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**VIA E-MAIL AND FED EX**

Mr. Fredrik Gertten  
WG Film AB  
Västergatan 23  
SE-211 21 Malmö, Sweden  
E-mail: film@wgfilm.com

Dear Mr. Gertten:

I represent Dole Food Company, Inc. I am also a First Amendment lawyer and the Co-Chair of my law firm's Media and Entertainment Practice Group. As a fierce defender of First Amendment freedoms, I can safely say I have never seen a more egregious, brazen, and outrageous case of defamation and actual malice than that reflected by your film *Bananas!*\*

I attended the screening of *Bananas!*\* on Saturday evening at the LA Film Festival and it confirmed what we had surmised from the trailer and other materials and statements you had disseminated prior to the screening: the film is a falsehood from start to finish, predicated on a source — the “star” of the film, attorney Juan Dominguez — who has been found by Judge Victoria G. Chaney to have engineered a massive international conspiracy to defraud Dole and the U.S. courts. Indeed, Judge Chaney's April 23 and June 17 findings, among others, completely discredit the film's entire false theme — that Dominguez is a crusading hero for the Nicaraguan people against U.S. corporations, and that Dole is guilty of wrongdoing — as well as a multitude of plainly false, utterly unsupported, and defamatory factual assertions, omissions, and implications throughout the film.

As you know, on Saturday evening, just before the screening, the Film Festival itself provided a lengthy written and oral statement to the audience members admitting that “there seems to be little question that the version of reality that the film portrays does not match the reality that emerged in the courtroom . . . . Nor, given what we now know, do we believe that *Bananas!*\* —

in its present form — presents a fair and accurate account of Juan Dominguez and the *Tellez* trial.” The Festival also admitted that you had relied on “unreliable evidence,” namely “a lawyer who has been found by the trial judge to have committed fraud on the court by recruiting and training his clients to present false evidence under oath and providing false employment documents and false lab reports — conduct which resulted in fraudulent testimony inside and outside of court.”

In light of these admissions, on top of Judge Chaney’s findings, it is inconceivable that either you or the Festival is contemplating screening this film tonight. We urge you not to do so.

The film includes myriad specific false statements, omissions, implications and obvious flaws, including, for example, the following:

- The film repeatedly, falsely, accuses Dole of *killing people* by using DBCP, even quoting Dominguez saying that each of these deaths are a “victory” for Dole. **But there is no evidence that Dole’s use of DBCP has ever caused a single death anywhere. Even in the discredited cases brought by Dominguez there are no claims that DBCP caused anyone’s death.**
- Despite the fact that the whole focus of the *Tellez* trial — the case at the center of your film — was that DBCP use in the 1970’s allegedly rendered male banana workers *sterile*, you disregarded the fact that your “witness” on camera regarding the death of a banana worker supposedly caused by DBCP **was the son of one of the workers, who appeared to be in his 20’s** and is shown lowering his father’s casket into the grave.
- The entire theme of the film is that Dole is guilty and the *Tellez* plaintiffs prevailed in the case, but Judge Chaney expressly found on April 23 that *Tellez* is **“a case that was built on somebody’s imagination, a case that was put together by smoke and mirrors.”** And on June 17, she elaborated that the *Tellez* “Plaintiffs and the evidence presented were all a product of the fraudulent enterprise the Court has found pervasive in these cases. Had the Court had the benefit of the evidence of fraud it now has when it still had jurisdiction over the *Tellez* case, **it would have terminated that litigation.**”
- The film ends with the jury’s verdict of \$2.5 million in punitive damages, but fails to disclose that Judge Chaney **set aside the punitive damage verdict in its entirety in March 2008.**
- The film shows images of an airplane spraying what is implied to be DBCP on a banana farm, and depicts liquid raining down from the sky over banana plants and dripping from plant leaves, implying that it is DBCP. **These images are patently false and grossly misleading. You appear to have intentionally created the false impression that DBCP was sprayed from airplanes without any factual basis whatsoever.**

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- The film is incredibly and unabashedly biased — you in fact admitted during the post-screening discussion that, incredibly, **you did not even contact Dole at any point during the process of making the film.**
- The film is edited in a highly misleading fashion, splicing alleged footage from the 1970's together with recently filmed footage, implying that Dole is still using DBCP even though it stopped using it nearly three decades ago, and stopped using it in Nicaragua more than a decade before its use was banned in that country. The film also omits Dole's CEO's answer to a question posed to him during the *Tellez* trial regarding Dole's practices so as to falsely make it appear that he did not have an answer to the question.
- The film also portrays Mr. Dominguez's co-counsel, Duane Miller as a hero and a true believer in the plaintiffs' cause — but the film fails to disclose that Mr. Miller and his firm **have withdrawn from *Tellez* and all other DBCP cases in light of the fraud on the court revelations and Judge Chaney's findings.**
- To add insult to injury, the woefully inadequate, incomplete and misleading “cards” you inserted at the end of the film falsely suggest that Judge Chaney was unable to determine what actually happened in Nicaragua, but in reality, as you well know, she issued voluminous findings unequivocally ruling that that there **“is clear and convincing evidence” that Dominguez and his clients “have committed fraud on this Court and on the Defendants,”** as part of **“a broader conspiracy that permeates all DBCP litigation arising from Nicaragua. . . . The purpose of this conspiracy was to manufacture evidence and improperly influence the outcome of DBCP cases pending in Nicaragua and the United States to obtain millions of dollars in judgments that would then be enforced in the U.S. and possibly elsewhere.”**

In light of the judicially-established facts and the undeniable and fatal problems with your film, we repeatedly wrote to you and made public statements requesting that you refrain from screening it unless and until it was revised to reflect the truth, as adjudicated in court and as recognized by the Film Festival. We did not, as you have falsely stated in the press, ask Judge Chaney to stop the screening from going forward. Rather, we simply asked you, as a filmmaker, to recognize that it would be not just legally, but artistically wrong to screen this defamatory film under these extraordinary circumstances.

As someone who has spent his entire career representing journalists and others in fighting for First Amendment freedoms — and defending clients against defamation claims — I cannot fathom why you went forward with the screening of this film when you know that it does not depict the truth. As the great First Amendment scholar Alexander Bickel once said when writing about the rights and responsibilities of journalists, freedom of speech and of the press “calls on the press to consider the responsibility that its position implies. Not everything is fit to print. There is to be regard for at least probable factual accuracy, for danger to innocent lives,” and this

requires those who invoke the First Amendment to exercise "self-discipline and self-restraint" so as to avoid disseminating false information.

The irony is that the latest developments in Judge Chaney's courtroom provide the makings of a truly dramatic and important film: a U.S. lawyer who goes to Nicaragua, exploits poor, uneducated Nicaraguan citizens, foments political unrest against his own country as part of a massive conspiracy to manufacture false claims for billions of dollars and commit fraud on the U.S. courts. As Judge Chaney found, Mr. Dominguez has orchestrated an international legal fraud of epic proportions, and you have managed to capture some of it on film. Judge Chaney further found that this fraud and conspiracy went far beyond Mr. Dominguez, stating that it involved several other U.S. and Nicaraguan law firms. Indeed, she found: "An entire industry has developed around DBCP litigation in Nicaragua for the purpose of bringing fraudulent claims."

Given all of this, with some re-editing, re-writing, and re-shooting to focus on the truth, it seems you could have produced a truly compelling film, which makes your intransigence all the more disturbing. As the Hollywood Reporter observed yesterday, "This film in its current form is too compromised for any kind of theatrical and TV distribution."

In short, the true story about Juan Dominguez and the DBCP litigation, as depicted in the detailed findings of the court, is vastly more compelling than the false, defamatory and judicially discredited one depicted in your film. A filmmaker sincerely interested in examining the truth would be embarrassed to screen it in its present form.

Very truly yours,

A handwritten signature in black ink that reads "T. Boutrous, Jr." with a stylized flourish at the end.

Theodore J. Boutrous, Jr.

cc: Scott A. Edelman  
Richard J. Lee, Esq.  
Michael Donaldson, Esq.  
Daniel M. Satorius, Esq.