the loop track can accommodate unit trains..

18. CVAG receives significant volumes of unit train service of over 9,300 railcars per year, and transloads over 800,000 tons of commodities through its Modesto Facility annually.

ANSWER: MET denies the allegations contained in paragraph 18 of the Complaint.

19. CVAG maintains safe conditions and operations at its Modesto facility. In the approximately nine years in which CVAG has received unit train animal shipments at its Modesto Facility, there has not been any serious incident or delay, and CVAG has received safely the commodities shipped by MET.

ANSWER: MET denies the allegations contained in paragraph 19 of the Complaint and demands strict proof thereof.

20. 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.

ANSWER: MET denies the allegations contained in paragraph 20 of the Complaint and demands strict proof thereof. As noted previously, the separate Lease and Transload Agreements have terminated.

21. CVAG has grown its business with the active encouragement of MET. After initial success with its manifest train transloading business, MET designed and built for CVAG's exclusive use loop track to receive 110 car unit trains almost a decade ago. This track was designed and built to grow CVAG's (and MET's) business. CVAG's Modesto Facility loop track is in full compliance with UP and BNSF's unit train unloading facility requirements.

ANSWER: MET has insufficient knowledge as to CVAG's growth or reasons therefore and has insufficient knowledge of whether the loop track is in full compliance with UP and BNSF's unit train unloading facility requirement, and therefore neither admits nor denies said allegations, but demands strict proof thereof. MET admits that from time to time over the last several years MET has met with CVAG to discuss business growth, and that MET built the track. MET denies the remaining allegation of Paragraph 21 of the Complaint and demands strict proof thereof.

22. 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.

ANSWER: MET admits only that the Lease and Transload Agreements have terminated, and that, under the Lease in effect up until January 31, 2018, escalating minimum car requirements were tied to MET investment requested by CVAG and that on average CVAG's receipt of railcars increased between 2008 and 2015. MET denies the remaining allegation of Paragraph 21 of the Complaint and demands strict proof thereof.

23. MET has 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, CVAG has itself invested over \$7,000,000 in improvements as its Modesto Facility.

ANSWER: MET admits that CVAG has paid rents. MET has insufficient knowledge as to the remaining allegations of Paragraph 22 of the Complaint therefore, neither admits nor denies said allegations, but demands strict proof thereof.

24. With the encouragement of MET, and its significant growth initiatives, CVAG is believed to be the largest transload facility in the State of California north of Fresno.

ANSWER: MET lacks knowledge sufficient in which to form a belief as to the truth or falsity of the allegations contained in paragraph 24 of the Complaint, and therefore makes no response thereto, but demands strict proof thereof.

25. The animal feed commodities received by CVAG are shipped under Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF") tariffs and other pricing authorities.

ANSWER: MET lacks knowledge sufficient in which to form a belief as to the truth or falsity of the allegations contained in paragraph 25 of the Complaint, and therefore makes no response thereto, but demands strict proof thereof.

26. MET [sic.] is a receiver and is not the shipper, consignor, or consignee of this freight. 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. The shippers that arrange for the transportation and pay the freight bills for the railroad shipments to CVAG's Modesto Facility are mainly large regional and national agribusinesses, including Gaviola Ingredients, LLC, Archer Daniels Midland Company, JD Heiskell, and A.L. Gilbert Company.

ANSWER: With the understanding that there is a scrivener's error in the first sentence and that CVAG intended to use "CVAG" instead of MET in the first sentence, then MET admits the allegations contained in Paragraph 26 of the Complaint. Otherwise, MET denies the first sentence of Paragraph 26 of the Complaint.

27. MET is not included in the applicable line-haul rate authorities, as it instead serves as the handling line carrier for UP and BNSF for deliveries in line-haul service with UP and BNSF.

ANSWER: MET admits the allegations contained in paragraph 27 of the Complaint.

28. MET is not eligible to establish its own independent rates for deliveries on through freight service with UP and BNSF. Instead, it receives a per car fee for interline deliveries to CVAG's Modesto facility from UP and BNSF.

ANSWER: MET admits it receives a per car fee as a handling carrier, but denies it is not eligible to establish rates for accessorial charges.

29. Most of the animal feed ingredients shipped by MET and received at the Modesto Facility is comprised of Canola Pellets (“Canola”), Gluten Feed Pellets (“Gluten”), and Dried Distillers Grains with soluble (“DDGs”).

ANSWER: MET admits the allegations contained in paragraph 29 of the Complaint.

30. These commodities are shipped in 100-car unit train service, and shipments of such livestock feed must be shipped in trains of 90-110 railcars because of the high volume demands, the low margins, and because of the rate incentives provided for such service. Additionally, the governing UP and BNSF tariffs require trains of this size. Therefore, virtually all of these agricultural feed commodities received at CVAG Modesto are transported in this size unit train service. Without the ability to receive 100-car unit train service, a transloader such as CVAG will quickly become uncompetitive and be forced out of that line of business.

ANSWER: MET denies the allegations contained in paragraph 30 of the Complaint.

31. The dairy industry represents a crucial part of California’s economy. Local and regional dairy farmers rely heavily on CVAG to receive and transload animal feed commodities, including Canola, Gluten, and DDGs to meet their livestock feed requirements.

ANSWER: MET denies the allegations contained in paragraph 31 of the Complaint.

32. 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. However, many of the 500 dairies in the area served by CVAG have few, if any other economically viable or feasible options available for their livestock feed other than CVAG.

ANSWER: MET denies the allegations contained in paragraph 32 of the Complaint.

33. 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 during the unloading process.

ANSWER: MET admits it has provided train support for the unloading at CVAG’s facility with varying amounts of crews and locomotives, but denies it was obligated to

do so without assessment of accessorial charges. MET denies the remaining allegations of paragraph 33 of the Complaint.

34. 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.

ANSWER: MET admits it has provided train support for the cutting of trains on the empty side of the unloading pit with varying amounts of crews and locomotives, but denies it was obligated to do so without assessment of accessorial charges. MET denies the remaining allegations of paragraph 34 of the Complaint.

35. 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. Rather than send invoices and demand service prepayments for its services, MET worked extra hours and weekends, used additional locomotive power, and encouraged the delivery of longer trains, up to the 100-car loop track capacity.

ANSWER: MET admits it has provided train support for the unloading at CVAG's facility with varying amounts of crews and locomotives, but denies it was obligated to do so without assessment of accessorial charges. MET denies the remaining allegations of paragraph 35 of the Complaint.

MET's Implementation of its Tariff Charges and Other Practices

36. Beginning in late 2016, MET and CVAG began discussing additional joint venture opportunities. 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.

ANSWER: MET admits that CVAG purported to exercise a lease extension option in June 2017, and that MET did not accept the exercise due to CVAG's material breaches

and defaults under the lease. MET denies the remaining allegations of Paragraph 36 of the Complaint.

37. 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).

ANSWER: MET admits that the Lease and Transload Agreements have terminated, that CVAG initiated legal proceedings against MET in California state court, and that MET has initiated unlawful detainer proceedings seeking to recover possession of the leased premises and Transload Area. MET denies the remaining allegations of Paragraph 37 of the Complaint.

38. On January 29, 2018, MET 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.” 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.”

ANSWER: MET admits the quoted materials are accurate. MET denies the characterization of the remaining allegations contained in Paragraph 38 of the Complaint.

39. In February 2018, MET released new “Service Bulletins.” Those bulletins demanded that CVAG perform its own train services in support of unit train unloading within 10 days, ending 90+ months where MET willingly provided unloading support activities. Even with the extremely short notice, CVAG fully and timely met MET’s demands. This change resulted in considerable resource and cost savings to MET, including but not limited to, MET no longer having the considerable locomotive (typically 2-3 locomotives per train) and crew resource demands and expenses that it previously incurred for CVAG’s delivery service.

ANSWER: MET admits the pure factual allegations, but denies the characterization of those facts.

40. Shortly after CVAG initiated its own train services in support of unit train unloading, MET significantly restricted CVAG’s access to the receiving loop tracks. 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. This trackage had long been used to support CVAG's service.

ANSWER: MET admits only that Track 43 is a MET yard track which MET uses, and has used, to support many of its rail customers, including on occasion, and as convenient for MET, CVAG. Track 1043 was never included in CVAG's Lease or Transload Agreements, and was only completed in the last few years to relieve system-wide pressure on MET. The remaining allegations contained in Paragraph 40 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

41. However, even in its restricted state, CVAG's railcar unloading loop track still remains large, at approximately 10,000 feet, and able to accommodate easily even the longest of 7,800 foot, 110-car animal feed unit trains. However, the longer DDGs 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.

ANSWER: MET admits the allegations contained in paragraph 41 of the Complaint.

42. While the parties have discussed reasonable train operating plans, 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. 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. These practices have resulted in further delays in train processing, and increased work for MET's crews as they have had more work to fix the train spotting problems.

ANSWER: MET admits that its accessorial charges are reasonable. MET denies the remaining allegations contained in paragraph 42 of the Complaint.

43 CVAG fully and adequately responded to MET's track gridlock initiative by developing reasonable train delivery operating plans and CVAG has attempted to reasonably work with MET to fix the situation to allow for safe unloading with each improperly delivered train.

ANSWER: MET denies the allegations contained in paragraph 43 of the Complaint.

44. Even with MET's forced track restrictions, because of CVAG's 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, CVAG is the only customer on which MET is seeking to impose its new Revised Accessorial Tariff and Revised Demurrage Tariff fees and other new practices and demands of full prepayment of assessed accessorial charges.

ANSWER: MET denies the allegations contained in paragraph 43 of the Complaint.

45. Through its adoption and publication of its new Revised Accessorial Tariff and Revised Demurrage Tariff, MET has sought to apply demurrage, train storage fees, switch fees, train re-assembly fees, security deposits, "intra-terminal" and "intra-plant" switch charges, and various other chargeable items targets specifically at CVAG. To reasonably deliver a train in cuts, MET assesses for 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.

ANSWER: MET denies the allegations contained in paragraph 45 of the Complaint.

46. Beginning March 2018, even before the MET's tariff revisions, MET 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, well over the amount MET already receives for its haulage and delivery services from UP and BNSF. 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. These fees apply on top of handling carrier charges that MET receives for its train deliveries to CVAG. Some of MET's charges and practices are in violation of the terms of its own tariffs, despite MET's ongoing efforts to revise the tariffs to address their deficiencies.

ANSWER: MET admits only that it has charged CVAG for a variety of accessorial charges and has requested prepayment. The remaining allegations contained in Paragraph 46 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

47. The charges MET seeks are punitive, and designed to force CVAG to vacate its property. The charges MET seeks are not applied to its other customers in the Beard Industrial District. Further, MET has made arrangements with other customers in the Beard

Industrial District that favor other customers' service and that deprive MET of its ability to respond to reasonable requests for service from CVAG.

ANSWER: MET denies the allegations contained in paragraph 47 of the Complaint.

48. MET has also issued a number of erroneous bills containing invoice errors, some of which CVAG has disputed, and which have not been resolved. Some of the invoicing errors have been corrected and revised multiple times by MET, but still with erroneous and improper charges and demands.

ANSWER: MET admits only that it did issue a few erroneous bills, which it will correct and re-issue. MET denies the remaining allegations contained in paragraph 48 of Plaintiff's Unreasonable Practice Complaint.

49. Under Item 270 of its Revised Accessorial Tariff Item, 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 up to \$53,900 for trains as a condition of delivery.

ANSWER: MET admits that Item 270 is accurately quoted, and denies the remaining allegations contained in paragraph 49 of the Complaint.

50. Although CVAG does not dispute the right of MET to assess valid and reasonable charge for rail service that is not provided as part of the line-haul service, CVAG has disputed and continues to dispute the aforementioned invoices and demands as defective, improper, and unreasonable for the freight rail delivery services that it receives from MET. CVAG has reasonably and timely objected to and protested each invoice and prepayment demand made by MET. These invoices and demands are a product of MET's own service delivery deficiencies, unreasonable practices, and failure to meet its common carrier service obligations. CVAG has also disputed these charges because many of them are the product of MET's improper decision to exclude trackage from use as plant trackage, and its attempt to include in an operating plan massive new accessorial tariff-type items, including, but not limited to, demurrage, train storage fees, switch fees, train re-assembly fees, and security deposits.

ANSWER: MET admits only that CVAG has disputed and has failed to pay invoices. MET denies the remaining allegations contained in paragraph 50 of the Complaint.

51. In response to CVAG's valid protests and disputes of its demands, MET has purposely and willfully taken various "self-help" actions in violation of its requirements as a common carrier. These violations include, but are not limited to reducing railroad service, requiring improper prepayment of properly disputed charges and possible future charges and assessments, imposing unreasonable security deposits, and otherwise interfering with train interchanges and the provision of service to CVAG.

ANSWER: MET denies the allegations contained in paragraph 51 of the Complaint.

52. CVAG has attempted to negotiate with MET reasonable security provisions, but MET has refused to depart from its full prepayment demands. MET has also refused to accept CVAG's attempts to pay it \$10,000 per train as a form of security and as a last ditch means of keeping the trains running.

ANSWER: MET admits only that MET refused to accept \$10,000 per train because the amount was inadequate. MET denies the remaining allegations contained in paragraph 52 of the Complaint.

53. Until MET's recent demands, in the nine years CVAG has conducted transloading services at its Modesto Facility, it has never been asked to, or paid, similar freight service rates by MET, UP, or BNSF.

ANSWER: MET denies that it did not have the right to charge accessorial charges, and admits the remaining allegations contained in paragraph 53 of the Complaint.

54. MET has routinely delivered similar trains under similar operating conditions in the past to CVAG without conditions and at no additional charge to CVAG.

ANSWER: MET denies the allegations contained in paragraph 54 of the Complaint.

55. MET has threatened line embargoes targeted at CVAG alone in the absence of CVAG acceding to its unprecedented delivery prepayment demands.

ANSWER: MET denies the allegations contained in paragraph 55 of the Complaint.

56. MET has threatened to refuse interchange of traffic with UP and BNSF for CVAG in the absence of CVAG acceding to its unprecedented delivery

prepayment demands. MET has carried out that threat and has refused to interchange traffic in the absence of CVAG acceding to its prepayment demands, including with Train GALOMOD314 shipped by Gavilon on BNSF.

ANSWER: MET admits that it is currently unwilling to accept certain unit trains.

MET denies the remaining allegations contained in paragraph 56 of the as legal conclusions.

57. MET promises to block, and has shown that it will block, other future unit train service in interchange and delivery to CVAG's Modesto facility absent CVAG's acceptance in full of its new forced prepay demands.

ANSWER: MET admits that it is currently unwilling to accept certain unit trains.

MET denies the remaining allegations contained in paragraph 57 of Plaintiff's complaint as legal conclusions.

58. Under the circumstances, and in order to keep the trains running, MET left CVAG with little choice but to cede to its improper demands and seek to pay in advance certain of the amounts sought, under protest.

ANSWER: MET admits that it sought certain payments in advance. MET denies the remaining allegations contained in paragraph 58 of the Complaint.

59. CVAG cannot afford to pay the entire amount of MET's demands. The unprecedented charges sought by MET are not cost based, and meet or exceed what CVAG receives from its customers for its unloading services at the Modesto Facility. MET has admitted that CVAG cannot afford to pay its demands. If forced to pay the MET demands during the pendency of the dispute, that will make the Modesto facility unfeasible, and result in the suspension of unit train operations and rail service.

ANSWER: MET admits only that CVAG's own choices and inefficiencies have resulted in it being subject to certain charges. MET denies the remaining allegations contained in paragraph 59 of the Complaint.

60. If CVAG was forced to suspend its Modesto Facility operations, 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.

ANSWER: MET denies the allegations contained in paragraph 60 of the Complaint.

61. CVAG has also invested over \$7,000,000 at its Modesto Facility. 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 demand are sustained.

ANSWER: MET has insufficient knowledge as to CVAG's investment. MET denies the remaining allegation of Paragraph 61 of the Complaint and demands strict proof thereof.

62. Funds in the amount of \$10,000 per train have been hand delivered by check to MET by CVAG, under protest, as security for the expense of any possible legitimate additional special switching activity associated with each train. These amounts far exceed MET's costs of any additional services it may be providing. CVAG also has acknowledged 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.

ANSWER: MET denies the allegations contained in paragraph 62 of the Complaint.

63. MET has rejected these reasonable security payments, and returned all of CVAG's prepayments by check.

ANSWER: MET admits it rejected the \$10,000 payments. MET denies the remaining allegation contained in paragraph 63 of the Complaint.

64. MET has refused all current and future service to CVAG, absent full payment of its demands.

ANSWER: MET denies the allegations contained in paragraph 64 of the Complaint.

65. MET has refused interchange with UP and BNSF of all current and future service to CVAG, absent full payment, in advance, of its demands.

ANSWER: MET denies the allegations contained in paragraph 65 of the Complaint.

66. On April 27, 2018, MET 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.”

ANSWER: MET admits the allegations contained in paragraph 66 of the Complaint.

67. MET’s cessation of service announcement for canola will block all regular unit train delivery service to CVAG’s Modesto Facility for canola, as these trains are generally shipped in 100-car trains, 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 unit 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.

ANSWER: MET denies the allegations of Paragraph 67 of the Complaint and demands strict proof thereof.

68. On April 27, 2018, MET also instructed CVAG that it “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.”

ANSWER: MET admits the allegations contained in paragraph 68 of the Complaint.

Statutory Requirements

69. Under 49 U.S.C. § 11101, a rail carrier “shall provide the transportation or service on reasonable request.”

ANSWER: MET admits that 49 U.S.C. § 11101 contains the quoted language, but denies that the allegation fully quotes said section or the applicability of it.

70. Under 49 U.S.C. § 11101, any “[c]ommitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.”

ANSWER: MET admits that 49 U.S.C. § 11101 contains the quoted language, but denies that the allegation fully quotes said section or the applicability of it.

71. Under 49 U.S.C. § 10702, “[a] rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable . . . rules and practices on matters related to that transportation or service.”

ANSWER: MET admits that 49 U.S.C. § 10702 contains the quoted language, but denies that the allegation fully quotes said section or the applicability of it.

72. Under 49 U.S.C. § 10744, “[a] rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not enter a[n] . . . arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination . . . and with the intent of avoiding or unnecessarily interrupting the continuous carriage or evading this part.”

ANSWER: MET admits that 49 U.S.C. § 10744 contains the quoted language, but denies that the allegation fully quotes said section or the applicability of it.

MET’s Violations of the Statutory Requirements

73. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations through MET’s insistence of forced prepay of the disputed amounts as a condition of receiving service.

ANSWER: MET denies the allegations contained in paragraph 73 of the Complaint.

74. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations because they are not based on any unreasonable cost or commercial considerations, violate governing precedent and tariff law, and are harmful to the public interest generally.

ANSWER: MET denies the allegations contained in paragraph 74 of the Complaint.

75. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they seek to collect erroneous charges and charges assessed in error, demand payment for charges not lawfully applicable to CVAG, seek charges that are not published in a common carrier tariff, and that otherwise contravene or depart from their own tariff provision requirements.

ANSWER: MET denies the allegations contained in paragraph 75 of the Complaint.

76. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations through MET's rejection of reasonable security arrangements as a means to avoid its service and delivery obligations.

ANSWER: MET denies the allegations contained in paragraph 76 of the Complaint.

77. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they are unfairly targeted, are purposely and improperly designed to assist a carrier in its separate contractual disputes, and jeopardize the continued viability of CVAG and all the significant investments that CVAG has made in its Modesto Facilities, and the livelihood of its 25 employees.

ANSWER: MET denies the allegations contained in paragraph 77 of the Complaint.

78. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they purposely and improperly harm feed ingredients suppliers, the California dairy feed dairy cattle industry, and local farmers in the form of: MET's forced suspension of services of a long-standing, important, large-scale regional transloading operator; the elimination of essential dairy feed storage and transloading capacity; increased local trucking distances and costs; and increased market prices for feed ingredients.

ANSWER: MET denies the allegations contained in paragraph 78 of the Complaint.

79. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they are anti-competitive, contrary to the public interest,

and also contrary to the national rail transportation policy at 49 U.S.C. § 10101, “(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers . . .;” “(9) to encourage honest and efficient management of railroads;” and “(12) to prohibit predatory pricing and practices, to avoid undue concentration of market power, and to prohibit unlawful discrimination.”

ANSWER: MET denies the allegations contained in paragraph 79 of the Complaint.

80. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations because they violate the principles established in the Railroad Industry Agreement entered into between the Association of American Railroads and the American Short Line and Regional Railroad Association that “[r]ail networks should be operated to maximize the efficiency of the network for ALL its users,” that “[b]oth Large and Small Railroads are dependent on interchanges” and that initiatives that “put the needs of the few ahead of the overall needs of the network is not sound public policy.”

ANSWER: MET denies the allegations contained in paragraph 80 of the Complaint.

81. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations because they purposely amount to an improper predatory pricing and/or a price squeeze designed to force CVAG from its Modesto Facility.

ANSWER: MET denies the allegations contained in paragraph 81 of the Complaint.

82. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations because they purposely and improperly involve intentional and unjustified tortious interference in CVAG’s business relationships and/or contracts with third parties.

ANSWER: MET denies the allegations contained in paragraph 82 of the Complaint.

83. MET’s Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier’s fundamental common carrier and continuous carriage of freight obligations because they Purposely and improperly harm line-haul carriage, in the form of a loss of business and the possible elimination of a highly efficient, unit train feed

ingredients transloading facility capable of meeting UP and BNSF customers' requirements at a low cost, and needed to meet the demand of the California Central Valley and North Valley dairy industry.

ANSWER: MET denies the allegations contained in paragraph 83 of the Complaint.

84. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they purposely and improperly involve a double and triple-dipping of charges for the same delivery services already covered by haulage agreements, and assess significant separate charges for the same services, along with charges for significant activities occurring beyond railcar receipt or release.

ANSWER: MET denies the allegations contained in paragraph 84 of the Complaint.

85. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because they purposely and improperly interfere with animal feed suppliers ability to ship product under lawful rate authorities, and have stranded, and will strand significant product and railcar resources. MET's Tariffs and practices have caused and will cause shippers significant business disruption and additional costs, and have subjected them and will subject them to tens of thousands of dollars per train in potential connecting carrier demurrage and storage fees.

ANSWER: MET denies the allegations contained in paragraph 85 of the Complaint.

86. MET's Tariffs and practices as applied to CVAG constitute an unreasonable practice and a violation of carrier's fundamental common carrier and continuous carriage of freight obligations because MET has made arrangements with other customers in the Beard Industrial District that favor other customers' service and that deprive MET of its ability to respond to reasonable requests for service from CVAG.

ANSWER: MET denies the allegations contained in paragraph 86 of the Complaint.

87. This Complaint covers any changes to, or modification of the Tariff that MET may establish during the course of this proceeding, along with any successor tariffs.

ANSWER: The allegations contained in Paragraph 87 of the Complaint constitute legal conclusions, and, as such, are denied by MET.

AFFIRMATIVE DEFENSES

1. The Board lacks jurisdiction and/or regulatory authority over this dispute.
2. CVAG has failed to state a claim for which relief can be granted.
3. CVAG has unclean hands and as such is not entitled to the requested relief.
4. CVAG has no standing to seek the relief it purports to seek.
5. CVAG is unlawfully retaining possession of its facility and MET's tracks and is therefore barred from the relief it seeks.
6. CVAG's requests for CVAG accessorial services for free or at rates below those set forth in applicable MET tariffs are unreasonable.

Respectfully submitted,

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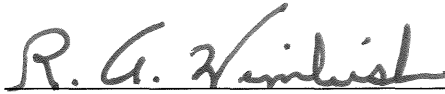
Dated: May 31, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of May, 2018, he caused a true and correct copy of the foregoing **Answer to Unreasonable Practice Complaint of Complainants** to be electronically filed with the Surface Transportation Board and served up on the following parties via email and deposit in the United States Mail chute located at 29 North Wacker Drive, Chicago, Illinois 60606, with proper postage prepaid:

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