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DOLE FOOD COMPANY, INC.,
12

13 SUPERIOR COURT, STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES
15

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

18 Plaintiff,

19 v.

20 FREDRIK GERTTEN, an individual,
21 MARGARETE JANGÅRD, an individual, WG
FILM AB, a business organization, and DOES 1
through 20, inclusive.

22 Defendants.
23

CASE NO. BC 417435

COMPLAINT FOR DEFAMATION

24
25
26
27 For its Complaint, Dole Food Company, Inc. ("Dole" or "Plaintiff") alleges as follows:
28

INTRODUCTION

1. The right to free speech is a justly cherished and fundamental American value. It is not, however, without some limits. As the California Constitution succinctly puts it, "Every person may freely speak, write and publish his or her sentiments on all subjects, *being responsible for the abuse of this right*." (Cal. Const., art. I, § 2, subd. (a), emphasis added.) There is no question on which side of the line this case falls. From start to finish, the documentary film *Bananas!** that is the subject of this Complaint for Defamation promotes as fact a false story that was adjudicated a fraud on Dole and on California's courts before the film was ever screened. Prior to the film's world premiere, Dole brought this fact to the Defendants' attention, and made repeated, detailed attempts to convince the Defendants that the film's patent falsehoods required that it not be shown without significant revisions. Despite their awareness of these facts, the Defendants, however, refused to make any meaningful changes to the film, and persisted in publicly screening it and touting its accuracy in the face of court rulings that its story was false and amounted to "extortion." This case, therefore, presents a textbook example of false and *per se* defamatory speech made with actual malice, utterly without regard for its truth or falsity, which maligns Dole and its 75,000 employees worldwide.

2. The subject—and star—of the film is California attorney Juan J. Dominguez. The film purports to chronicle his attempts to use the United States legal system to obtain money on behalf of individuals purporting to be injured former banana workers from Nicaragua. The film details in documentary fashion Dominguez's supposed "David versus Goliath" "success" in bringing the *Tellez v. Dole Food Company, Inc.* case to trial in Los Angeles Superior Court (along with his co-counsel Duane Miller), and climaxes with Dominguez obtaining a \$2.5 million punitive damage award on behalf of five of 12 Nicaraguan plaintiffs. Before Defendants released the film, however, the Court not only threw out the punitive damage award, reduced the compensatory damages award and reversed the decisions as to some of these plaintiffs, but also found that the Nicaraguan plaintiffs and Dominguez had committed a fraud on Dole and the Court by knowingly participating in an elaborate conspiracy to develop and prosecute false claims on behalf of individuals who never worked on Dole-contracted farms and were never injured.

1 3. In fact, before Defendants released the film, the Court found in *Tellez* that Dominguez's
2 (and his plaintiffs') misconduct was so "heinous" and "so outrageous and pervasive and profound that
3 it far exceeds anything described . . . in any of the reported cases. Here, there is [a] massive amount[]
4 of evidence demonstrating the recruiting and training of fraudulent plaintiffs to bring cases in both
5 the Nicaraguan and U.S. courts." The Court found that this pervasive fraud had "contaminated each
6 and every one of the [*Tellez*] plaintiffs" and that *Tellez* "was built on somebody's imagination, a case
7 that was put together with smoke and mirrors." The Court "apologize[d] to all the jurors who had to
8 sit through that case and make a decision based on nothing but the imagination of somebody,
9 dreamed up in a back room of some law office in Chinandega [Nicaragua]."

10 4. And before Defendants released the film Dominguez's (and his plaintiffs') co-counsel
11 —and "co-star" of the film—Duane Miller, and his firm, withdrew from the case, citing their ethical
12 obligation as officers of the court, and abandoned any attempt to defend the *Tellez* judgment they had
13 obtained. Indeed, before Defendants released the film, even Juan Dominguez himself had found it
14 prudent to arrange to be "terminated" by the *Tellez* plaintiffs. Moreover, the Court of Appeal on July
15 7, 2009, granted Dole's petition for a writ of error *coram vobis*, held that a prima facie showing of
16 fraud had been made as to all the *Tellez* plaintiffs and remanded the remainder of the *Tellez* case back
17 to the Superior Court for dismissal unless the prima facie showing was promptly

18 5. As detailed below, Dole repeatedly brought this fraud—and much, much more—to
19 Defendants' attention before Defendants released the film. Sensitive to free speech and artistic
20 expression concerns, Dole implored Defendants not to screen the film without making substantial
21 changes to take account of the Court's ruling and detailed findings. But Defendants ignored the truth
22 and screened this blatantly false film. As the film's director, Defendant Fredrik Gertten, explained,
23 Defendants had adopted their "point of view" at the outset of their enterprise and thought there was
24 nothing they needed to learn from Dole. And just as Defendants never contacted Dole prior to
25 "completing" their film, they likewise refused to consider the Court's ruling of fraud prior to releasing
26 it. There can be no clearer case of defamation or actual malice.

27 6. The quintessential value of free speech is its power to seek out and disseminate the
28 truth. As the great First Amendment scholar Alexander Bickel once said when writing about the

1 rights and responsibilities of journalists, freedom of speech and of the press "calls on the press to
2 consider the responsibility that its position implies. Not everything is fit to print. There is to be
3 regard for at least probable factual accuracy, for danger to innocent lives," and this requires those
4 who invoke the First Amendment to exercise "self-discipline and self-restraint" so as to avoid
5 disseminating false information. Defendants here purport to be depicting the truth in their
6 documentary film and yet have abdicated any sense of responsibility, self-restraint, or self-discipline.
7 To screen, promote, and profit from this film, despite the fact that its entire premise has been
8 adjudicated a fraud on Dole and California's courts, is the epitome of reckless and irresponsible
9 conduct. It cannot possibly be justified or defended. It must stop.

10 **JURISDICTION AND VENUE**

11 7. Dole is a Delaware corporation with its principal place of business in the County of
12 Los Angeles, State of California.

13 8. At least some of the wrongful acts complained of took place in Los Angeles County,
14 California.

15 9. The amount in controversy exceeds the minimum for unlimited civil jurisdiction of this
16 Court.

17 **IDENTIFICATION OF PARTIES**

18 10. Plaintiff Dole is a corporation organized and existing under the laws of the State of
19 Delaware, and is, and was at all times mentioned herein, qualified to do business in California.

20 11. Defendant Fredrik Gertten ("Gertten"), an individual, directed the documentary film
21 *Bananas!**, referred to herein. Plaintiff is informed and believes and on that basis alleges that Mr.
22 Gertten is a citizen and resident of Sweden, and an employee of WG Film AB.

23 12. Defendant Margarete Jangård ("Jangård"), an individual, produced the documentary
24 film *Bananas!**, referred to herein. Plaintiff is informed and believes and on that basis alleges that
25 Ms. Jangård is a citizen and resident of Sweden, and an employee of WG Film AB.

26 13. Defendant WG Film AB ("WG Film"), a business organization, developed and
27 produced the documentary film *Bananas!** that is referred to herein. Plaintiff is informed and
28

believes and on that basis alleges that WG Film is a partnership, unincorporated association, or corporation, organized and existing under the laws of Sweden.

14. The true names and capacities of the Defendants named herein as DOES 1 through 20, inclusive, whether individual, corporate, associate, or otherwise, are presently unknown to Plaintiff and are sued herein by fictitious names pursuant to Civil Code section 474. Plaintiff is informed and believes and on that basis alleges that each of the Defendants designated herein as a fictitiously named Defendant is in some manner responsible for the events and happenings herein referred to and caused the damage to Plaintiff as herein alleged. Plaintiff is informed and believes and on that basis alleges that all DOE Defendants are either residents of the State of California or are subject to jurisdiction in California. Plaintiff will amend this Complaint to show their true names and capacities when the DOE Defendants have been determined.

GENERAL ALLEGATIONS

15. This case is about a film, presented as a factual documentary. The substance and content of the film are presented as fact. The film, entitled *Bananas!**, is purportedly about a crusading hero—a Los Angeles lawyer by the name of Juan J. Dominguez—who sues a supposedly evil multinational company on behalf of exploited Nicaraguan victims. And he wins by getting a punitive damage verdict. But before the film was released, the Court in that very case: (1) overturned the punitive damage verdict on the ground that there was insufficient evidence to support it; (2) found that the star of the movie is not a crusading hero but the engineer of a massive fraud on Dole and the Court who exploits Nicaraguan citizens; and (3) found that the plaintiffs in the trial are frauds, and all of their claims are infected with fraud such that the Court would have dismissed them had it known about this before the *Tellez* trial started. Indeed, also before the film's release, the other plaintiffs' lawyer who stars in the film—Duane Miller, the lead lawyer during the trial—resigned from the case due to ethical concerns, and the now discredited star of the film, Dominguez, engineered his own termination from the case by his own clients. Dole repeatedly brought this fraud to the Defendants' attention and asked that they not publish these known falsehoods to the public. Yet Defendants ignored the truth and screened this blatantly false film. There can be no clearer case of libel and slander *per se* and actual malice.

A. The Film and Promotional Website and Promotional Booklet and Their False Statements About Dole

16. WG Film, an independent film company based in Sweden, developed and produced a 2009 documentary film entitled *Bananas!**, which was directed by Gertten and produced by Jangård. Dole is informed and believes and on that basis alleges that WG Film, Gertten, and Jangård ("Defendants"), individually and/or collectively, operate and control the content of www.BananasTheMovie.com, a promotional website ("Defendants' Website") for the film, *Bananas!**, and have created and/or control the content of the other promotional material for the film, including, but not limited to, the promotional trailer and promotional booklet found on Defendants' Website.

17. *Bananas!** was screened for the public at Film Independent's ("FIND") Los Angeles Film Festival ("LAFF") on June 20, 2009, and June 23, 2009. Plaintiff is informed and believes and on that basis alleges that Defendants intend to screen *Bananas!** at a minimum of two additional film festivals and to release the film for widespread screening in movie theaters in October 2009.

18. The Defendants also maintain a promotional website for the film, *Bananas!**, which is listed on the internet as www.BananasTheMovie.com. This website, as a whole, including the Promotional Booklet (attached as Exhibit A), Trailer (attached as Exhibit B), "Interview with Frederick Gertten," (attached as Exhibit C), and the "Facts" section (excerpts attached as Exhibit D), repeats, echoes, and amplifies on the false and defamatory statements made in *Bananas!** that are described herein and reinforces the false and misleading portrayal of the film as a true representation of facts regarding Dole's purported wrongdoing in Nicaragua and Dominguez's role as hero and successful advocate in vindicating such purported wrongs through *Tellez* and other litigation against Dole.

19. The film *Bananas!**, Defendants' Website, and other promotional materials for the film, including but not limited to the documentary's promotional trailer and press "booklet," and multiple public statements made by Defendants, contain a multitude of false statements of purported fact concerning Plaintiff, and communicate false purportedly factual information concerning Plaintiff that has harmed Plaintiff's reputation. The entire gist and premise of the film and all related

1 promotional materials and public statements—that Dominguez and Miller heroically and justly
2 prevailed against Dole in the U.S. courts on behalf of their deserving Nicaraguan clients—has been
3 utterly demolished by the Court's authoritative findings based on a mountain of evidence of which
4 Defendants were aware prior to screening the film for the public.

5 **B. Falsity**

6 20. *Bananas!** has at all times relevant to the allegations herein been described, advertised,
7 and presented by Defendants as a documentary. The substance and content of the film are presented
8 as fact.

9 21. Defendants did not contact anyone from Dole in connection with making this
10 documentary.

11 22. *Bananas!** as a whole portrays the claims of the *Tellez* plaintiffs as genuine, valid, and
12 not the product of a fraudulent scheme to extort Dole and other U.S. companies. It directly implies
13 that Dole has caused many people in Nicaragua to die because of the use of DBCP at Dole-contracted
14 banana farms and then ties those false assertions to the *Tellez* litigation, in which Dominguez, the
15 film's main character, is portrayed as a crusading, heroic figure who vindicates Dole's purported
16 wrongdoing by obtaining a punitive damage award. These assertions of purported fact are false.

17 23. The film falsely and unfairly demonizes Dole in broad terms. The film goes beyond
18 the allegations of the *Tellez* plaintiffs to accuse Dole and others of misconduct in Nicaragua which
19 was not alleged in *Tellez* and for which there is no supporting evidence. The documentary as a whole
20 asserts that Dole, through the use of DBCP on Dole-contracted banana farms, knowingly, recklessly
21 and/or intentionally caused the deaths of countless Nicaraguan citizens, including the death of
22 Alberto Rosales, identified in the film as the father of Byron Rosales ("Byron"), and that Dole
23 considers such deaths a "victory." In addition, the film directly implies that DBCP was applied on
24 Dole-contracted banana farms regularly, if not on a daily basis, and that it was applied by airplane,
25 drenching the fields while the banana workers were working in them. All of these assertions of
26 purported fact are false.

27 24. The film *Bananas!**, the movie trailer and promotional booklet are edited in a highly
28 misleading fashion that paints a patently false picture. For example, the film splices alleged footage

1 from the 1970s and 1980s together with recently filmed footage and thereby directly implies that
2 Dole is still using DBCP even though it stopped using it nearly three decades ago, and stopped using
3 it in Nicaragua more than a decade before its use was banned in that country. The film also omits
4 Dole's CEO's answer to a question posed to him during the *Tellez* trial regarding Dole's practices so
5 as to falsely and damagingly make it appear that he did not have an answer to the question.

6 **1. Fraud Findings Regarding The *Tellez Mejia* and *Rivera* Cases**

7 25. *Tellez* was one of three DBCP lawsuits filed against Dole and other U.S. defendants,
8 including a former manufacturer of DBCP, The Dow Chemical Company ("Dow"), in Los Angeles
9 Superior Court by Los Angeles attorney Dominguez and the law firm of Miller, Axline & Sawyer
10 ("MAS").

11 26. The complaint in *Tellez*, originally filed on March 26, 2004, alleged that the plaintiffs,
12 all of whom are male, were Nicaraguan citizens who were exposed to DBCP while working on Dole-
13 contracted banana farms in Nicaragua during the 1970s. The *Tellez* plaintiffs alleged that, as a result
14 of that exposure, they suffered from azoospermia (sterility), oligospermia (abnormally low sperm
15 counts), and other reproductive injuries, rendering them unable to father children. Male infertility
16 was the only alleged injury at issue in the *Tellez* trial. The plaintiffs in the *Tellez* action sought both
17 compensatory relief and punitive damages against Dole and other defendants.

18 27. The other two DBCP lawsuits brought in the United States by Dominguez and MAS on
19 behalf of Nicaraguan plaintiffs are *Rodolfo Mejia, et al. v. Dole Food Company, Inc., et al.* (LASC
20 Case No. BC340049) ("*Mejia*") and *Hilario Rivera, et al. v. Dole Food Company Inc., et al.* (LASC
21 Case No. BC379820) ("*Rivera*"). *Mejia* and *Rivera* were originally filed by Dominguez and MAS on
22 September 20, 2005 and October 26, 2007, respectively.

23 28. Like the *Tellez* plaintiffs, the *Mejia* and *Rivera* plaintiffs were all males who alleged
24 that they suffered from azoospermia (sterility), oligospermia (abnormally low sperm counts), and
25 other reproductive injuries, as a result of exposure to DBCP while working on Dole-contracted
26 banana farms in the 1970s, and were thus unable to father children. None of the plaintiffs in *Mejia*
27 and *Rivera* alleged that anyone had died from exposure to DBCP. The plaintiffs in *Mejia* and *Rivera*
28 sought both compensatory relief and punitive damages against Dole and other defendants.

1 29. *Tellez, Mejia*. and *Rivera* were designated complex pursuant to California Rules of
2 Court 3.400, *et seq.*, and transferred to Department 324 of the Los Angeles Superior Court, the
3 Honorable Victoria Gerard Chaney presiding ("the Court"). To manage the matters in an orderly and
4 cost effective manner, the Court decided, with the agreement of all parties, to try the *Tellez* matter
5 first, followed by *Mejia*, then *Rivera*; *Mejia* and *Rivera* were stayed pending trial of the *Tellez* matter.

6 30. While there were 43 individual plaintiffs included at one time or another in *Tellez*, the
7 majority of those plaintiffs voluntarily dismissed their claims, and a few plaintiffs transferred their
8 claims to the related action of *Mejia*. Thus, only 12 plaintiffs proceeded to trial in *Tellez*.

9 31. Trial in *Tellez* commenced on July 10, 2007. The *Tellez* trial consumed approximately
10 four months of Court time.

11 32. On November 5, 2007, the jury returned a verdict in favor Dole and against six
12 plaintiffs, and in favor of six plaintiffs against Dole and its co-defendant Dow, awarding
13 compensatory damages against Dole in the amount of approximately \$2.5 million. On November 7,
14 2007 the jury returned a Phase 2 verdict, finding that five of those six recovering plaintiffs were
15 entitled to punitive damages against Dole on the theory of fraudulent concealment, and on
16 November 15, 2007, the jury returned a Phase 3 verdict, awarding \$500,000 dollars in punitive
17 damages against Dole to each of the five plaintiffs, for a total of \$2.5 million dollars.

18 33. After the jury verdicts were rendered, Dole filed five post-trial motions, including a
19 Motion for Judgment Notwithstanding the Verdict, or, Alternatively, a New Trial on the Issue of
20 Punitive Damages ("Punitive Damages Motion"), a Motion for New Trial as to Claims of Plaintiff
21 Jose Anastacio Rojas Laguna ("Rojas Laguna Motion"), and a Motion for Judgment Notwithstanding
22 the Verdict, or, Alternatively, a New Trial on Plaintiffs' Strict Liability and Fraudulent Concealment
23 Claims ("Strict Liability Motion").

24 34. On March 7, 2008, the Court granted Dole's Punitive Damages Motion and entered a
25 judgment notwithstanding the verdict in favor of Dole on the issue of punitive damages, finding that
26 "no substantial evidence supports the verdict on plaintiffs' claims for punitive damages. On the
27 contrary, viewing the evidence in the light most favorable to plaintiffs, the evidence compels a
28

1 verdict for defendant[] as a matter of law." This ruling was widely publicized, including via a Dole
2 press release.

3 35. Also on March 7, 2008, the Court granted Dole's Rojas Laguna Motion, ordering a new
4 trial on the issue of plaintiff Rojas Laguna's exposure to DBCP, the injury claimed by him (whether it
5 be azoospermia, oligospermia, or both), and the question of legal causation. Thus, despite a jury
6 verdict in his favor, no judgment was entered in favor of plaintiff Rojas Laguna against Dole.

7 36. In addition, on March 7, 2008, the Court granted, in part, Dole's Strict Liability
8 Motion, finding that "no substantial evidence" supported the verdict against Dole on plaintiffs' strict
9 liability claims, and that "the evidence compel[led] a verdict for defendants as a matter of law." As
10 such, with respect to plaintiff Claudio Gonzalez, who obtained a verdict against Dole solely on the
11 basis of strict liability, the Court found that Dole was "entitled to judgment against plaintiff Claudio
12 Gonzalez, and said plaintiff shall have and recover nothing from defendant." Thus, despite a jury
13 verdict in his favor, no judgment was entered in favor of plaintiff Gonzalez against Dole.

14 37. Further, following post-trial motions in *Tellez*, the Court reduced the amount of
15 compensatory damages awarded to the four *Tellez* plaintiffs who had secured a judgment against
16 Dole to a total of \$1,581,440.00.

17 38. Final judgment was entered in *Tellez* on October 6, 2008. Both sides appealed.

18 39. On or about October 8, 2008 the Court entered a protective order in *Mejia*. The
19 purpose of the protective order was to protect the identities of witnesses in Nicaragua who had
20 knowledge of the fraud being committed in the Nicaragua DBCP cases in general, and in *Mejia* in
21 particular.

22 40. On March 5, 2009, Dominguez was discharged by the plaintiffs in *Tellez*, *Mejia*, and
23 *Rivera* as their counsel of record, effectively leaving only MAS as counsel of record in each action.

24 41. On April 23, 2009, the Court dismissed *Mejia* and *Rivera* on the basis of fraud, finding
25 that "plaintiffs' and plaintiffs' attorneys' misconduct in this record is so outrageous and pervasive and
26 profound that it far exceeds anything described . . . in any of the reported cases."

27 42. In the Court's April 23, 2009 oral ruling, the Court found that the evidence
28 overwhelmingly revealed a "truly heinous and repulsive" scheme of pervasive fraud, organized and

1 directed by Nicaraguan and U.S. lawyers, including Dominguez, and "cemented together by human
2 greed and avarice."

3 43. The Court found that this system of fraud included a group of "recruiting captains,"
4 who, on behalf of the Nicaraguan and U.S. lawyers, including Dominguez, "reached out and grabbed
5 the groups of men to make spurious claims that they are sterile [] from a chemical called DBCP" as a
6 result of exposure to the chemical on a Dole-contracted banana farm. These fraudulent plaintiffs
7 were then trained, through a variety of means including training manuals and "field trips" to former
8 Dole-contracted banana farms, to provide credible, perjured testimony. Indeed, the Court pointed to
9 "massive amounts of evidence demonstrating the recruiting and training of fraudulent plaintiffs to
10 bring cases in both the Nicaraguan and U.S. courts," and found that Dominguez was intimately
11 involved in this system of massive-scale "subornation of perjury."

12 44. The Court also found, based on a "plethora of evidence of spurious lab reports," that
13 this pervasive fraud involved "groups of medical personnel" who provided DBCP plaintiffs with
14 "sham laboratory reports indicating sterility where none really exists," and even "groups of fathers
15 denying paternity of their own children, posing as lonely men, coming into the court, saying they
16 have no solace in their old age because they have no children." And, in addition to evidence of
17 fraudulent medical records, the Court found "uncontroverted proof of the systematic fabrication of
18 work certificates, which were signed in blank and filled in later, to apply to any plaintiff whom
19 counsel or their employees on whim and their agents might choose." These work certificates were
20 later used by DBCP plaintiffs to support their false claims that they had once worked on a Dole-
21 contracted banana farm.

22 45. The Court found, by clear and convincing evidence, that the "conduct that has infested
23 this case with fraud, a reprehensible conduct, has been put together by several in Nicaragua,
24 including Dominguez, a Nicaraguan attorney by the name of Antonio Hernandez Ordeñana
25 (Ordeñana), together with other DBCP plaintiff law firms."

26 46. And the Court found, by clear and convincing evidence, that Dominguez and Ordeñana
27 engaged in a "strategy of fear and intimidation" that included "routinely directing witnesses in person
28 or on the radio not to communicate with Dole investigators," "target[ing] Dole investigators," and

1 "direct[ing] people to hurt the investigators on sight and to hurt anybody who came forward with
2 testimony about the illegal schemes brewing in Nicaragua."

3 47. Regarding the *Tellez* trial, around which the entire film *Bananas!** revolves, the Court
4 found, by clear and convincing evidence, that "the fraud that I have seen here has also contaminated
5 each and every one of the plaintiffs in the *Tellez* matter."

6 48. The Court stated in its oral ruling: "Millions of dollars were expended in [the *Tellez*]
7 case, and hundreds of hours of court time and attorney time were spent in prosecuting a case that was
8 built on somebody's imagination, a case that was put together by smoke and mirrors. I apologize to
9 all the jurors that had to sit through that case and make a decision based on nothing but the
10 imagination of somebody, dreamed up in a back room of some law office down in Chinandega[,
11 Nicaragua]. How sad."

12 49. In the Court's written findings of fact supporting its dismissal of *Mejia* and *Rivera*,
13 issued on June 19, 2009, the Court stated its finding, by clear and convincing evidence, that "[e]ach
14 of the Plaintiffs in *Mejia*, *Rivera*, and *Tellez*, is a product of this fraudulent scheme."

15 50. The Court also stated in its written findings of fact, that "[v]iewing the testimony of the
16 *Tellez* Plaintiffs with the benefit of the evidence of fraud collected in the *Mejia* and *Rivera* cases that
17 is now before this Court, it is now clear that those Plaintiffs and the evidence presented were all a
18 product of the fraudulent enterprise the Court has found pervasive in these cases. Had the Court had
19 the benefit of the evidence of fraud it now has when it still had jurisdiction over the *Tellez* case, it
20 would have terminated that litigation as it has in the *Mejia* and *Rivera* cases."

21 51. On May 8, 2009, MAS filed a Motion to be Relieved as Counsel for plaintiffs in the
22 *Tellez* appeal, citing ethical conflicts in light of the fraud revelations. On June 12, 2009, the Court of
23 Appeal granted MAS's motion, and entered an order allowing them to withdraw as counsel of record
24 for the *Tellez* plaintiffs. MAS filed multiple Motions to be Relieved as Counsel for plaintiffs in the
25 Superior Court in *Mejia* and *Rivera*, citing the same ethical conflicts. The Superior Court granted
26 MAS's Motions to be Relieved as Counsel on June 18, 2009.

27 52. On May 19, 2009, Dole filed a Petition for Writ of Error *Coram Vobis* in the Court of
28 Appeal seeking relief from the *Tellez* judgment on the grounds that newly-acquired evidence,

1 obtained during the discovery phase in the *Mejia* action, convincingly demonstrates that the *Tellez*
2 judgment was procured by the *Tellez* plaintiffs and Dominguez through fraud. On July 7, 2009, the
3 Court of Appeal granted Dole's petition and issued an Order to Show Cause, finding that Dole had
4 made a *prima facie* showing that *Tellez* "was procured in part by means of fraud" and remanding this
5 case for the Superior Court to consider dismissal.

6 **2. Defendants Knowingly and Recklessly Published False Statements And**
7 **Assertions That Plaintiff Killed People Through The Use Of DBCP**

8 53. *Bananas!** outrageously and falsely asserts that Dole, as a result of the use of DBCP on
9 Dole-contracted banana farms in the 1970s, knowingly, recklessly and/or intentionally caused the
10 deaths of countless Nicaraguan citizens. This false depiction is communicated by, *inter alia*:

- 11 a. The opening scene of the film, depicting a priest as he begins to play an
12 audiotape of music for a funeral procession. The film depicts the funeral
13 procession proceeding through Chinandega, Nicaragua, and images from the
14 burial of the decedent are shown, while the decedent's son, a young man who is
15 identified in the film as Byron, states in Spanish, with English subtitles, that
16 his father worked on a banana farm all of his life, and warned him never to
17 work on a banana farm because, although they provided work, exposure to
18 pesticides on the farm would result in "slow death."
19 b. The assertion, by Dominguez, that "Every time a banana worker who was
20 exposed to this chemical dies then its one more victory for Dole Food
21 Company. Every death is another victory."
22 c. The assertion, by Byron, that his father's death is another death "on [Dole's]
23 conscience. It's like a war. The general doesn't care if people die, he only wants
24 to win."

25 54. These assertions are false. There is no evidence that Dole's use of DBCP has ever
26 caused a single death anywhere. Even in the discredited cases brought by Dominguez there are no
27 claims that DBCP caused anyone's death. Only a grossly reckless person could have concluded
28 otherwise. Despite the fact that the whole focus of the *Tellez* trial — the case at the center of the

1 film — was that DBCP use in the 1970's allegedly rendered male banana workers *sterile*, Defendants
2 disregarded the fact that their "witness" on camera regarding the death of an alleged banana worker
3 supposedly caused by DBCP **was the son of one of the workers, who appeared to be in his 20's**
4 and is shown lowering his father's casket into the grave.

5 **3. Defendants Knowingly and Recklessly Falsely Implied That DBCP Was Applied**
6 **Via Airplane and Drenched People on the Ground**

7 55. *Bananas!** directly implies that DBCP was applied on Dole-contracted banana farms in
8 Nicaragua by airplane, drenching people on the ground with DBCP. This false depiction is
9 communicated by repeated footage of airplanes spraying a liquid that is impliedly DBCP on banana
10 plants. This assertion is false.

11 56. *Bananas!** directly implies that DBCP was applied on Dole-contracted banana farms
12 during the day, while banana workers were in the fields. This depiction is communicated by, *inter*
13 *alia*, repetition of images of the irrigation cannons spraying liquid on banana plants during the day;
14 repetition of images of liquid raining down from the sky over banana plants and onto the camera lens;
15 and liquid dripping from plant leaves, during the day, followed by video of a barefoot worker
16 walking through mud and puddles of liquid. This depiction is false.

17 57. The film *Bananas!** directly implies that the images of DBCP being sprayed at Dole-
18 contracted banana farms through irrigation cannons, DBCP raining down through banana plants,
19 plants dripping with DBCP, and muddy conditions with puddles of standing DBCP, are images of
20 Dole-contracted banana farms in the 1970s. These assertions are false. Plaintiff is informed and
21 believes and therefore alleges that this film footage was taken from the Nicaraguan film *Bananeras*.
22 Plaintiff is informed and believes and on that basis alleges that the footage for the film *Bananeras*
23 was shot between 1981 and 1982. Plaintiff is informed and believes and on that basis alleges that
24 footage from the film *Bananeras* does not depict Dole-contracted banana farms.

1 **4. Defendants Knowingly And Recklessly Published The False Assertion That Dole**
2 **Was Ordered To Pay \$2.5 Million in Punitive Damages**

3 58. The film asserts as a fact that Dole was ordered to pay \$2.5 million in punitive
4 damages. This assertion is false, as the Superior Court overturned the punitive damage award over
5 15 months before the screening of the film.

6 **5. Defendants Attempt To Link False Assertions Of Death And Aerial Spraying To**
7 ***Tellez***

8 59. *Bananas!**, and its specific purported statements of fact, falsely link the purported
9 wrongdoing of Dole as described above to the *Tellez* lawsuit. *Bananas!** falsely represents the *Tellez*
10 trial and its outcome, and falsely portray the claims of the *Tellez* plaintiffs as genuine, valid, and not
11 fraudulent. The film falsely depicts the *Tellez* plaintiffs as victims who were employed as banana
12 workers on Dole-contracted farms and suffered reproductive injuries and were unable to have
13 children as a result of Dole's use of DBCP on Dole-contracted banana farms in the 1970s. This false
14 depiction is communicated by, *inter alia*:

- 15 a. Footage from the *Tellez* trial, edited by the Defendants to create an unfair,
16 unbalanced, and highly inaccurate report of the *Tellez* trial. This footage
17 includes, but is not limited to portions of direct testimony from some of the
18 *Tellez* plaintiffs where they discuss their purported former work on a Dole-
19 contracted banana farm, including false testimony that, while working on
20 Dole-contracted banana farms, their bodies and clothing would be drenched in
21 DBCP.
- 22 b. Footage from the Nicaraguan film *Bananeras*, depicting liquid raining down
23 from the sky over banana plants and onto the camera lens, and liquid dripping
24 from plant leaves, followed by video of a barefoot worker walking through
25 mud and puddles of liquid. The footage falsely implies that the liquid is DBCP
26 and that the workers depicted are on a Dole-contracted banana farm during the
27 1970s, and are being drenched in the pesticide, and forced to walk barefoot
28

1 through puddles of it. This footage is portrayed as corroborating the claims of
2 the *Tellez* plaintiffs.

- 3 c. Footage of at least one *Tellez* plaintiff who begins to weep while testifying
4 that, because of his exposure to DBCP on a Dole-contracted banana farm, he
5 was unable to father children.
- 6 d. Portraying as a key point of the film a jury award of punitive damages in favor
7 of certain *Tellez* plaintiffs as a laudable victory, and not as a product of fraud,
8 even though the Court overturned that award more than 15 months before the
9 film was released.
- 10 e. Portraying Dominguez as a crusading hero who speaks the truth on behalf of
11 the *Tellez* plaintiffs despite the finding by the Superior Court that Dominguez
12 had committed a fraud on Dole and on California's courts.

13 60. The false statements made by the *Tellez* plaintiffs during the *Tellez* trial, and the
14 legitimacy of the *Tellez* trial and jury verdicts are presented by Defendants as fact, and in the context
15 of the film, the sham claims of the *Tellez* plaintiffs are depicted as valid, and not the product of fraud.
16 This portrayal of the *Tellez* plaintiffs' claims, and the *Tellez* trial and verdict is false, as demonstrated
17 by the Superior Court's findings and recent Court of Appeal ruling in *Tellez*.

18 **C. Defendants Screened The Film For The Public and Claimed The False Statements and**
19 **Innuendos Were True**

20 61. When Dole learned that Defendants planned to screen the documentary film *Bananas!**
21 at LAFF, it sent letters informing Defendants of the foregoing facts, among other things, and urging
22 Defendants to act responsibly and not publish and disseminate information that was patently false,
23 and that had been wholly discredited by the very judge who presided over the trial that is at the center
24 of the film. On the evening of, Saturday, June 20, 2009, just before the "world premiere" screening
25 of the film at LAFF, the Film Festival itself provided a lengthy written and oral statement to the
26 audience members admitting that "there seems to be little question that the version of reality that the
27 film portrays does not match the reality that emerged in the courtroom Nor, given what we now
28 know, do we believe that *Bananas!** — in its present form— presents a fair and accurate account of

1 Juan Dominguez and the *Tellez* trial." LAFF also pulled the film from the documentary competition,
2 and admitted that Defendants had relied on "unreliable evidence," namely "a lawyer who has been
3 found by the trial judge to have committed fraud on the court by recruiting and training his clients to
4 present false evidence under oath and providing false employment documents and false lab reports—
5 conduct which resulted in fraudulent testimony inside and outside of court."

6 62. But Defendants took a decidedly different tack—they stood by their film and touted it
7 far and wide. Despite the fact that Dominguez was a primary source of information for Defendants
8 in making the documentary film *Bananas!**, and despite Defendants' knowledge that the Superior
9 Court had found that Dominguez had committed a fraud on Dole and on California's courts,
10 Defendants did not alter the film so that it would accurately convey the true facts as they could have
11 done. Instead, they showed the documentary film in its entirety without meaningful alteration on
12 June 20 and June 23, 2009 and sought to milk the controversy for publicity. They added to the
13 conclusion of the documentary film "cards" which presented a few misleading snippets of the many
14 facts that Dole had given them, making it appear that Dole's criticism of the documentary film was
15 marginal and weak by comparison to the lengthy visual and oral portrayal of the falsehoods presented
16 by the fraudulent Dominguez and others. In fact, these statements falsely imply, not only that the
17 Court findings of fraud are ambiguous, and leave open the question of whether the *Tellez* litigation
18 was the product of fraud, but also that the allegations of fraud against Dominguez have been
19 fabricated. These few lines of printed text did nothing to remove or mitigate the utter falsity of what
20 was communicated by the entire 89-minute film.

21 63. Moreover, Gertten went out of his way to repudiate LAFF's disclaimer regarding
22 *Bananas!**. Gertten asserted to the audience that the documentary, as a whole, and the individual
23 statements and purported facts therein, are true, by stating, *inter alia*, the following:

- 24 a. Immediately following the reading of LAFF's statement to the audience on
25 June 20, 2009, Gertten introduced the film to the audience, saying, "The film
26 you are going to see now is how I saw . . . what I saw in front of my eyes. I
27 didn't see any fraud. I saw a very complex story unfolding in front of my
28 eyes."

- 1 b. Immediately following the reading of LAFF's statement to the audience on
2 June 23, 2009, Gertten introduced the film to the audience, saying that the
3 Defendants did not endorse the disclaimer.
- 4 c. Immediately following the screening of the film on June 23, 2009, Gertten
5 described the film as being about "morals, ethics, and corporate responsibility."

6 64. On June 24, 2009, the day after the second screening of *Bananas!** at LAFF,
7 Defendant Gertten spoke in response to questions about *Bananas!** at a filmmaker lunch and again
8 vouched for the blatantly false film. In those remarks, Gertten stated that:

- 9 a. He had "updated the film" because of the fraud findings but that the film is still
10 "totally valid."
- 11 b. The "real story" from the film is about what Dole did in Nicaragua and whether
12 Dole took responsibility for that, directly implying that the documentary film
13 had accurately reported what Dole did in Nicaragua.

14 **D. Additional False Statements Published by Defendants Of and Concerning Dole**

15 65. Since the defamatory screenings began, Defendants have continued with malicious and
16 reckless impunity to publish additional false and defamatory statements of and concerning Plaintiff in
17 interviews and through other media outlets in the face of overwhelming, objective, and judicially-
18 established evidence of falsity.

19 66. On June 23, 2009, Los Angeles radio station KPFK interviewed Defendant Gertten as
20 part of its feature story entitled, "*Bananas!*, The Film Dole Doesn't Want You To See.*" As of the
21 date of this Complaint, the interview is available for download on the Internet, at
22 <http://uprisingradio.org/home/?p=8451> (last visited July 7, 2009).

23 67. In the interview, Gertten falsely asserted that, on Dole-contracted banana farms in
24 Nicaragua, DBCP was shot by cannons into the banana fields, workers were doused in DBCP, and
25 workers walked barefoot in fields with puddles of DBCP.

26 68. In the interview, Gertten falsely asserts that Dole was "found guilty with fraud and
27 malice" in the *Tellez* trial, and that "that case is *still valid.*"

69. In addition, in the interview, Gertten falsely asserts that the Court's finding of fraud contaminating the *Tellez*, *Mejia*, and *Rivera* cases was erroneous, and in fact was orchestrated by Dole.

E. As A Result Of The Court's Rulings And Dole's Numerous Written Requests To Correct The Factual Assertions, Defendants Clearly Knew That The Statements They Made Of And Concerning Plaintiff Were False Or Acted With Reckless Disregard As To Their Falsity

70. The Court's April 23, 2009 ruling dismissing *Mejia* and *Rivera*, and the Court's findings of pervasive fraud infesting Nicaraguan DBCP cases and the misconduct on the part of Dominguez and his Nicaraguan clients were widely-publicized. Local and national media outlets, including, but not limited to, the Associated Press, The Wall Street Journal, Los Angeles Times, Bloomberg News, and Reuters, published news stories and commentary pertaining to this ruling.

71. Shortly after the Court issued its publicized oral ruling dismissing *Mejia* and *Rivera* with prejudice on April 23, 2009, Dole became aware that *Bananas!** was scheduled to premiere at LAFF.

72. In May and June 2009, counsel for Dole wrote numerous letters to the Defendants and to LAFF, notifying them of the substance of the Court's April 23, 2009 ruling, and attaching a written copy of that oral ruling. Counsel for Dole went to great lengths to present the true facts to Defendants, and repeatedly requested that the film not be screened until it had been corrected to reflect the true facts. Dole's counsel also notified Defendants of a number of false statements of fact published on Defendants' Website, www.BananasTheMovie.com, including, but not limited to the false assertion that Dole's application of DBCP was responsible for countless deaths in Nicaragua, and the false assertion that Dole used airplanes to apply DBCP.

73. On or about May 11, 2009, even former *Tellez* plaintiffs' attorney Michael Axline of MAS wrote to the Defendants. This letter, which also attaches a copy of the Superior Court's April 23, 2009 oral ruling, states that "[t]he significant new information revealed in the ruling is, I believe directly relevant to the subject matter of the *Bananas!** film. I urge you to carefully review the facts described in the ruling and take appropriate action to account for those facts."

1 81. Persons who read, heard or saw the documentary film *Bananas!**, Defendants'
2 Website, and other promotional materials for the film, including but not limited to the documentary's
3 promotional trailer and press "booklet," and other public statements made by Defendants described
4 above through the internet, radio, or any other source, reasonably understood the aforementioned
5 statements to be about Dole.

6 82. The above-described messages, of and concerning Plaintiff, are false.

7 83. The above-described statements convey a defamatory meaning to their audience. They
8 harm the reputation of Plaintiff as to lower it in the estimation of the community and deter third
9 persons from associating or dealing with Plaintiff and entice further baseless fraudulent lawsuits
10 against Dole.

11 84. It was Defendants' expectation and intent that this defamatory matter would be
12 republished and further disseminated to the public at large.

13 85. Defendants' publications of these false and defamatory statements of and concerning
14 Plaintiff were not privileged.

15 86. Defendants published the above-described defamatory statements with actual malice—
16 i.e., with knowledge of their falsity, or, alternatively, with a reckless disregard for their falsity.
17 Indeed, Plaintiff repeatedly brought the falsity of this film to Defendants attention and repeatedly
18 requested that Defendants not release such a patently flawed and false film to the public. Yet
19 Defendants published these statements and screened this film in the face of findings and rulings
20 discrediting the film's entire premise from the very judge who presided over the trial depicted in the
21 film. LAFF itself recognized that the film was false, discredited, and did not reflect reality. And
22 before the second screening on June 23, the Hollywood Reporter observed, "This film in its current
23 form is too compromised for any kind of theatrical and TV distribution." None of this deterred
24 Defendants from the malicious defamation of Plaintiff. Among other things the film repeats and
25 endorses false and fabricated information, it contains allegations that are so inherently improbable
26 that only a reckless person would disseminate them, it has been published despite obvious reasons to
27 doubt the veracity of the informant upon whom the film is based and the accuracy of his reports, the
28 Defendants failed to interview key witnesses and obvious sources—such as Dole officials and

1 personnel—and engaged in purposeful avoidance of the truth, admitted bias about the story, and
2 published in the face of objective, overwhelming evidence of falsity.

3 87. As a result of Defendants' publication of these false and defamatory statements with
4 actual malice, Plaintiff has suffered damages in the form of loss to reputation, lost profits, and
5 increased costs.

6 88. Defendants also acted with "malice" as defined by Civil Code section 3294 and
7 engaged in highly reprehensible and despicable conduct warranting punitive damages.

8 **SECOND CAUSE OF ACTION**

9 **(DEFAMATION – SLANDER *PER SE*)**

10 89. Paragraphs 1 through 76 are incorporated by reference as though fully set forth herein.

11 90. The documentary film *Bananas!**, Defendants' Website, and other promotional
12 materials for the film, including but not limited to the documentary's promotional trailer and press
13 "booklet" as well Defendants' other public statements, including oral statements that republish the
14 falsehoods described above, as a whole, and specific statements of fact published therein, purport to
15 be factual.

16 91. The documentary film *Bananas!**, Defendants' Website, and other promotional
17 materials for the film, including but not limited to the documentary's promotional trailer and press
18 "booklet" as well Defendants' other public statements, including oral statements that republish the
19 falsehoods described above, were intentionally communicated to the public via public screenings of
20 the documentary at LAFF, the internet, public meetings, and radio.

21 92. Persons who read, heard or saw the documentary film *Bananas!**, Defendants'
22 Website, and other promotional materials for the film, including but not limited to the documentary's
23 promotional trailer and press "booklet" as well Defendants' other public statements, including oral
24 statements that republish the falsehoods described above, reasonably understood the aforementioned
25 statements to be about Dole.

26 93. The above-described messages, of and concerning Plaintiff, are false.

27 94. The above-described messages, of and concerning Plaintiff, charge Plaintiff with
28 killing people through the use of the pesticide DBCP.

1 95. The above-described messages, of and concerning Plaintiff, directly injure Plaintiff by
2 imputing conduct with reference to Plaintiffs' profession, trade and/or business that has a natural
3 tendency to lessen its profits.

4 96. The above-described messages convey a defamatory meaning to their audience. They
5 harm the reputation of Plaintiff as to lower it in the estimation of the community and deter third
6 persons from associating or dealing with it and entice further baseless fraudulent lawsuits against
7 Dole.

8 97. It was Defendants' expectation and intent that this defamatory matter would be
9 republished and further disseminated to the public at large.

10 98. It was Defendants' expectation and intent that this defamatory matter would lessen
11 Plaintiff's profits.

12 99. Defendants' publications of these false and defamatory statements of and concerning
13 Plaintiff were not privileged.

14 100. Defendants published and spoke the above-described defamatory statements with
15 actual malice — i.e., with knowledge of their falsity, or, alternatively, with a reckless disregard for
16 their falsity. Indeed, Plaintiff repeatedly brought the falsity of this film to Defendants' attention and
17 repeatedly requested that Defendants not release such a patently flawed and false film to the public
18 without substantial modification. Yet Defendants published these statements and screened the film in
19 the face of findings and rulings discrediting the film's entire premise and the key source—
20 Dominguez—issued by the very judge who presided over the trial depicted in the film. LAFF itself
21 recognized that the film was false, discredited, and did not reflect reality. And before the second
22 screening on June 23, the Hollywood Reporter observed, "This film in its current form is too
23 compromised for any kind of theatrical and TV distribution." None of this deterred Defendants from
24 the malicious defamation of Plaintiff. Among other things the film repeats and endorses false and
25 fabricated information, it contains allegations that are so inherently improbable that only a reckless
26 person would disseminate them, it has been published despite obvious reasons to doubt the veracity
27 of the informant upon whom the film is based and the accuracy of his reports, the Defendants failed
28 to interview key witnesses and obvious sources—such as Dole officials and personnel—and engaged

1 in purposeful avoidance of the truth, admitted bias about the story, and published in the face of
2 objective, overwhelming evidence of falsity.

3 101. As a result of Defendants' publication of these false and defamatory statements with
4 actual malice, Plaintiff has suffered damages in the form of loss to reputation, lost profits, and
5 increased costs.

6 102. Defendants also acted with "malice" as defined by Civil Code section 3294 and
7 engaged in highly reprehensible and despicable conduct warranting punitive damages.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

10 103. For general damages;

11 104. For punitive damages;

12 105. Upon a verdict or judicial finding in favor of Dole on its defamation claim, for a
13 permanent injunction enjoining Defendants from showing the documentary film *Bananas!** to the
14 public; from showing the promotional trailer for the documentary film *Bananas!** to the public; from
15 publishing the promotional booklet for the documentary film *Bananas!**; from displaying the website
16 for the documentary film *Bananas!** on the internet; and from giving interviews promoting the
17 documentary film *Bananas!** in which any portion of the accusations made against Dole in the
18 documentary film *Bananas!** are republished;

19 106. For interest on Plaintiff's damages to the date of judgment;

20 107. For costs of suit incurred herein; and

21 108. For such other relief as the Court may deem just and proper.

22 DATED: July 8, 2009

23 GIBSON, DUNN & CRUTCHER LLP
24 Theodore J. Boutrous Jr.
25 Scott A. Edelman
26 William E. Thomson

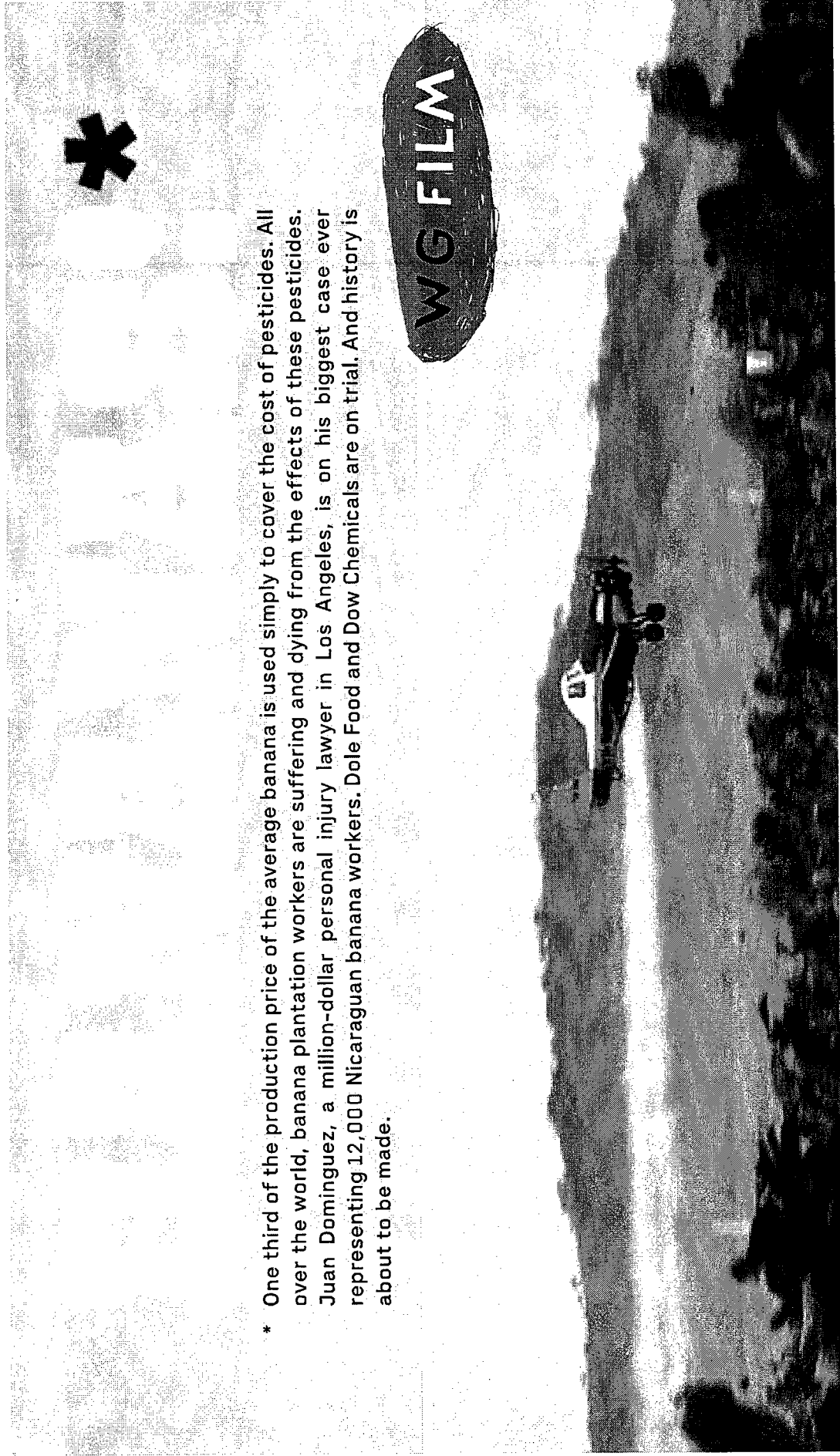
27 By: 

Theodore J. Boutrous Jr.

28 Attorneys for Plaintiff,
Dole Food Company, Inc.

100689454

EXHIBIT A



* One third of the production price of the average banana is used simply to cover the cost of pesticides. All over the world, banana plantation workers are suffering and dying from the effects of these pesticides. Juan Dominguez, a million-dollar personal injury lawyer in Los Angeles, is on his biggest case ever representing 12,000 Nicaraguan banana workers. Dole Food and Dow Chemicals are on trial. And history is about to be made.

WG FILM: Västergatan 23, SE-211 11 Malmö, Sweden. Tel: +46 40 23 20 98, +46 40 781 50, fax +46 40 23 35. film@wgfilm.com, www.wgfilm.com.

BAMWAS!

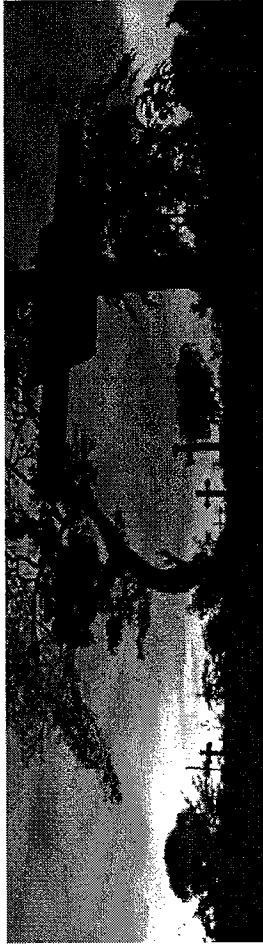
* The World Health Organization has found DDT levels 700 times higher than the recommended limit in breast milk in Chinandega, Nicaragua, rendering the area an ecological disaster zone.



Hazel with a friend at her father's funeral



Byron buying his father Alberto Rosales



Workers at a banana plantation, below: The cemetery at Chinandega, Nicaragua

BANANAS!*

* In the area of Chinandega, Nicaragua, 10,000 men have been exposed to pesticides and left sterile, 3,000 farm workers need kidney transplants, and a large number of the women have cancer.

Another banana worker is being buried in a small northern town in Nicaragua. For his whole life, Alberto Rosales used his machete to remove weeds from below the banana plants. His last years were filled with pain, a body that was itching all night—and in the end his kidneys stopped working.

Inside the church, filled with friends and family, Father Bayardo begins his sermon. It's not about Alberto Rosales after awhile. It's about pesticides. He is accusing landowners and US transnationals of immoral practices which he says cause the death and suffering of many members of his community.

The whole region of Chinandega is an ecological disaster zone. The pesticide spray has left its mark everywhere. The soil, the water, the animals, the food of the people are all affected. The level of pesticides in breastmilk is 700 times higher than is acceptable. Some say it will take 200 years for the ground to heal itself enough to produce natural crops again.

One of the pesticides, a DBCP-based compound called Nemagon, was banned in the USA in 1977 for causing male sterility. Standard Fruit—now Dole—continued to use the pesticide in its plantations outside the USA up to 1982.

ACCIDENTANTES

“EL MEJOR ABOGADO”

JUAN JOSÉ DOMÍNGUEZ

800-877-7773



Six US law firms saw an opportunity and opened offices in Nicaragua. And in 2002, Dole, Dow Chemicals and Shell Chemicals were ordered by a Nicaraguan court to pay \$430 million to 583 workers. All three companies refused to pay.

Enter Juan Domínguez.

Domínguez, a personal injury lawyer and a member of the “Million Dollar Club” of attorneys in Southern California, is making history. As the legal representative of over 12,000 Nicaraguan banana workers, he is the first attorney ever to force American corporations to take responsibility for actions they have done outside US borders.

This case has been followed by experts and companies all over the world. If Domínguez is successful, it could rock the economic foundations of Dole and Dow, and it would open the US courts to other global victims of US-based multinationals. It would represent a new day in international justice, and there are 6,800 cases of a similar nature on file and coming up next.

TREATMENT

BANANASI is a film filled with human drama, curiosity, and the humour that comes from life-changing situations.

It is a large and complex story. It is about the disturbing global politics of the banana, the incredible gap between our world and what we call the third world, scientific choices, corporate behaviour, and about the very food we eat. We are choosing to tell this story simply, through characters in two locations. These characters will form the human epicentres of the film.

We start in a small town in northern Nicaragua. A hall is packed with banana workers who have been exposed to and affected by pesticides for generations. On stage the Cuban-American super lawyer Juan Dominguez chants:

Unidos!

Triunfamos! answers the crowd.

"United—we win! United—we win!"

Juan Dominguez gives many speeches around Nicaragua. He needs more plaintiffs confronting Dole Food Company and Dow Chemicals. He now represents 12,000 banana workers in Nicaragua. The job is complicated; he must convince the plaintiffs that he's the best lawyer. Then, find the best individual cases and witnesses to send up to the trial in Los Angeles

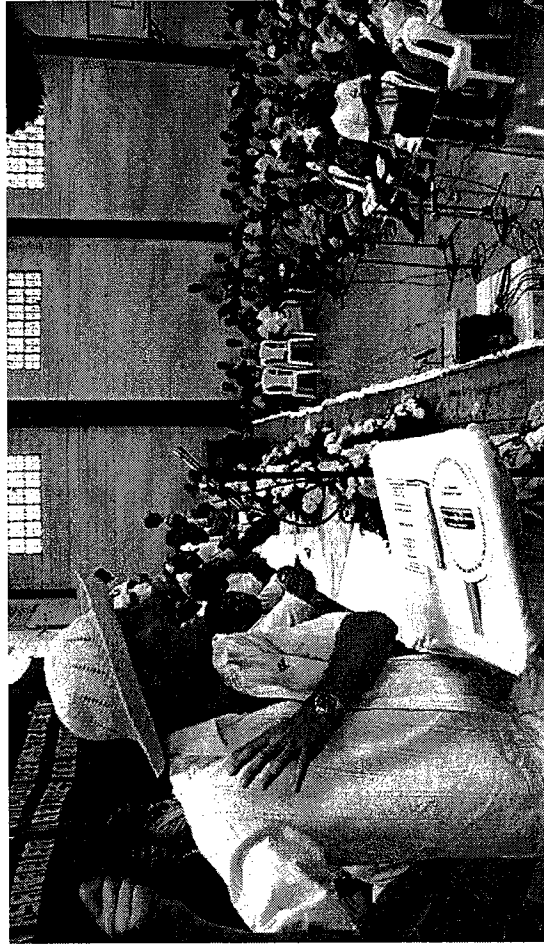
Superior Court—the first trial ever when a huge US corporation faces foreign farmworkers in a trial on American soil.

Juan Dominguez is doing well, his latino blood gives him strength. He acts more like a presidential candidate than a lawyer, and to keep his clients happy he organizes them like in a political party with "captains" representing every pesticide-affected community in the country. Every month he buys time on the biggest Nicaraguan radio-station, updating his clients on the case.

In the local graveyard weeks before, the Rosales children have just buried their father. Alberto Rosales was a banana worker most of his life, like many of his relatives beforehand. Years of exposure to pesticides—sprayed liberally over the banana crops, and the people in the shanties that live right alongside those fields—wore his body down to nothing.

The children, Byron, Orban, and Hazel must now tell their mother Carmen that her husband has died. They have avoided telling her, afraid the grief would be too much for her as she was weak undergoing chemotherapy treatments in Managua the day her husband dies.

Carmen also worked in the banana plantations. She left after losing her two first babies. The doctor told her if she wanted to have children at all, she had to leave the poisonous environment of her banana-packing job.



Juan Dominguez giving a speech in Estelí, Nicaragua

Making his way through the town, her son Byron sees the effects these pesticides have had on their neighbours. Many of them are bananeros, either carrying 70 kilo bundles of bananas through the fields on their backs, or working long hours in the packing plant. Birth defects, cancers, many homes have been touched by this grim industry. Even in this place, Byron hears the drone of the airplanes spraying the crops nearby.

Byron returns to the family house along the main road. Heavy trucks make the house shiver, where he lives with his mother, sister and his own small family. Carmen works from her pedal-operated sewing machine. Byron is now a math teacher, also giving extra classes at home to the local children –he hopes this will give him a chance to go to architecture school, and for 18-year old Hazel to become a psychiatrist. But he also knows these are impossible dreams.

This is an extremely poor and affected family. But they are dignified, religious people.

One day Carmen finally returns to the cancer clinic in Managua. The doctor gets angry with Carmen for not showing up for her treatments in months. It's not that Carmen doesn't trust doctors; she was struck by grief and the two hour bus ride to Managua is both costly and exhausting. In Managua she lives in dormitory behind the hospital.

There are many families like this all over northern Nicaragua. Families who have worked the plantations for generations, and are now dealing with the consequences.

Through Byron and his family, we meet others whose lives intersect their story, and the stories of others like them—Cesar Garcia, the foreman of the pesticide spray team; Father Bayardo Oton, the outspoken local priest; Dr. Luisa Caballero, a medical doctor who studies the effects of

pesticides on water; and the union leaders who say they are representing the best interests of the banana worker families.

Cesar Garcia travels to Los Angeles to give witness. In court, parts of an old documentary are shown and Cesar points out the locations and the huge water guns that sprayed the pesticide 150 meters in one single shot. This documentary, "Bananeras", shot by Frank Pineda 1982 in 35mm. It shows evidence of the harsh realities of the past decades. Nothing much has changed in the plantations over the years.

When the court case is in its closing arguments, the law office in Chinandega is packed with people. Byron and his mother now stand in the hall with the banana workers and relatives who have signed on with Juan Dominguez. As they listen to the transmission, they hope this will have impact on life in their community.

The second main character we will follow is Juan Dominguez, a Cuban-American personal injury lawyer famous in LA for promoting his law firm with his image and the words "ACCIDENTES" on buses and billboards throughout the city. He has made his career as an "ambulance chaser" and has been designated as a "Super Lawyer" by the US Super Lawyer Club.

"Back in the schoolyard in Cuba, I learned how to fight the bigger boys," Dominguez says. "And at the end of the day, if my legacy is winning this court case and advancing international justice, rather than having a status or a building in my name, I'd be very happy with that."

In his 23rd story penthouse office in downtown Los Angeles, there is an oil portrait of himself surrounded by degrees and honors. The other side his war room has boxes of documents and testimony relating to this case that line the walls and floors.

Dominguez is in an intense discussion with his colleague Duane Miller, honing their prosecuting strategy. Miller is the only court attorney in US history to have won a DBCP case, and during trial dates the courtroom is very lopsided. It's only Miller against eight attorneys from Dow and Dole. Yet Dominguez is confident that they will win.

Something has happened to Dominguez because of this case. This man—the one with a bust of Caesar in his lush office and a 24-hour 1-800 line for accident victims—has gotten political. There's an awakening happening here, and this case has become about more than just righting a wrong for him. It's a personal statement now.

In a small hotel in the poor downtown area close to the court, 12 banana workers proven to be sterile, plus other witnesses, are waiting for their turn to testify.

Meanwhile every second weekend Dominguez broadcasts on a paid radio program, with the Rosales family and the rest of the workers in Nicaragua listening, saying that they will break the back of the transnationals.

Every session of the court is broadcast over the internet. During the closing arguments, Dominguez and his entire latino staff watch the video projected on the wall. He's excited. It's like a boxing match, complete with cheering every time his colleague Duane Miller hits an important point against the defendants.

In the office in Chinandega, it would be a similar scene, but not many of the viewers understand English.

The arguments are now over. The jury starts to deliberate...and the waiting begins.

November 15, 2007. The jury has reached its final verdict. Dow and Dole

are held liable for damages inflicted upon the workers, and Dole is also found to have acted with malicious intent. In total they owe over six million dollars to six of the twelve workers.

And now the spin begins. Dole and Dow's lawyers say the case is a failure for Dominguez and the workers, as the judgment will not even pay for Dominguez's costs.

Dominguez's team says that the workers didn't want to get rich off the case, but rather wanted to show that Dole and Dow were responsible for their condition.

At the party Dominguez holds after the verdict, it's clear this is a conflicted result. The companies are held responsible, but how much difference will six million dollars make to two companies that are economic leaders in their respective fields?

Dole and Dow does everything to delay paying the money. But Juan Dominguez and his colleagues have a strategy. A new trial opens in Nicaragua this spring and a new case is due to open in Los Angeles early 2009.

During the entire trial process and beyond, we have followed Dominguez's team behind the scenes, and Rosales' and the workers' families on the ground in Nicaragua.

When the court case closed, the world press was present. We have been there from the beginning and we have full access to all court material and all the key players.

STYLE



The story outlined above—which follows the Rosales family, the lawyer Juan Dominguez, and the unique people they meet up with along the way—forms the heart, or the ‘first layer’ of the film, and will be told with a humanistic, verité approach.

At strategic times in the film, we will also use a graphically-appropriate ‘second layer’ which will showcase, in a concentrated way, the cultural history, science, and economics of the banana.

We will also be able to graphically showcase scientific and economic facts to underline particular parts of the narrative.

Bananas have never been connected with death, pesticides and poverty. More often than not they are seen as benign and healthy. Bananas are one of the most popular fruits in the western world.

Images of bananas as a ‘happy fruit’, abound in media. Laurel and Hardy slipping on a banana peel. Carmen Miranda dancing with her hat of bananas and other fruit. The abundant, sometimes eerily ironic catalogue of banana advertising. All of this, strategically used, will add speed and resonance to the story, adding a macro-level of humor and politics to accompany the drama of the developments in Nicaragua and Los Angeles.

AUDIENCE ENGAGEMENT

BANANAS! has the benefit of being a human story, against a large backdrop, that resonates through the lives of all of us. Like many other parts of the world, the banana is one of the first foods that Americans feed their children. Therefore we anticipate a keen interest in this story from angles including food security, health care, cultural/Central American issues and legal and current events.

In addition, although much of the action takes place in Nicaragua, the character of Los Angeles ‘super lawyer’ Juan Dominguez will act as a ‘relationship point’ for viewers unfamiliar with Central American culture.

We are developing an appropriately targeted PR campaign and web strategy to tap into these various angles of the story, and will use this to work with our distributors and broadcasters to maximize audience potential. Part of this campaign has started now, by engaging teams from the University of Miami and UCLA.

BANANAS!

• The pesticide Nemagon was banned in the USA in 1977 for causing male sterility. Standard Fruit—now Dole—continued to use the pesticide in its plantations outside the USA up to 1982.

BANANAS!

• Mr. Murdock, chairman and sole owner of Dole Food Company, Inc., established the Dole Nutrition Institute to “Feed the World with Knowledge.” The Institute focuses on education and research regarding the potential of a plant-based diet to promote health and prevent disease. He also opened the WellBeing Institute, introducing the Dole Scale, which evaluates each food for its total nutritive value, emphasizing antioxidant values of fruits and vegetables to nurture health and longevity.

CURRENT STATUS

Project has completed three development shoots and is now in production. Production support comes from the Sundance Documentary Fund, Swedish Film Institute, Danish Film Institute, ITVS, ZDF-ARTE, YLE, NRK, SVT, DR, VPRO, Odisea, TSR, Film i Skåne, Nordic Film and TV Fund, and the MEDIA Programme.



WEB STRATEGIES

Our web team has over 10 years of experience in cutting-edge interactive media relating to documentary material.

A range of interrelated web projects will start early and will play a significant role in launching the film and add greatly to the film when in Theatres, on Television and later in the DVD market. In the initial stage a number of strategies focus on creating a buzz and building participation. These strategies include the formation of strategic, proactive partnerships with international artists who have high profiles on the web, and whose work gels with both the film and their audiences.

By the time the film premieres, rich content applications will add value to audience, offer possibilities for involvement and prolong the interest for the film

CREDITS

WG Film AB

Since 1994, producing and developing author driven documentaries. In Sweden famous for local stories with universal understanding. Also active in the international co-financing world with five documentaries sold to over forty broadcasters in 25 countries.

Fredrik Gertten, filmmaker & producer at WG film, Sweden

Fredrik Gertten speaks fluent Spanish and has worked as a journalist in Nicaragua in the eighties and nineties.

Selected films, producer: *Mikbar*, Dir. Terese Mörnvik & Ewa Einhorn, 2007; *Thin Ice*, Dir. Håkan Berthas 2006; *Belfast Girls*, Dir. Malin Andersson, 2006; *Boogie Woogie Daddy*, Dir. Erik Bäfving, 2002.

In development: *Cassady Credentials*, documentary, Dir. Maria Ramström & Malin Korkeasalo; *Forest*, documentary, Dir. Helena Nygren & Jacob Andrén.

Selected films, producer & director: *The Socialist*, *The Architect* & the *Twisted Tower*, 2005; *An Ordinary Family*, 2006; *Just a piece of steel/ Bye Bye Malmo*, 2003; *Walking on Water*, 2000. Co-directed with Lars Westman; *The Way Back-True Blue2*, 2002, co-directed with Magnus Gertten and Stefan Berg.

Contact: fredrik@wgfilm.com

Margarete Jångård, producer at WG Film, Sweden

Employed at WG Film since five years as producer. Has been in the media business for 20 years. Worked as freelance film worker for some years, at SVT Drama and commercial information films. EAVE graduate 2005.

Projects: *Mikbar*, Dir. Terese Mörnvik & Ewa Einhorn, 2007; *Thin Ice*, Dir. Håkan Berthas 2006; *Belfast Girls*, Dir. Malin Andersson, 2006; *The Socialist*, *The Architect* & the *Twisted Tower*, Dir. Fredrik Gertten, 2005;

An Ordinary Family, Dir. Fredrik Gertten, 2005.

In development: *Cassady Credentials*, documentary, Dir. Maria Ramström & Malin Korkeasalo; *Forest*, documentary, Dir. Helena Nygren & Jacob Andrén. Contact: margarete@wgfilm.com

Bart Simpson, producer, Canada

Bart Simpson is best known as producer of the feature documentary *The Corporation*, which has won over 25 international awards and is the highest-grossing domestic documentary in Canadian history. It played theatrically in over 10 countries and ran for over 6 months on screens in Canada and the UK before a popular television premiere. Zeitgeist Films distributed the film in the United States. Bart is also immediate past Chair of the Documentary Organization of Canada (DOC).

Selected credits: *Moebius Redux: A Life In Pictures* 2007; *The Corporation*, 2004; *Two Brides and a Scalpel*, *Diary of a Lesbian Marriage*, 2000; *Visits with Max*, director/producer, 1996.

Contact: +1 709 753 1518, bart@wgfilm.com

Frank Phaeda, photographer

Worked in more than 100 productions, documentary and features in 35mm, 16mm and video. Collaborated with some Internationals News Agencies and TV Channels as: NBC, ABC, TVE, BBC, Channel 4, etc. In 1990 sets up Camila Films, an independent production company in Nicaragua. *The World Stopped Watching*, Dir. Peter Raymond, 2002. *The lovers of San Fernando*, Dir. Peter Torbjörnsson, 2001, Documentary 16mm, SVT. *Machos*, Dir. Lucinda Broadbent, 2000. Produced by BBC, London. *Carla's Song*, Dir. Ken Loach, 1995, feature film, 35mm.

Jesper Osmund, editor

was born in 1964 and works as an editor since 1991. He has edited 6 fiction feature films, about 35 documentaries and more than 600 commercials. Documentaries include: *An Ordinary Family*, Dir. Fredrik Gertten/WG Film, 2005; *Selection of IDFA Amsterdam*, Thessaloniki, Zagreb, Buenos Aires, a.o. *The Well*, 2004 Dir. K. Petri/Charon Film; *Nomination to the Swedish Golden Bug*, Festivals of Toronto, Montreal, Seattle, Amsterdam a.o.

Nils Pagh Andersen, narrative consultant

Denmark's best documentary film editor with more than 250 films of widely different categories. Some examples of his award winning work are: *Pathfinder*, 1986. Dir. Nils Gaup. Feature nominated for an Oscar: *Walking on Water*, 2000 Dir. Fredrik Gertten & Lars Westman; *Three rooms of Melancholia*, 2004 Dir. Pripj Honkasalo; *The Winner of The Grand Prix of Krakow*, One world award, *Krystalle: Prostitution behind the Veil*, 2004 Dir. Nahid Persson, Emmy-nominated, *The Grand Prix of Odense Film Festival* and Nordic Panorama; *The German Secret*, 2005 Dir. Lars Johansson; *Flying Confessions of a Free Woman*, 2006 Dir. Jennifer Fox.

Nathan Larson AKA Hot One Inc, film composer /musician /producer Music for film, television and commercials, including among many others: *Boy's Don't Cry*, 1999, Dir. Kim Pierce, Fox Searchlight; *A Love Song For Bobby Long*, 2004, Dir. Shannae Gabel, El Camino/Lion's Gate; *Dirty Pretty Things*, 2003, Dir. Stephen Frears, Miramax; *Phone Booth*, 2003, Dir. Joel Schumacher, Fox (Additional music); *Velvet Goldmine*, 1998, Dir. Todd Haynes, Miramax.

Joe Aguirre, photographer

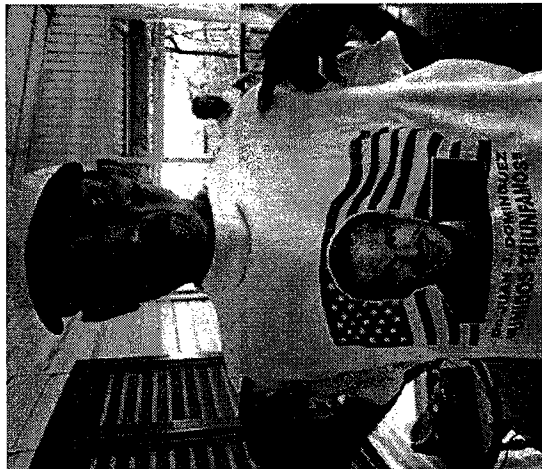
Joe Aguirre is a freelance camera man based in Los Angeles. In six years of working with director/camera man Samuel Bayer, Joe has collaborated in the filming of commercials for ESPN, Pepsi, Nike, and Microsoft, and music videos for Green Day and My Chemical Romance. He was a camera man on upcoming Sony releases *Quarantine* and *Obsessed*, and on Jack Johnson's 2008 European Tour documentary. *Next Year Country*, an MTV5-funded documentary he directed and shot, will be his directorial debut.

Rebecca Méndez, designer and creative director

Professor at UCLA Design | Media Arts, is a brand design expert, formerly leading the Brand Integration Group at Ogilvy & Mather in Los Angeles. Has her own design studio Rebecca Méndez Design since 1996, where she works for clients such as architects Thom Mayne and Frank Gehry, and motion graphics powerhouse Imaginary Forces. Méndez is also an exhibiting artist. She has participated in numerous exhibitions worldwide and her work is represented in public and private collections including the San Francisco Museum of Modern Art, The National Design Museum, New York, Denver Art Museum, and Museo Jose Luis Cuevas, Mexico City.



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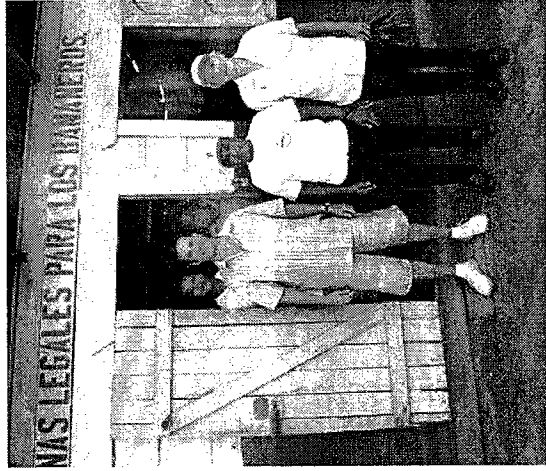
A client showing his new 'Unidos Trunfamos' (United We Win) T-shirt



Carmen and Byron listening to the radio report on the verdict in Los Angeles.



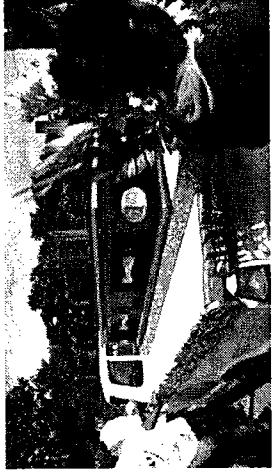
Active: Juan Dominguez framed newspaper article, 2005. Pending case files in Nicaragua.



Juan Dominguez at a field office in Bilwi, Nicaragua.

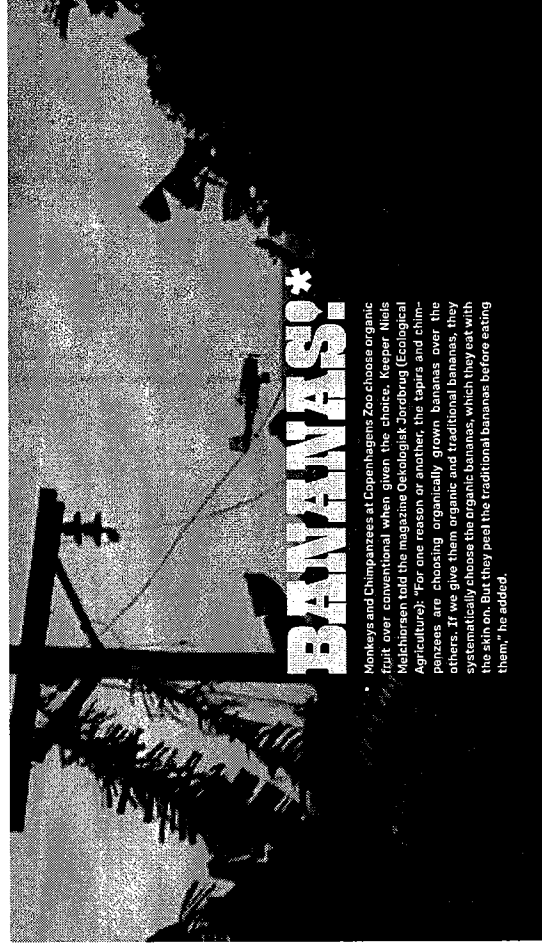


Active: Empty barrels of Noragon left to rot, 2006. Byron watching the court case



Active: Family at Mr. Alberto Rosales' funeral, 2006. Mr. Alberto Rosales on the way to his grave.

BANANAS!*
GONE
BANANAS!*
TOP
BANANAS!*
YOUR



• Monkeys and chimpanzees at Copenhagen Zoo choose organic fruit over conventional when given the choice. Keeper Niels Melchiorson told the magazine Økologisk Jordbrug (Ecological Agriculture): "For one reason or another, the tapirs and chimpanzees are choosing organically grown bananas over the others. If we give them organic and traditional bananas, they systematically choose the organic bananas, which they eat with the skin on. But they peel the traditional bananas before eating them," he added.

BANANAS!



* A documentary about the disturbing global politics of the banana, the incredible gap between our world and what we call the third world, scientific choices, corporate behaviour, and about the very food we eat.

WG FILM



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EXHIBIT B

DVD

EXHIBIT C

BANANAS!*

Interview with director Fredrik Gertten with Orvar Säfström

"I show the real world. But it's the world seen through my eyes, and there are different ways to depict that," says Fredrik Gertten – filmmaker and journalist.

Fredrik Gertten is one of Sweden's most prominent documentary film makers. He is well known in his native country for films with a strong connection to the Malmö-region including Architectural projects like the Turning Torso skyscraper (***The Socialist, the Architect and the Twisted Tower***), the Öresund bridge (***Walking on Water***) and the local soccer team (***True Blue***).

An ordinary family is a story about a destitute middle class family in Argentina. It received moderate attention in Sweden, however, it became Gertten's greatest international success with standing ovations from South Korea, the US. to Istanbul and one million television viewers in Poland.

"I am interested in the universality of a story, and since we finance our films internationally they naturally stretch outside the Swedish border. I want to make films that everyone can understand. None of our films were made for critics or cineastes. One of the best things in my line of work is when people approach me in the street to talk about one of my films."

Gertten's latest project BANANAS!* tells the story of how 12 banana plantation workers from Nicaragua sue the Dole company, one of the biggest food corporations in the world. Dole is accused of knowingly using a banned pesticide in the 70's that may be linked to severe health problems and infertility among workers.

"What amazed me most is the audacity of a company like Dole to use a pesticide that was known to cause sterility. I wanted to learn more."

The Nicaraguan worker's situation is by no means an isolated problem. During production of BANANAS!*, Gertten was contacted by several other Dole workers with similar stories, in regions as far apart as the Ivory Coast and the Philippines.

"The bananas we've been eating all these years look to have caused horrendous suffering for these people. To me it is very unsettling to find that out now. Who knows what chemicals are used on bananas today? Who knows if any consequences will be felt in 30 years? I want to highlight the moral dilemma - that the food we eat can have a high price tag for others."

Fredrik Gertten started WG-Film in 1994 together with documentary filmmaker Lasse Westman. During the initial years they lived off external projects, investing all company assets in technical equipment, cameras and editing tools.

"It's easier to get started nowadays, since equipment is so much cheaper. In most cases however, people make one or two films, then they get themselves a "real" job."

Before venturing into filmmaking, Fredrik Gertten was a print journalist focusing on long, reflective articles from around the globe. An important aspect of his work can be traced back to those years - his fascination for "the little man."

"I'm interested in telling the story of a nation through one single person in the street. That is more rewarding than meeting kings and presidents. For me, one of the greatest tasks of the political documentary is to show "the others". To portray them as fellow human beings we can respect, and not just as victims."

Fredrik makes no attempt to hide that the casting is a vital part of his work. It is an often underestimated or even scorned process in the documentary world.

"A great story without a great main character leaves you with a less than great film. It's as simple as that."

The first attorney to bring a case in front of a US jury is Juan Dominguez, a Spanish speaking Cuban exile. In the film, Dominguez bridges the wide gap between the rich world and the poor workers, even though he was just a child when he arrived in the US. Juan is an Los Angeles based personal injury lawyer, specializing in automobile accidents and with a primarily Latino client base. The process against Dole is significantly larger than any case he's previously taken on.

"We looked up his (Dominguez) web page and it was almost too good to be true. We couldn't have written a better character ourselves. Duane Miller, Juan's partner in this venture, is his exact opposite. Miller may be a more talented trial lawyer and specializes in court cases dealing with toxins and chemical pollution of the environment, but his reluctance to appear in the film is obvious. He wanted to focus completely on the case. That is a very reasonable position, however it does not translate into a great film."

Gertten does not shy away from emphasizing certain character traits in the film with a facial expression, a sigh or a grin. At the same time he distances himself from what he calls "reality show dramaturgy" to project set roles onto the people involved.

"My guideline is that the subjects should be able to recognize themselves. Dole's defense attorney Rick McKnight for instance is in many ways the bad guy in the film, but he is also portrayed as proud, sharp and alert. I don't think he would object to that image of him."

This illustrates one of Gertten's convictions, not to create monsters on the screen. In BANANAS!* this is never more clear than when Dole's former CEO David Delarenzo enters the witness stand. He was directly responsible on site in Nicaragua in the 70's and gave the order to keep using pesticides already banned in the US.

"And in comes this nice little man with a Nicaraguan wife. The caricature with a tall black hat and a dollar grin seldom fits. Maybe the film would have packed a bigger punch if I had painted everything black and white, but it is just that kind of complexity that fascinates me."

Gertten has become more and more secure in his film making. Where he would previously keep the cameras rolling to make sure no great shot was lost, he now works in a more deliberate and controlled fashion. Despite this, the raw material for BANANAS!* consisted of 50 days of court hearings and 60-70 hours of other footage. First Danish editor Jesper Osmund and dramaturgy consultant Niels Pagh went through everything. Then a strategic meeting was held discussing a possible structure. How does the film open? How do we portray Juan? If the audience doesn't quite like him, will they still root for the plantation workers?

"US documentaries often begin with a really long cut. In the editing room they initially tend to have a version running several hours, and then they gradually trim it down to an acceptable length. Our method is instead to isolate potential scenes. First, situations with Juan through the entire narrative and next the Nicaraguan family, then Duane. We create several parallel threads that we spend two to three months working on, then we weave these together. This leaves us with an initial running time quite close to the final goal."

A lot of the drama is created in editing, but the research and filming sets the tone for the entire film. For Gertten, it is about knowing what he is after. Asking the right question, but also being in the right place at the right time.

"Sometimes you feel instinctively that a shot will end up in the final cut. I sat in the courtroom when Rick McKnight held his final argument. I had been in Nicaragua, I had met the affected workers and I was intensely provoked by his mocking banter. I wanted my audience to feel the same thing."

The final arguments are followed by another scene that puts a sharp focus on our own part in this story. To celebrate, Juan sends an employee to buy some liquor and mixers, and he returns with a bag full of Dole juice.

“That scene is absolutely real, and it clearly shows how trained we are as consumers. If not even these people think about what juices they buy, what would it take for the rest of us to break the pattern?”

Gertten points out that even though Dole obviously has an enormous responsibility for the lives of these people, our own attitudes are important as well.

“I eat less bananas now, but I consciously try not to quit entirely but instead choose Fair trade products. I don’t believe in being 100% orthodox. That goes for my private life as well as my films. I don’t want to preach morality and BANANAS!* shouldn’t leave the audience feeling guilty and depressed. Change does not come from despair, but from seeing a light at the end of the tunnel, that our actions actually matter.”

BANANAS!*

"The film Dole Food Co. doesn't want you to see"
- Uprising Radio

Home News The film The Facts Resources Press Contact

The Facts



May 5 2009

What is Nemagon?

I was 21 years old, what did I know? Nobody told us anything. For two years, I applied Nemagon wit... »



May 5 2009

Fairtrade unpeels the banana trade

At noon the 6th of March, the Go bananas for Fairtrade campaign was launched. Thousands of UK citize... »



May 1 2009

Pesticide lawsuits – a DBCP overview

Background During the 1970s, the pesticide DBCP (Dibromochloropropane) was used extensively on ... »

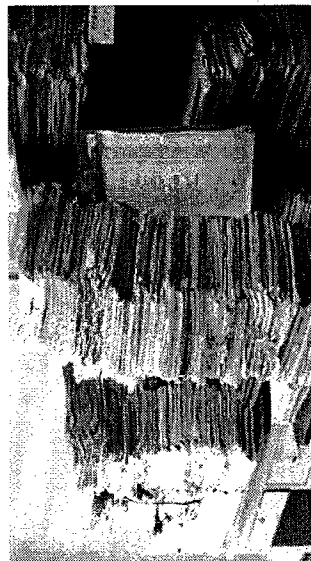


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May 5 2009



DBCP case files

Pesticide lawsuits – a DBCP overview

Background

During the 1970s, the pesticide DBCP (Dibromochloropropane) was used extensively on banana plantations all over the world. DBCP, http://www.bananashempire.com/pesticide-lawsuits-%e2%80%93-a-dbcp-overview/#article

Screenings

Filmi Båstad
(Exclusive Preview)
Båstad, Sweden
August 1, 2009

Los Angeles Film Festival
California, USA
June 18-28, 2009

RADIO BANANAS!



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originally synthesized in 1955, had many brand names, such as *Nemagon* and *Fumazone* (read more about DBCP here).

DBCP was used to protect many different crops: vegetables, nuts, fruits, beans and cotton. The target pest was *nematodes*, tiny worms living in the soil, feeding on the roots. The pesticide was either pumped directly into the ground, or sprayed into the air with irrigation guns.¹

In 1977, employees who had handled DBCP at the Occidental Chemical plant in California were found to be sterile. Within months, the Environmental Protection Agency (EPA) had suspended most uses of the chemical.²

In 1983, Sacramento attorney Duane Miller won a \$4.9 million judgement against Dow on behalf of six of the Occidental plant workers. Two years later, the EPA permanently banned the use of DBCP in the United States.³

In March 1990, the Texas court announced they would allow cases with a foreign location as place of incident. This was not possible before due to a legal doctrine called "forum non conveniens", which said lawsuits should be heard in the countries where the damage occurred.⁴

In 1992, this shift in regulation made it possible for 1,000 Costa Rican workers and their lawyers to win a case against Standard Fruit (now Dole). The corporation agreed to pay \$20 million to the affected workers. After legal fees, each worker was left with \$1,500 to \$15,000, depending on individual circumstances.⁵

In 1993, a class-action lawsuit was filed in Texas by more than 16,000 banana plantation workers from Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua and the Philippines. The target was several fruit and chemical companies, including Dole, Chiquita, Del Monte, Dow, Shell and Occidental. The companies agreed to pay a total of \$41.5 million in 1997 to those who proved they were sterile. However, when all legal fees were paid, the affected workers received relatively small payments.⁶

The Nemagon movement

The Nicaraguan Nemagon movement is the strongest independent popular movement in modern Nicaragua. It started up in the early nineties when former banana workers started to share strange experiences. Children were born with birth defects, women had miscarriages and the men seemed to be sterile. The former workers also suffered from skin and kidney diseases.

Under the name ASOTRAEXDAN (Association of Workers and Former Workers with Claims against Nemagon), this movement started protesting. They demanded justice, health care and coffins to bury their dead. An in-depth story about this can be found in the *Envio* Magazine article *Victims of Nemagon* hit the road (June, 2005).

In 1999, ASOTRAEXDAN began to push for a law to be passed in



Facebook and Twitter



Nicaragua that would allow Nicaraguan workers to sue foreign companies. The law, known as "law 364", was registered in January 2001. In short, law 364 was directly intended to give DBCP victims and their relatives the right to demand compensation from the companies who imported and applied the chemical in Nicaragua. The law was instantly criticized by the U.S. Embassy in Nicaragua. They claimed the law being unfair to the transnational companies, and in March 2002, the Nicaraguan attorney general submitted a movement to the Nicaraguan Supreme Court to declare law 364 unconstitutional.⁷

In December 2002, Nicaragua's Supreme Court ordered Dow Chemical Co., Shell Chemical Co. and Dole Food Co. to pay \$490 million in compensation to 583 Nicaraguan banana workers. This landmark case was lead by plaintiff attorneys Thomas Girardi and Walter Lack, the same lawyers who fought the Erin Brockovich toxicity suit (which later became the blockbuster movie starring Julia Roberts).⁸

Neither Dow nor any of the other companies participated in the trial. Dow said they will not pay and called the judgment "unenforceable" because the case was supposed to be moved to a U.S. court. They also pointed at the previous claim of law 364 being unconstitutional. One year later, in October 2003, a judge in Los Angeles ruled that the judgment could not be enforced against the companies because they weren't properly named or legally notified in the Nicaraguan court action.⁹

In April 2007, Amvac Chemical Co., one of the companies who produced and sold DBCP in the 1970s, agreed to pay a total of \$300,000 to 13 Nicaraguan workers. In court papers, the company called the agreement a "compromise of disputed claims" and denied any wrongdoing.¹⁰

Tellez versus Dole

In 2004, Los Angeles based attorney Juan Dominguez teamed up with Duane Miller. Dominguez travelled to Nicaragua and started to register workers claiming they had been afflicted by the chemical. Over 10,000 clients were registered in Nicaragua alone.

In July 2007, the case was brought up in the Los Angeles Superior Court. Twelve workers alleged sterilization and accused Dole Food Co. and Dow Chemical Co. of negligence and fraudulent concealment in using DBCP. Compared to the cases from '92 and '93, this case was unique since no previous DBCP case had ever been presented to jurors.¹¹

The companies acknowledged that DBCP can be linked to male sterility and that the product was used in Nicaraguan banana plantations. Dow also acknowledged that the possibility of harm existed, but said the product was safe as long as instructions were followed. Also, they claimed the quantities of DBCP were too small, and the open-air conditions too diffuse to harm workers.¹²

In 1977, Dow stopped their production of DBCP. Not only did Dole admit in court to using DBCP after this date, it demanded Dow to

admit in court to using DBCP after this date, it demanded Dow to continue delivering it, or else Dow would be in breach of contract.

In November, 2007, the Los Angeles jury awarded \$3.2 million to six of the twelve workers in compensatory damages. Jurors found that DBCP was defective and that its risks outweighed its benefits. They also found that Dole acted with malice and actively concealed the danger from its own workers.

Dole's share of the damages ranged from 20% to 40% of the awards to each worker. Dow contended that the chemical was not defective if administered properly, and Dole denied that it had fraudulently concealed the danger. Dole called the verdicts unjust and appealed.¹³

Two weeks later, the jury added an additional \$2.5 million in punitive damages against Dole as punishment for concealing the dangers of DBCP.

One of Dole's attorneys, Rick McKnight, said the verdict was "a huge defeat" for the workers. "It doesn't even pay their costs, much less their bills", he said.¹⁴

Duane Miller said the verdict sends an important message to Dole: "It lets [them] know that they're accountable for what they do, even if they do it south of our border", he said. "Our reputation as a country is partially dependent on the reputations of our corporations doing things overseas".¹⁵

But the case was not closed. **In March 2008**, the punitive damages were reduced by Judge Victoria Chaney from \$2.5 million to six workers – to \$1.58 million to four workers. Chaney found that because Dole was a user of the pesticide, not a marketer, the firm could not be subjected to liability without fault. She also reasoned that punitive damages may not be used to punish "a domestic corporation for injuries that occurred only in a foreign country".¹⁶

Dole later appealed and the case is still (May, 2009) pending in California.

The fraud case

In November 2008, Juan Dominguez brought two other DBCP cases on behalf of former Nicaraguan banana workers to the Los Angeles Superior Court.¹⁷

Dole claimed that all but one of 11 plaintiffs in the two cases had never worked on banana plantations and that the men were paid and coached by their attorneys. Several witnesses testified on videotape, some of them anonymous (the "John Doe witnesses") since they claimed they feared for their lives for exposing the fraud.

In April 2009, Judge Victoria Chaney dismissed the cases.

"We'll never know if anybody in Nicaragua was actually injured or harmed by the alleged wrongful conduct of the defendants, and people will never have the opportunity to learn, since this fraud is so pervasive and extensive that it has forever contaminated even our own ability to ever

know the truth", Chaney said during the April 23 hearing.

In May 2009, Dole attorneys tried to stop the film *BANANAS!*™ from being shown based on the trailer. The film contains interviews with Juan Dominguez and courtroom scenes from the Tellez trial.

Judge Chaney refused to stop the film.

"Just so we're clear, I am not in any way going to make, and I will not consider, any request for prior restraint on free speech", Chaney said during the May 8 hearing.

June 15th – Juan Dominguez is ordered to appear before Los Angeles County Superior Court for a hearing on sanctions for alleged contempt of court.

June 20th – *BANANAS!*™ will premiere at the Los Angeles Film Festival.

Links to the available transcripts from the Los Angeles court hearings:

- April 21, 2009 (PDF)
- April 23, 2009 (PDF)
- May 8, 2009 (PDF)

Articles about the fraud case:

- Dole accuses banana case attorneys of fraud
Thomas Watkins, Associated Press, April 20, 2009
- LA Judge rules fraud in lawsuits against Dole
Linda Deutsch, Associated Press, April 24, 2009
- Judge refers lawyer for prosecution in Dole fraud
Linda Deutsch, Associated Press, May 9, 2009

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National Center for Biotechnology Information (NCBI)
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Christian Miller, Los Angeles Times, May 7, 2007
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Christian Miller, Los Angeles Times, May 7, 2007
5. Pesticide Hazard in Costa Rica
TED Case Studies
6. Banana Workers Win Against Dow, Shell and Standard Fruit
Pesticide Action Network, Jan 6, 2003
7. Death Sentence – an honorable job
Richard Leonardi, Mar 31, 2003
8. L.A. attorneys may face punishment in Dole case
Alexa Hyland, L.A. Business Journal, June 16, 2008
9. Dole, Dow and Shell Win Dismissal of Suit

- Los Angeles Times, Oct 25, 2003
10. Pesticide company settles sterility suit for \$300,000
Christian Miller, Los Angeles Times, Apr 16, 2007
 11. Pesticide trial begins against Dole and Dow
Christian Miller, Los Angeles Times, Jul 20, 2007
 12. Plantation workers look for justice in the North
Christian Miller, Los Angeles Times, May 7, 2007
 13. Dole must pay farmworkers \$3.2 million
John Spano, Los Angeles Times, Nov 6, 2007
 14. Dole must pay \$2.5 million to farmhands
John Spano, Los Angeles Times, Nov 16, 2007
 15. Dole must pay \$2.5 million to farmhands
John Spano, Los Angeles Times, Nov 16, 2007
 16. L.A. judge reduces Dole's damages in pesticide case
John Spano, Los Angeles Times, Mar 11, 2008
 17. Mejia, et al. v. Dole Food Company, Inc., et al. and Rivera, et al. v.
Dole Food Company, Inc., et al.

4 Comments

Tom Nelsajnsai

May 22nd, 2009 at 19:14

There is nothing on this page that refers to the fraud that the attorney is accused of by the judge.

Tablari

May 22nd, 2009 at 20:09

Good point Tom. This was written before the most recent events. We will soon publish an update about the fraud accusations. In the meantime, the LA Times website has great coverage about the case.

admin

May 23rd, 2009 at 15:28

This article has now been updated with info about the fraud case along with links to other articles.

Its Dole vs Bananas - Small Farmers Big Change.

June 17th, 2009 at 18:12

[...] it from circulating in film festivals and theaters, the experience of all those farm workers, a generation of them across the planet, and the indignities they suffered for the sake of a fruit company, will also be prevented from [...]

There is nothing on this page that refers to the fraud that the attorney is accused of by the judge.

Toklat

May 22nd, 2009 at 10:08

Good point Tom. This was written before the most recent events. We will soon publish an update about the fraud accusations. In the meantime, the LA Times website has great coverage about the case.

astwin

May 25th, 2009 at 16:28

this article has now been updated with info about the fraud case along with links to other articles.

its Dole vs. Baranov + Small Farmers Big Change

June 17th, 2009 at 16:12

[...] it from circulating in film festivals and theaters, the experience of all those farm workers, a generation of them across the planet, and the indignities they suffered for the sake of a fruit company, will also be prevented from [...]

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EXHIBIT D

BANANAS!*

"The film Dole Food Co. doesn't want you to see"
- *Up/ising Radio*

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Tue Feb 21



May 5 2005

What is Nemagon?

I was 21 years old, what did I know? Nobody told us anything. For two years, I applied Nemagon wit... »



May 5 2005

Fairtrade unpeels the banana trade

At noon the 6th of March, the Go bananas for Fairtrade campaign was launched. Thousands of UK citize... »



May 5 2005

Pesticide lawsuits – a DBCP overview

Background During the 1970s, the pesticide DBCP (Dibromochloropropane) was used extensively on ... »



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Screenings

Film i Båstad
(Exklusive preview)
Båstad, Sweden
August 1, 2005

Los Angeles Film Festival
California, USA
June 18-23, 2005

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May 5 2005



What is Nemagon?

I was 21 years old, what did I know? Nobody told us anything. For two years, I applied Nemagon without mask, gloves or protecting clothing. You pump it directly into the ground. Sometimes, the pressure made the liquid splash right in your face. You could feel the hideous smell across 100

meters

(Interview with banana plantation worker (1)

In the film *BANANAS!*TM, twelve Nicaraguan banana plantation workers are suing Dole for concealing the dangers of a pesticide that they claim made them sterile.

The case is about Nemagon, one of many brand names for Dibromochloropropane (DBCP), a pesticide originally synthesized in 1935. It was used extensively all over the world until 1977, when employees who had handled the chemical at the Occidental Chemical plant in California were found to be sterile (2).

DBCP was used to protect many different crops: vegetables, nuts, fruits, beans and cotton. The target pest was *nematodes*, tiny worms living in the soil, feeding on the roots. The pesticide was either pumped directly into the ground, or sprayed into the air with irrigation guns (3).

In the 1960s, Standard Fruit (now Dole), Del Monte and United Fruit (now Chiquita) began to use Nemagon massively on Central American, Caribbean and Philippine banana plantations, as well as on sugar, pineapple and cotton plantations. Various chemical companies manufactured the pesticide: the Occidental Corporation, Dow Chemical and Shell Oil. Together, Dow and Shell exported as much as 24 million pounds of Nemagon each year during the 1970s until 1977 (4).

From 1977-1979, DBCP registrations were suspended by the Environmental Protection Agency (EPA) which stopped most applications except for use on pineapples in Hawaii. In 1985, the EPA canceled all registrations (5).

Even as early as 1961, an internal Shell report recommended using impermeable protective clothing to prevent contact with the skin, because the product could have undesirable consequences for human reproduction (2, 6).

DBCP interrupts the hormones that act as the body's "chemical messengers". This can increase cancer risk and affect the reproduction system. Studies in both animals and humans have found that DBCP can cause low sperm counts and infertility in men (7). Exposure to high levels have also shown to cause kidney and liver damage (5).

Most of the studies conducted so far have focused on males, and it is difficult to confirm DBCP as a carcinogen causing tumors, especially breast cancer. This is because it takes many years before cancer evolves, and it is difficult to isolate DBCP as single factor (7).

However, there are strong reasons to suspect DBCP is the reason for several cases of cancer. Among males who worked up to three years on plantations during the 70s, researchers found an increase of lung cancer cases by 40 percent. Among males who applied pesticides for a period longer than three years, the cases of brain cancer increased by 80 percent (1).

It was mainly men who worked in the fields and applied the chemical. However, women got exposed to DBCP in the packing plants or when

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However, women got exposed to DBCP in the packing plants or when they sometimes removed weed or washed the men's clothes. Children got exposed when they entered the plantations to bring lunch boxes to their fathers (1).

In El Viejo and other villages in Nicaragua's banana-growing province of Chinandega, where activists estimate 16,500 people were harmed and more than 1,000 died from exposure, DBCP goes under the name "Death's Dew" (3).

References:

1. Jaktten på den fullkomliga bananen ("The hunt for the perfect banana") – The Swedish Society for Nature Conservation (SSNC), 2004
2. Dibromochloropropane (DBCP): a review – National Center for Biotechnology Information (NCBI)
3. Nicaragua fights for 'Death's Dew' compensation - [Newsday.com](#)
4. Victims of Nemagon Hit the Road – [Envio.org](#)
5. Dibromochloropropane – [Toxipedia.org](#)
6. Banana Workers Put Shell on Trial – [Envio.org](#)
7. Pesticides and Breast Cancer Risk: Dibromochloropropane (DBCP) - Cornell University (2007)

See also:

Article and photo gallery from [Newsday.com](#)

Other DBCP brand names

BBC 12	Nemagon	Nematob
Durham Nematocide	Nemamax	OS 1987
Fumagon	Nemapaz	Oxy DBCP
Fumazona	Nemaset	RCRA waste number U086
Gro-Tone Nematode	Nemazon	SC-1887
Nemabrom	NCI-C00500	UN 2872
Nematume	Nematocide	

List source:

Pesticides and Breast Cancer Risk: Dibromochloropropane (DBCP) - Cornell University (2007)
Consumer Factsheet: Dibromochloropropane - EPA

4 Comments

[Accidentaloman](#)

June 4th, 2009 at 3:38

da best. Keep it going! Thank you

[Daniel](#)

June 12th, 2009 at 22:52

This is a big and important issue.

Andrew Goldman June 4th, 2009 at 10:38

da best. Keep it going! Thank you

Daniel June 12th, 2009 at 22:42

This is a big and important issue.

Really looking forward to see the movie.
Keep up the good work!!

JaneRagages June 13th, 2009 at 22:11

Hi, very nice post. I have been wonder'n bout this issue so thanks for
posting

Michelle Kaufman June 18th, 2009 at 3:45

I wish we would just stop using all pesticides! bugs are natural,
chemicals are not. I would rather eat a worm than get cancer. No
wonder why other countries laugh at America.

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