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

Re: Docket No. NOR 42159, Central Valley Ag Grinding, Inc. and Central Valley Ag Transport Inc. v. Modesto and Empire Traction Company v. Modesto and Empire Traction Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find (i) an executed original and ten copies of the Central Valley Ag Grinding, Inc. and Central Valley Ag Transport Inc.'s (individually and collectively "CVAG")'s Unreasonable Practice Complaint; (ii) a check for the filing fee of \$350; (iii) an executed original and ten copies of CVAG's *Ex Parte* Application for Section 11123(a) Service Order and Section 11701 Investigation, Petition for Preliminary Injunction and Investigation (which contains marked color pages); (iv) a check for the filing fee of \$300; and (v) three CDs with PDF copies for each of the two filings.

Kindly date stamp the extra copy of this cover letter and the enclosed filings and return them to the bearer of this letter. Thank you for your attention to this matter.

Respectfully submitted,

Peter A. Pfohl

An Attorney Central Valley Ag Grinding, Inc. and Central Valley Ag Transport Inc.

FEE RECEIVED
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TRANSPORTATION BOARD

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May 1, 2018
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cc: Robert A. Wimbish, Esq., Fletcher & Sippel LLC

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CENTRAL VALLEY AG GRINDING, INC.	)	
AND CENTRAL VALLEY AG TRANSPORT	)	
INC.	)	
5509 Langworth Road	)	
Oakdale, CA 95361	)	
	)	
Complainants	)	
	)	Docket No. NOR 42159
v.	)	
	)	
MODESTO AND EMPIRE TRACTION	)	
COMPANY	)	
530 11 th Street	)	
Modesto, CA 95354	)	
	)	
Defendant.	)	
	)	

Attorneys for Complainants

	)	
CENTRAL VALLEY AG GRINDING, INC.	)	
AND CENTRAL VALLEY AG TRANSPORT	)	
INC.	)	
5509 Langworth Road	)	
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Modesto, CA 95354	)	
	)	
Defendant.	)	
	)	

COMES NOW Central Valley Ag Grinding, Inc. and Central Valley Ag Transport, Inc. (individually and collectively, “CVAG”), to file this Complaint under 49 U.S.C. §§ 10702, 10704, 10744, 11101, and 11701, seeking a determination from the Board, injunctive relief, and monetary damages pertaining to certain actions and practices engaged in, and common carrier tariffs and rules issued by Defendant Modesto and Empire Traction Company (“MET”).

- 1 -

service of essential California dairy industry livestock feed to CVAG. Through its actions and practices, MET has already succeeded in intermittently preventing and blocking railroad interchange and delivery to CVAG, in violation of its fundamental common carrier obligations, and it has recently implemented a new policy to prevent and block interchange and delivery to CVAG permanently, and to otherwise restrict traffic. MET's refusal to interchange and deliver the trains will effectively suspend CVAG's unit train transloading business indefinitely, and cause irreparable business harm.

In addition, for those trains that MET has agreed to interchange and deliver, MET seeks to force CVAG to accede to unprecedented, inapplicable, unwarranted, constantly changing, and excessive accessorial charges and fees and forced prepay requirements that are highly inappropriate and depart dramatically from short line and Class I railroad industry standards. MET's forced cessation of service of traffic and its additional attempt to impose unreasonable tariff terms and other demands is designed to and will have devastating impact on CVAG. These actions will also inhibit CVAG's ability to continue to meet the needs of the California dairy industry, substantially harm CVAG's customers, and extinguish needed rail service of essential commodities.

MET's practices as applied to CVAG have no legitimate justification. MET's unreasonable service practices, unreasonable interchange practices, and implementation and attempted continuing enforcement of unreasonable tariffs on CVAG, including all predecessor and revised versions, or successors, violate its common carrier

obligations and constitute an unreasonable practice in violation of Title 49, contravene the National Rail Transportation Policy, and are contrary to the public interest.

CVAG seeks determinations from the Board that MET's tariff terms and practices as applied to CVAG constitute a violation of its common carrier service obligations and an unreasonable and unlawful practice in violation of 49 U.S.C. §§ 11101 and 10702(2) and a violation of its obligations to interchange traffic and engage in continuous carriage of freight under 49 U.S.C. §10744. CVAG also seeks an order from the Board directing MET to cease and desist from its unlawful practices, declaring that the assailed Tariff provisions shall not be enforced or given effect with respect to CVAG, and awarding CVAG damages, with interest, pursuant to 49 U.S.C. § 11704(b) for all unlawful payments it has made to MET. CVAG also requests that the Board impose penalties, under 49 U.S.C. §§ 11901, 11906, and 11907, for MET's willful violations of its duties. Because of the massive size and nature of the prepay requirements imposed, the inadequacy of monetary relief and associated irreparable harm, the effect on the public interest, and the likelihood of success on the merits, CVAG is separately seeking directed service, a preliminary injunction, and Board investigation.

In support of this unreasonable practice complaint, CVAG respectfully states as follows:

The Parties

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.

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.

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.

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.

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 carriage of freight.

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 8000-B (Supplement 2-A), effective April 23, 2018. MET further has informed CVAG that it may soon revise its Accessorial Tariff yet again. The Accessorial Tariff, as revised, is referred to herein as the “Revised Accessorial Tariff”).

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.”

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.”

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 x \$200/car) representing the movement of the initially delivered 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.

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.”

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.

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."

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."

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 at 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.

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.

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.

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.

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.

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.

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.

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.

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.

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 at its Modesto Facility.

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.

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.

26. MET 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 Gaviion Ingredients, LLC, Archer Daniels Midland Company, JD Heiskell, and A.L. Gilbert Company.

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.

28. 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 interline deliveries to CVAG's Modesto facility from UP and BNSF.

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").

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.

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.

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.

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.

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.

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 110-car loop track capacity

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.

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).

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.”

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.

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.

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.

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.

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.

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.

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 targeted 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.

46. Beginning March 2018, even before 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.

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.

48. MET has also issued a number of erroneous bills containing invoicing 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.

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.

50. Although CVAG does not dispute the right of MET to assess valid and reasonable charges 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.

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.

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.

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.

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.

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

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.

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.

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.

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, this will make the Modesto facility unfeasible, and result in the suspension of unit train operations and rail service.

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.

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 demands are sustained.

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 for 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.

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

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

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.

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."

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.

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."

Statutory Requirements

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

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."

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.”

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.”

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.

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 reasonable cost or commercial considerations, violate governing precedent and tariff law, and are harmful to the public interest generally.

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.

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.

77. MET 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.

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.

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 concentrations of market power, and to prohibit unlawful discrimination."

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."

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.

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.

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.

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.

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.

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.

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

Prayer for Relief

WHEREFORE, Complainant CVAG requests that Defendant MET be required to answer the charges herein; that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board's implementing regulations, the Board find the assailed Tariffs and charges adopted and implemented by MET as applied to CVAG are unreasonable and unlawful in violation of 49 U.S.C. §§ 11101, 10702, and 10744; that the Board award CVAG damages, with interest, pursuant to 49 U.S.C. § 11704(b) for all unlawful payments it has made to CVAG; that the Board impose penalties, under 49 U.S.C. §§ 11901, 11906, and 11907, for MET's willful violations of its duties, and that the Board grant to CVAG such other and further relief as the Board may deem proper on the record presented.

Respectfully submitted,



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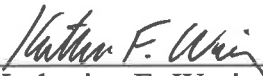
Dated: May 1, 2018

Attorneys for Complainants

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May 2018 caused to be served copies of this Complaint by overnight express courier and by email to outside counsel of MET, as follows:

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



Katherine F. Waring
An Attorney for Complainants