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12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**  
15

16 DOLE FOOD COMPANY, INC., a  
Delaware corporation,

17 Plaintiff,

18 v.

19 FREDRIK GERTTEN, an individual,  
20 MARGARETE JANGÅRD, an individual  
21 WG FILM AG, a Swedish corporation

22 Defendants.

23 WG FILM AB, a Swedish corporation

24 Cross-Complainants

25 v.

26 DOLE FOOD COMPANY, INC., a  
Delaware corporation,

27 Cross-Defendants.  
28

Case No. BC417435

[Assigned For All Purposes To The Hon. Ernest M.  
Hiroshige]

**CROSS-COMPLAINT OF WG FILM AB  
AGAINST DOLE FOOD COMPANY, INC. FOR  
INTENTIONAL INTERFERENCE WITH  
PROSPECTIVE ECONOMIC ADVANTAGE**

Complaint Filed: July 8, 2009

1 For its Cross-Complaint against Dole Food Company, Inc. (“Dole”), Defendant and Cross-  
2 Complainant WG Film AB (“WG Film”) alleges as follows:

3 **INTRODUCTION**

4 1. After spending more than two years producing, filming, researching and editing  
5 footage, renowned documentary film producer, WG Film, completed production on the documentary  
6 film *Bananas!\**. *Bananas!\** focuses on the people and events surrounding a trial in Los Angeles  
7 Superior Court that pitted poor Nicaraguan banana field workers against Dole and other major  
8 transnational corporations (the “*Tellez Trial*”) to tell, from a new perspective, a well-worn and much  
9 larger story. By focusing on the *Tellez Trial*, which was the first time American companies were  
10 required to face an American jury to answer the accusation that the pesticide 1,2-dibromo-3-  
11 chloropropane (“DBCP”) poisoned workers in banana plantations in another country, *Bananas!\** tells  
12 the story of the tense relationship between banana workers, their third world governments and  
13 transnational fruit companies. For more than a century, Dole has played an integral role in that story.

14 2. To create *Bananas!\**, WG Film distilled hundreds of hours of film footage, including  
15 video of the entire four month *Tellez Trial* as well as film capturing events in Nicaragua and Los  
16 Angeles, through the matrix of information garnered through extensive research, to create a  
17 compelling story addressing the theme of meeting the world’s thirst for consumption at the expense  
18 of impoverished workers. To tell this story, the film relies almost entirely on the words of the  
19 participants: Nicaraguan workers and their families; the plaintiffs and their lawyers; Dole and its  
20 counsel.

21 3. After Judge Victoria Chaney, who presided over the *Tellez Trial*, dismissed the claims  
22 of the plaintiffs in the DBCP cases remaining before her – but not the prevailing plaintiffs in the  
23 *Tellez Trial* – Dole assumed the role of information czar, controlling the media story regarding DBCP  
24 and its effect on banana workers and anyone else exposed to the pesticide. Dole message control  
25 objective was to spin Judge Chaney dismissal of certain plaintiffs’ claims (based on her finding of a  
26 purported conspiracy to commit fraud on the superior court involving plaintiffs’ lawyers and a  
27 corrupt Nicaraguan judiciary) into a broader and unsupported message that any and all claims  
28 regarding DBCP are frivolous, if not fraudulent.

1           4.       At about the same time as Judge Chaney held hearings to determine whether the non-  
2 *Tellez* claims should be dismissed, the Los Angeles Film Festival (the “Festival”) informed WG Film  
3 that *Bananas!*\* had been selected as a competitor in its documentary film competition, making the  
4 film eligible to receive a \$50,000 prize and the significant marketing advantage provided to a film  
5 that competes for (much less wins) a prize at a film festival. Recognizing that the film, which Dole  
6 had not seen, stood in the way of its attempt to control the DBCP message, Dole launched a full scale  
7 attack on the film to prevent the public from ever seeing it and to halt the distribution of the film.

8           5.       Rather than addressing speech with which it disagrees with more speech – as the First  
9 Amendment intends and compels – Dole sought to silence the speaker. Dole pressured the Festival to  
10 remove *Bananas!*\* from the Festival’s slate to prevent any showing of it. As part of this scheme,  
11 Dole sent copies of a letter in which it recklessly and falsely attacked WG Film’s integrity and  
12 competency as a documentary film maker to the heads of corporate sponsors of the Festival.  
13 Moreover, Dole went so far as sending letters making similar false and defamatory statements to the  
14 General Consul and Ambassador from Sweden, WG Film’s home country.

15           6.       Dole’s wrongful efforts were partially successful. As a result of its defamatory attacks  
16 on WG Film, the Festival removed *Bananas!*\* from competition, depriving the film of the  
17 opportunity to win the \$50,000 prize and the substantial benefits of being able to tout a film as being  
18 part of the competition (and, perhaps even better, as the “prize winner” at a renowned film festival).  
19 WG Film and the Festival, however, refused to acquiesce to Dole’s bullying and went forward with  
20 two screenings of the film. WG Film will continue to fight back against Dole’s attempt to censor any  
21 speech that does not comport with Dole’s “spin” of the important DBCP story. This Cross-  
22 Complaint is one part of that fight: it seeks to hold Dole accountable for the damage it caused by its  
23 improper interference with WG Film’s important film.

#### PARTIES

24           7.       WG Film is a Swedish corporation, with headquarters in Malmo, Sweden. WG Film  
25 is engaged in the business of making documentary films, of which it has produced nearly two dozen  
26 covering a wide variety of subjects.

27           8.       Dole is a corporation organized and existing under the laws of the State of Delaware  
28 with its principal place of business in the County of Los Angeles, California.

1  
2 **GENERAL ALLEGATIONS**

3 **A. Dole’s Nicaraguan Banana Production and Workers’ Health Controversy**

4 9. Bananas have been grown in Central and South America for export to the United  
5 States since the end of the 19<sup>th</sup> Century. Dole (and/or its corporate predecessors and related  
6 corporate entities) has exported bananas from contracted plantations in Nicaragua since the early  
7 1970s. To improve banana production, Dole used DBCP to control the tiny worms that destroy the  
8 banana plants’ roots. Following Dole’s guidance, DBCP – purchased from Dow Chemical Company  
9 (“Dow”) – was applied by overhead irrigation systems during a seven year period between 1973 and  
10 1980. As a result of this drenching process, the DBCP would either soak into the soil or evaporate.

11 10. In 1977, following a study by a DBCP manufacturer linking exposures to DBCP with  
12 male sterility, California banned use of DBCP and the EPA suspended DBCP’s registration. The  
13 EPA classifies DBCP as a probable human carcinogen, and DBCP is well recognized to cause  
14 testicular dysfunction and temporary or permanent sterility in men. Both factory and field exposure  
15 to DPCP have been linked to testicular dysfunction, at sufficient doses.

16 11. On August 11, 1977, Dow ceased all production and sale of DBCP. After Dow  
17 informed Dole of its decision to suspend sales and production of DBCP, Dole informed Dow that  
18 Dole would consider Dow’s failure to deliver agreed quantities of DBCP to be a breach of contract.  
19 After Dole made this threat and then agreed to indemnify Dow against any third party claims that  
20 might arise from Dole’s continued used of DBCP, Dow continued to provide the pesticide to Dole in  
21 Nicaragua.

22 12. Approximately two years after Dole ceased its banana operations in Nicaragua, the  
23 first lawsuits by foreign banana workers claiming sterility caused by exposure to DBCP were brought  
24 in Texas state court. This was the beginning of a flood of suits in state courts on behalf of banana  
25 workers from all over the world, including workers from Nicaragua. By the end of 2003, 49 cases  
26 against Dole were being actively litigated in Nicaragua. Nevertheless, in spite of judgments entered  
27 against it in Nicaragua since November 2000, Dole has not paid any remuneration to any Nicaraguan  
28 banana worker. In contrast, Dole has paid significant sums to residents of Hawaii and California  
resolve claims relating to exposure to DBCP through groundwater.

1           13.     In addition to litigation before Nicaraguan courts, United States plaintiffs' lawyers  
2 filed cases in federal and state courts in the United States on behalf of Nicaraguan banana workers.  
3 One such case was brought by Los Angeles attorney Juan Dominguez, who filed an action in Los  
4 Angeles Superior Court in September 2004 on behalf of approximately 50 Nicaraguan banana  
5 workers that was eventually captioned *Tellez v. Dole, et al* ("Tellez").

6           14.     After *Tellez* was transferred to the courtroom of the Hon. Victoria Chaney in Central  
7 Civil West in May 2007, it was coordinated with two other cases -- *Mejia v. Dole*, LASC Case No.  
8 BC340049, and *Rivera v. Dole*, LASC Case No. BC379820. All three of these cases had been  
9 brought by Dominguez on behalf of Nicaraguans who allegedly became sterile after being exposed to  
10 DBCP while working at plantations supplying bananas to Dole. In addition to the cases brought by  
11 Dominguez, more than 40 other cases involving more than 5,000 banana workers from countries  
12 other than Nicaragua were pending before the Los Angeles Superior Court.

13           **B.     The Making of *Bananas!* \***

14           15.     In late 2006 or early 2007, a Swedish journalist, Sara Bergfors, who had spent several  
15 years reporting from Nicaragua, approached Fredrik Gertten, the President of WG Film to discuss the  
16 production of a documentary about the devastating impact pesticide exposure had inflicted on  
17 Nicaraguan banana workers and their families. Gertten initially declined Ms. Bergfors's proposal,  
18 citing the complexity of the project. Nevertheless, Gertten explored the possibility of proceeding on  
19 the project, telling the story differently by narrowing the focus of the narrative. Eventually, WG  
20 Films chose to take on the project, and Gertten assumed directorial responsibilities.

21           16.     In spring or summer of 2007, WG Film first learned about the suits brought by  
22 American plaintiffs' lawyers in courts in the United States addressing the use of DBCP at Dole's  
23 Nicaraguan banana plantations. At that time, it began to consider incorporating the United States  
24 legal actions into the narrative to help convey the broader themes.

25           17.     Prior to traveling to Nicaragua in June of 2007, WG Film encountered Dominguez.  
26 WG Film obtained a release from Dominguez and was permitted to film and interview him and  
27 others for the film. While in Nicaragua, WG Film representatives interviewed medical professionals  
28 who expressed their conclusions that pesticide exposure had harmed the health of banana workers

1 and their families. WG Film also interviewed numerous banana workers and members of their  
2 families, who recounted stories of such harm.

3 18. WG Film representatives also interviewed former Sandinista politician, Victor  
4 Espinales, who provided WG Film additional information about the workers struggle in Nicaragua.  
5 Wanting to tell a story relevant to banana workers worldwide, WG Film decided that the focus of the  
6 film would not be on the specific legal and political activities in Nicaragua.

7 19. While in Nicaragua, WG Film unexpectedly encountered a funeral procession that was  
8 taking place in a neighborhood where WG Film's crew happened to be located and WG Films  
9 captured this funeral on film. Ultimately, the son of this banana worker who died of kidney failure  
10 became a focal point of the documentary, and his father's funeral opens the film. The film captures  
11 footage of the young man expressing his belief that pesticides used on the banana fields contributed  
12 to his father's death and his mother's cancer. In one poignant scene of the film, however,  
13 Dominguez tells the young man that "[w]e have decided to base our lawsuit on sterility. Not on  
14 death, not on cancer, kidney failure, birth defects, testicular cancer or other conditions, even though  
15 there is research that supports it. But the findings with regard to sterility are indisputable."

16 20. As the *Tellez* trial approached in July 2007, Dominguez retained Duane Miller of the  
17 law firm Miller, Axline & Sawyer to represent at trial the 12 plaintiff whose claims still remained to  
18 be heard by a jury.

19 21. In addition to filming footage in Nicaragua, WG Film had access to film taken of the  
20 entire four months of the *Tellez* trial, from opening statement to the announcement of the verdict. On  
21 November 3, 2007, after a four month trial, the jury returned a verdict that Dole breached a duty  
22 owed to all 12 of the plaintiffs but that only six of the 12 proved that this breach caused them injury,  
23 awarding the six plaintiffs a total of \$3.2 million. While the jury later returned a \$2.5 million punitive  
24 damages award, Judge Chaney reversed the award, agreeing with Dole that punitive damages were  
25 not available for conduct that occurred outside California.

26 22. Following the verdict, WG Film collected both the raw footage from the trial and from  
27 its filming in Nicaragua and Los Angeles and began the arduous editing process. During this  
28 process, WG Film compiled and reviewed substantial research on the history of the banana trade, the

1 use of pesticides in its production, and the thirty year history of the DBCP dispute. WG Film also  
2 evaluated its options on how to tell the story of the banana workers in a clear and compelling manner.

3 23. Eventually, WG Film chose to tell the story through a dual viewpoint, using the  
4 American plaintiffs' lawyer, Dominguez, as one focal point and the banana worker's son as a second  
5 focal point. This approach fit WG Film's attempt to convey the impact of pesticides on the  
6 Nicaraguan community broadly, while using the *Tellez* trial, which is exclusively about the pesticide  
7 DBCP. Although Miller actually tried the plaintiffs' case at trial, WG Film concluded that Miller did  
8 not have the charisma necessary to carry the narrative of the film. In contrast, Dominguez, a  
9 charismatic plaintiff's lawyer, proved a rich protagonist – a character who could drive forward much  
10 of the narrative and themes in *Bananas!\**, including the tension between his drive for wealth and the  
11 plight of the banana workers. Throughout the process, however, Mr. Gerten and WG Film remained  
12 committed that its film be about the broader plight of banana workers. For this reason, it also  
13 emphasized the emotions and actions of the banana worker's son, who was not part of the DBCP  
14 litigation.

15 24. During the editing process, which began in August 2008 and finished in December  
16 2008, WG Film distilled the footage of the *Tellez* trial to those portions needed to tell the broader  
17 *Bananas!\** story. WG Film conveyed the background of the banana trade in Nicaragua through clips  
18 taken from a 13 minute grainy film entitled *Bananeras* made decades earlier. After an extensive  
19 evidentiary hearing, many of the clips of this archival film, which were included in *Bananas!\**, were  
20 admitted into evidence and shown to the jury during the *Tellez* trial. These clips included scenes of  
21 banana workers walking through puddles and scenes of the high powered sprinkler systems through  
22 which DBCP was applied to the banana fields. In allowing significant portions of this movie to be  
23 show to the jury, Judge Cheney concluded that "I think this ... film illustrates for the jury the general  
24 landscape, the size and scale of the individual banana plantations."

25 25. In *Bananas!\**, WG Film uses footage from the courtroom to present Dole's defense to  
26 the claims brought by the banana workers. The film showed Dole presenting evidence that Dole had  
27 ceased using DBCP in Nicaragua by 1980 and that it had investigated its recommended handling of  
28 DBCP, concluding that it was safe. It also showed Dole introducing evidence that many of the *Tellez*  
plaintiffs had lied under oath and that some of the plaintiffs were sterile before ever working at a

1 banana plantation while others were not sterile at all. As *Bananas!*\* shows, the jury ultimately  
2 agreed with Dole in part, rejecting the claims of six of the twelve *Tellez* plaintiffs, while finding that  
3 Dole's use of DBCP did result in injury to the other plaintiffs.

4 26. *Bananas!*\* also presents Dominguez's callous dissatisfaction with the jury's verdict,  
5 totaling up the amount of damages awarded as the verdict is announced without any concern over the  
6 identity of the prevailing plaintiffs. While the courtroom evidence ends with the jury's punitive  
7 damage award, *Bananas!*\* includes footage of Dole's counsel's comment that "for the plaintiffs'  
8 lawyers this is a substantial defeat because of them to have invested so heavily as they did in time  
9 and costs and to come up with this result that would even come close to paying their smallest bills, is  
10 a real defeat."

11 27. But most of the film, in reality, is not of great concern to Dole other than one scene in  
12 the film taken straight from the trial testimony of one of Dole's long-time senior executives, who  
13 testified that Dole continued to use DBCP in Nicaragua after Dole had been informed that the  
14 pesticide likely caused sterility in banana workers.

15 28. During the editing period and continuing through and beyond post-production, which  
16 was completed in March 2009, WG Film pursued financing to pay for the completion of the project.

17 **C. Judge Chaney's Ruling in *Mejia* and *Rivera***

18 29. On January 17, 2008, Dole filed a motion for a new trial motion in *Tellez*. Dole  
19 informed the court through an attorney declaration that it was aware of witnesses who would testify  
20 to misconduct of Dominguez and his Nicaraguan. In addition, Dole reported to the court that at least  
21 two of the *Tellez* plaintiffs never worked on a banana plantation. While Judge Chaney denied Dole's  
22 motion for a new trial, the Court ultimately stayed the activity in *Mejia* and *Rivera*, except for  
23 discovery aimed at uncovering the existence of any alleged fraud.

24 30. On March 11, 2009, the Court issued an Order to Show Cause regarding terminating  
25 sanctions on the plaintiffs in *Mejia* and *Rivera* based on Dole's claim that Dominguez and his  
26 Nicaraguan counterpart had engaged in egregious misconduct. In April 2009, the Court held a  
27 hearing on this order. After the hearing concluded, Judge Chaney terminated the claims of all of the  
28 plaintiffs in the *Mejia* and *Rivera* cases, concluding that a member of the Nicaraguan judiciary,  
"lawyers from nearly all of the Nicaragua law firms, and Mr. Dominguez, representing plaintiffs in



1 DBCP litigation, conspired to manufacture evidence of sterility and other wise fix those lawsuits in  
2 favor of plaintiffs.” Judge Chaney ruled that evidence of manufactured evidence of sterility and  
3 employment at Nicaraguan banana plantations compromised Dole’s ability to have a fair trial in the  
4 future. She also concluded, however, that she was *not* making any determination on the ultimate  
5 issue of whether Dole was liable for the conduct alleged by banana workers regarding Dole’s use of  
6 DPCP.

7 31. Judge Chaney reached the conclusion that the *Mejia* and *Rivera* cases were tainted by  
8 fraud, even though Dole had previously subjected each of the *Tellez* plaintiffs to as many as three  
9 separate medical exams conducted by Dole’s own experts prior to trial and Dole had been able to  
10 impeach the testimony of one *Tellez* plaintiff with evidence that he in fact worked at a different  
11 banana plantation. Similarly, while Judge Chaney concluded that Dole could not receive a fair trial  
12 in Nicaragua because the Nicaraguan judiciary was corrupt, much of the evidence she relied upon to  
13 draw that conclusion is suspect.

14 32. Three of the alleged participants in the alleged meeting of conspirators have testified  
15 under oath that they were never present at such a meeting. One of these participants has offered into  
16 evidence his passport, which shows that he was not in Nicaragua at the time this alleged meeting is  
17 said to have taken place. The judge in question has also called the allegations “absurd”.

18 **a. Dole Pressures the Festival to Remove *Bananas!*\* from Competition**

19 33. After Judge Chaney issued this order, Dole prepared a press kit, designed to maximize  
20 the positive spin on the rulings regarding the Nicaragua DBCP litigation. One such quote from  
21 counsel for Dole expressly claimed that Judge Chaney’s finding of fraud in *Mejia* and *Rivera* “should  
22 have a devastating effect on any future Nicaraguan litigation in the U.S.... The judge has established  
23 that *the entire DBCP litigation is fraudulent.*” (emphasis added). Dole representatives frequently  
24 cited to Judge Chaney’s dubious finding of credible evidence of the meeting of conspirators in  
25 Nicaragua as evidence of the illicit nature of the claims made in other DBCP cases.

26 34. Dole, however, ignores Judge Chaney’s expressed sadness “for individuals who are  
27 now going to be unable to come to this court, or any court, for redress, for wrongs that they believe  
28 have been committed against them.” Moreover, contrary to the manner in which Dole has sought to  
use her order, Judge Chaney concluded that she had no opinion “whether or not there was any

1 wrongdoing by any of the defendants. We'll never know." Nevertheless, Dole has continued to  
2 falsely use this order to support Dole's mythology that it was not possible that anyone was ever  
3 injured as a result of Dole's use of DBCP.

4 35. In April 2009, *Bananas!\** was selected to compete at the Festival for a \$50,000 prize.  
5 The Festival would be the world premiere of the film. When a documentary film makes its world  
6 premiere in a competition at a prestigious film festival, such as the Los Angeles Film Festival, the  
7 film maker realizes a substantial economic benefit from the recognition and publicity accompanying  
8 such an honor. On May 5, 2009, WG Film released on its website the trailer for *Bananas!\** along  
9 with a press kit for the film.

10 36. On May 8, 2009, in a transparent attempt to control the DBCP message by stifling  
11 WG Film's speech contained in the film – which Dole had not seen – counsel for Dole sent to WG  
12 Film a letter demanding that WG Film stop "making false, defamatory statements about Dole,"  
13 contained in *Bananas!\** and copied the letter to all of the Festival's corporate sponsors, including the  
14 heads of the Los Angeles Times, Target Corporation, Eastman Kodak Company, Sundance Channel,  
15 Netflix, American Airlines, and others. In the letter Dole falsely attacks WG Film and Gertten's  
16 integrity and competency as documentary filmmakers. Dole's makes the specious conclusion that,  
17 because Dominguez was the "star" of the film and because Judge Chaney in her order in *Mejia* and  
18 *Rivera* had found that he had masterminded a fraudulent conspiracy, the film must be defamatory.  
19 For its only other concrete examples of these "false and defamatory statements of purported fact",  
20 Dole offers only the alleged false statements that WG Film somehow asserts that DBCP is  
21 responsible for countless deaths and that Dole applied DBCP with airplanes. Nevertheless, Dole  
22 represented to WG Film and –more importantly – to the corporations copied on the letter that WG  
23 Film was on notice of "numerous false and defamatory statements of fact of and concerning Dole".

24 37. By recklessly mischaracterizing the content and themes presented in *Bananas!\**, Dole  
25 impugns the integrity and honesty of WG Film as documentary film makers. Viewing the film itself  
26 demonstrates Dole's recklessness. First, the film is not about DBCP or the *Tellez* trial. Rather, the  
27 film tells the broader story of the health impact of pesticides on third world workers employed by  
28 multinational corporations through the concrete images of the first trial over DBCP use in a United  
States courtroom. Far from being presented as a "hero," Dominguez is one of two protagonists in the

1 film. Dominguez is flawed and part of the dramatic tension in *Bananas!*\* is the conflict between the  
2 rich trappings of his plaintiffs' lawyer persona versus the suffering of the poor banana workers and  
3 their families, in particular that of the young man whose father's funeral begins the film.

4 38. Contrary to the false claims made by Dole, WG Film in *Bananas!*\* does not state that  
5 this young man's father (or any person, for that matter) died from exposure to DBCP; rather the film  
6 shows that after working his whole life on banana plantations, he died from kidney damage, which is  
7 a common symptom from pesticide exposure. In fact, the film contains a scene in which the young  
8 man is informed that his claim for the death of his father will not be brought because it is not as  
9 scientifically substantiated as sterility. Although the United States Environmental Protection Agency  
10 has found that DBCP is a possible human carcinogen, the film makes it clear that Dominguez did not  
11 bring any claims for wrongful death in the DBCP cases. Furthermore, the images of the plane  
12 spraying pesticides do not indicate that Dole sprayed DBCP from the air. Rather, WG Film and  
13 Gertten included those images to portray the fact that pesticides continue to be used, even though use  
14 of DBCP has ceased in Nicaragua (a fact made perfectly clear in the film).

15 39. Nevertheless, as a result of Dole's defamatory attacks on WG Film and *Bananas!*\*  
16 director, Fredrik Gertten, the Festival pulled *Bananas!*\* from the competition.

17 40. Not content with convincing the Festival to pull *Bananas!*\* from the competition,  
18 Dole proceeded to pressure the co-sponsors of the film to withdraw their support for the film at the  
19 Festival by continuing its attack on WG Film's integrity. On May 27, 2009, counsel for Dole wrote a  
20 letter to the Consulate General of Sweden, Los Angeles (the "Swedish Consulate"), once again  
21 offering the same generalized allegations of supposed "patently defamatory" statements made by WG  
22 Film in *Bananas!*\*. The letter called on the Swedish Consulate to join its previous co-sponsor, Legal  
23 Aid Foundation of Los Angeles, in withdrawing its support for the film.

24 41. After receiving no response from the Swedish Consulate, Dole sought to apply  
25 additional pressure. On June 5, 2009, counsel for Dole sent a letter to Jonas Hafstrom, Swedish  
26 Ambassador to the United States, requesting that the Swedish Consulate withdraw its endorsement of  
27 the film and that the Ambassador pressure WG Film and Gertten to halt dissemination of the film in  
28 the United States and Europe. Even though nobody from Dole had never seen *Bananas!*\* and thus  
Dole was completely ignorant of the film's contents, theme and narrative framework, Dole stepped

1 up its assault on WG Film's competency and integrity by falsely asserting that WG Film had  
2 proceeded with the film, even though it knew that the "entire theme and premise of the film  
3 *Bananas!\** is thus false, depicting the fraudulent *Tellez* plaintiffs as 'victims' of Dole, and their  
4 crooked attorney as a hero."

5 42. As alleged previously, even putting aside the fact that Dole is apparently comfortable  
6 using such inflammatory rhetoric to describe an attorney who has yet to be convicted of any  
7 wrongdoing and who was prevented from taking part in Judge Chaney's proceedings, Dole's  
8 continued characterization of Dominguez as the hero of the film is simply untrue. Furthermore, the  
9 theme of the film is not limited to the *Tellez* case or Juan Dominguez. Rather, it is the broader theme  
10 of feeding the hunger of First World consumers for cheap and plentiful food at the expense of the  
11 health and safety of the Third World workers. Ultimately, the Swedish Consulate did not withdraw  
12 its sponsorship of the film. The Swedish Consulate did, however, withdraw from a reception at the  
13 Swedish Consulate in honor of the film that the Swedish Consulate had previously agreed to sponsor,  
14 further damaging WG Film.

15 43. After receiving a copy of Dole's letter, however, WG Film's Margarete Jangård, the  
16 producer of *Bananas!\**, received a late night telephone call from Niklas Wiberg, of the Swedish  
17 Consulate. Mr. Wiberg accused WG Film of having made *Bananas!\** only after having been first  
18 contacted by Juan Dominguez, who purportedly wanted WG Film to make the film for him. Ms.  
19 Jangård denied this utterly false accusation and continued to address Mr. Wiberg's concerns over  
20 WG Film's competency and integrity in making *Bananas!\**. WG Film is informed, believes, and  
21 thereupon alleges that, prior to calling Ms. Jangård, Mr. Wiberg had received communication from a  
22 representative from Dole that falsely accused WG Film of making *Bananas!\** as a propaganda film  
23 for Juan Dominguez. This false accusation further damaged WG Film.

24 44. Although it had been pulled from the competition, WG Film refused to be bullied into  
25 abandoning its First Amendment right to make its contribution to the emotional and long running  
26 public debate over the use of pesticides in general and of DBCP in particular. To account for events  
27 occurring after *Bananas!\** had been completed, WG Film added cards to the end of the movie  
28 describing the findings in the subsequent court proceedings. To allow viewers to draw their own  
conclusions, WG Film showed *Bananas!\** to the public twice during the Festival.

1           45.     WG Film made available a press kit that accompanied the screening that provided  
2 detailed information about the ongoing proceedings before Judge Chaney. This press kit remains  
3 available on the film's web site and provides an extensive explanation of what happened after the  
4 film was completed.

5           46.     Prior to the two screenings of the film at the Festival, a lengthy statement prepared by  
6 the Festival's lawyers was read to the audience about the ongoing controversy concerning the DBCP  
7 litigation. This statement, prepared under pressure from Dole, erroneously claimed that Judge  
8 Chaney's decision regarding the *Mejia* and *Rivera* cases and the charges against Dominguez rendered  
9 the contents of *Bananas!*\* false. As a result of Dole's groundless attacks on WG Film's competency  
10 and integrity as film makers, the Festival premiered the film as a virtual case study in allegedly  
11 fraudulent filmmaking, rather than as a well-crafted and timely documentary film about significant  
12 social issues, for which it had been originally selected before Dole engaged in its wrongful and  
13 damaging interference.

14           **D.     Economic Consequences of Dole's Wrongful Interference**

15           47.     The removal of *Bananas!*\* from the Festival competition did more harm to WG Film  
16 than merely precluding it from possibly winning the \$50,000 prize. Even films that do not win  
17 competitions such as the one at the Festival benefit tremendously from simply having been  
18 nominated to be part of the competition. These benefits far exceed the value of the prize award.  
19 Inclusion as a finalist at a film festival competition enhances the reputation of a film and increases its  
20 economic and marketing value. In addition, it results in heightened respect for the documentary  
21 filmmaking abilities of the director and producer of a film that receives such an honor, thereby  
22 enhancing the ability of the film maker to raise money in future projects. These impacts are  
23 heightened when the competition is also the world premiere of the film. A film can hold only one  
24 world premiere. Holding the world premiere in a prestigious festival provides the best opportunity to  
25 sell and promote the film.

26           48.     Through its reckless defamatory accusations against the competence and integrity of  
27 WG Film and Gertten, Dole convinced the Festival to pull *Bananas!*\* from competition. As a result,  
28 WG Film was deprived of the economic benefits that it had reasonably expected would flow from the  
only world premiere that *Bananas!*\* would ever be able to have as the as a finalist in the Festival

1 competition. When Dole forced the Festival to turn the premiere of *Bananas!*\* into a "case study" of  
2 allegedly improper or fraudulent filmmaking, WG Film lost irreplaceable economic value in the film.

3 **FIRST CAUSE OF ACTION**

4 **(Intentional Interference with Prospective Economic Advantage)**

5 49. WG Film repeats and realleges the allegations contained in paragraphs 1 through 48  
6 hereinabove, and incorporates them herein by this reference as if fully set forth herein.

7 50. In April 2009, the Festival informed WG Film that its documentary film *Bananas!*\*  
8 had been selected as a finalist in the Festival's competition. In addition to making WG Film a finalist  
9 for a \$50,000 prize, the inclusion of *Bananas!*\* in the Festival competition would have enhanced the  
10 reputation of WG Film as a maker of quality documentary film and increased the economic and  
11 marketing value of *Bananas!*\* to WG Film.

12 51. At some time during or after April 2009, Dole discovered that *Bananas!*\* had been  
13 selected as a finalist in the Festival competition. WG Film is informed, believes, and thereon alleges  
14 that after learning that the film had received this honor, Dole researched the identity of the Festival's  
15 corporate sponsors.

16 52. In an attempt to censor and control the public discussion of the DBCP litigation by  
17 preventing the screening of *Bananas!*\*, Dole drafted a letter to WG Film on May 8, 2009. As  
18 previously alleged, in that letter, Dole sought to apply pressure on the Festival to revoke its inclusion  
19 of the film not only in the competition at the Festival, but inclusion at all in the Festival, by  
20 intentionally defaming the integrity and competency of WG Film and the film's director, Fredrik  
21 Gertten, in making documentary films. Dole then intentionally sent copies of the letter to the heads  
22 of the corporate sponsors of the Festival.

23 53. Dole's transparent attempt to interfere with the relationship between WG Film and the  
24 Festival was partially successful. Although the Festival screened the film twice, the Festival revoked  
25 its previous invitation for *Bananas!*\* to be included in the Festival's competition. WG Film is  
26 informed, believes, and thereon alleges that the Festival's decision to pull *Bananas!*\* from the  
27 competition was a direct consequence of Dole's defamatory statements regarding WG Film and  
28 Gertten and the pressure that Dole was applying to the Festival's sponsors, the Swedish Consulate  
and others.

1           54. In addition, as a direct result of Dole’s defamatory interference, the Festival premiered  
2 *Bananas!\** as a virtual case study in allegedly fraudulent filmmaking, rather than as a well-crafted  
3 and timely documentary film about significant social issues, for which the Festival had originally  
4 selected the film as a finalist. Prior to the two screenings of the film at the Festival, a lengthy  
5 statement prepared by the Festival’s lawyers under pressure from Dole was read to the audience  
6 about the ongoing controversy concerning the DBCP litigation. Among other things, this statement,  
7 erroneously claimed that Judge Chaney’s decision regarding the *Mejia* and *Rivera* cases and the  
8 charges against Dominguez rendered the contents of *Bananas!\** false.

9           55. The Festival’s withdrawal of *Bananas!\** from the competition and its transformation  
10 of the film from a timely, high quality documentary film into an alleged fraud at the world premiere  
11 of the film, sparked by Dole’s malicious attacks, has injured WG Film by reducing the economic  
12 value of the film by the loss of the enhanced reputation that it would have been accorded as a finalist  
13 of the competition, by the loss of economic benefit resulting from its world premiere, and by Dole’s  
14 unfounded claim that WG Films has been both incompetent and less than honest in the making of  
15 *Bananas!\**.

16  
17 **PRAYER FOR RELIEF**


18 WHEREFORE, WG Film prays for relief as follows:

- 19       ▪ For damages in an amount to be determined at trial, but not less than \$100,000;
- 20       ▪ For pre-judgment interest;
- 21       ▪ For WG Film’s costs of suit; and
- 22       ▪ For any other such relief as the Court deems just and proper.

23 DATED: September 10, 2009

LATHROP & GAGE LLP

24  
25  
26 By: \_\_\_\_\_

  
27       LINCOLN D. BANDLOW  
28       Attorney for Defendant and Cross-Complainant  
       WG FILM AB