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Attorneys for Plaintiff Calyxt, Inc.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA**

Calyxt, Inc.,

Plaintiff,

vs.

Morris Ag Air & Sons, Inc.; Morris Ag Air
 Southwest, LLC; Amigo Farms, Inc.;
 Jeffrey Nigh, an individual; Tri-Rotor,
 L.L.C.; Tri-Rotor Ag Services, Inc.;
 Jonhenry Luke, an individual; and
 D'Arrigo Brothers Company,

Defendants.

No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Calyxt, Inc. ("Calyxt") hereby pleads the following claims against Defendants for strict liability, negligent trespass, negligence *per se*, and private nuisance arising under Arizona common law, and for violations of Arizona Revised Statutes §§ 3-114 and 3-367. These claims arise from Defendants' unlawful actions relating to the aerial application of certain chemicals that caused extensive damage to Calyxt's high fiber wheat crops growing for research and commercial development purposes on two fields in or near Yuma, Arizona. For its Complaint, Calyxt alleges as follows:

NATURE OF THE ACTION

1
2 1. This is an agricultural dispute arising under Arizona statutory and common
3 law. It is based on the unlawful acts of aerial applicators, their pest control advisors, and
4 produce growers who recklessly undertook the aerial application of chemical herbicides
5 near fields where Calyxt was growing highly valuable wheat crops susceptible to those
6 herbicides.

7 2. Due to weather, aerial application, proximity, and/or other adverse
8 conditions about which Defendants knew or should have known, Defendants' herbicides
9 that were intended to be applied to Defendants' leaf lettuce crops drifted onto Calyxt's
10 fields. These actions caused extensive damage to Calyxt's innovative, high fiber wheat
11 crop—a result that was entirely foreseeable to Defendants because wheat is a type of grass,
12 and the chemical they applied is specifically intended to kill grasses. Accordingly, as
13 alleged herein, Defendants are individually, jointly, and severally liable to Calyxt for these
14 actions in violation of Arizona law.

THE PARTIES

A. Plaintiff Calyxt, Inc.

16
17 3. Plaintiff Calyxt, Inc. ("Calyxt") is an agriculture technology company
18 focused on delivering plant-based solutions that are healthy and sustainable using
19 proprietary gene-editing technology. Calyxt is a Delaware corporation with its principal
20 place of business located at 2800 Mount Ridge Rd., Roseville, MN 55113.

B. The Morris Defendants

21
22 4. Defendant Morris Ag Air Southwest, LLC ("Morris Ag Air Southwest") is
23 an aerial applicator of agricultural pesticides and is organized as a limited liability company
24 under the laws of the State of Arizona, with its principal place of business located at 6277
25 W County 12th Street, Yuma, AZ 85365. Miles Morris is the only member of Morris Ag
26 Air Southwest and, on information and belief, is an Arizona citizen with a permanent
27 residence located at 340 W 32nd Street #413, Yuma, AZ 85364.
28

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5. Defendant Morris Ag Air & Sons, Inc. (“Morris Ag Air & Sons”) is also an aerial applicator, and an Arizona corporation sharing the same principal place of business as Morris Ag Air Southwest, LLC, located at 6277 W County 12th Street, Yuma, AZ 85365.

6. On information and belief, Defendants Morris Ag Air Southwest and Morris Ag Air & Sons (collectively, “Morris Ag Air”) are alter egos and agents of each other, acting on each other’s behalf with a unity of interest and ownership, such that observance of their separate corporate forms would promote injustice. As such, the Morris Ag Air defendants are jointly, severally, and vicariously liable for each other’s actions and for the claims against them as alleged herein. Miles Morris is the statutory agent for both of these companies, he is the sole member of Morris Ag Air Southwest, and, on information and belief, his close relatives, Michael and Michelle Morris, are the officers and directors of Morris Ag Air & Sons. Defendants Morris Ag Air Southwest and Morris Ag Air & Sons also share a common address for their principal places of business.

7. Defendant Amigo Farms, Inc. (“Amigo Farms”) is a grower of agricultural produce and is an Arizona corporation with its principal place of business located at 4245 East 32nd Street, Yuma, AZ 85365. On information and belief, Amigo Farms leases and grows crops on fields located in and near Yuma, Arizona.

8. Defendant Jeffrey Nigh (“Nigh”) is an individual who is a Pest Control Advisor (“PCA”) with Arizona PCA License No. 3464. On information and belief, at all relevant times, Nigh is and has been a citizen of Arizona, with a permanent residence in or near Yuma, AZ.

9. Collectively, Morris Ag Air, Amigo Farms, and Nigh shall be referred to herein as the “Morris Defendants.”

C. The Tri-Rotor Defendants

10. Defendant Tri-Rotor, L.L.C. (“Tri-Rotor, L.L.C.”) is an aerial applicator of pesticides, organized as a limited liability company under the laws of the State of Arizona, with its principal place of business located at 18679 South Avenue D, Somerton, AZ 85350.

11. Defendant Tri-Rotor Ag Services, Inc. (“Tri-Rotor Ag Services”) is an aerial applicator and Arizona corporation sharing the same principal place of business as Tri-Rotor, L.L.C., located at 18679 South Avenue D, Somerton, AZ 85350.

12. On information and belief, Defendants Tri-Rotor, L.L.C. and Tri-Rotor Ag Services (collectively, “Tri-Rotor”) are alter egos and agents of each other, acting on each other’s behalf with a unity of interest and ownership, such that observance of their separate corporate forms would promote injustice. As such, the Tri-Rotor defendants are jointly, severally, and vicariously liable for each other’s actions and for the claims against them as alleged herein. Matt Fieldgrove is the statutory agent for both of these companies and a director at Tri-Rotor Ag Services, which is the sole member of Tri-Rotor L.L.C. The businesses also share a common address for their principal places of business.

13. Defendant D’Arrigo Brothers Company of California (“D’Arrigo Brothers”) is a grower of agricultural produce and is a California corporation with a principal place of business located at 21777 Harris Road, Salinas, CA 93908. On information and belief, D’Arrigo Brothers leases and grows crops on fields located in and near Yuma, Arizona.

14. Defendant Jonhenry Luke (“Luke”) is an individual who is a Pesticide Control Advisor with Arizona PCA License No. 3773. On information and belief, at all relevant times, Luke is and has been a citizen of Arizona with a permanent residence in or near Yuma, AZ.

15. Collectively, Tri-Rotor, D’Arrigo Brothers, and Luke shall be referred to herein as the “Tri-Rotor Defendants.”

JURISDICTION AND VENUE

16. This is a civil action regarding Defendants’ unlawful actions relating to the aerial application of chemical herbicides that drifted onto fields where Calyxt was growing high fiber wheat crops. This action arises under Arizona statutory and common laws created to protect innocent parties against the inherently dangerous aerial application of such chemical herbicides.

1 17. Complete diversity exists between Calyxt and Defendants. As set forth above
2 in Paragraphs 4-15, none of the Defendants are citizens of Delaware or Minnesota.
3 Pursuant to 28 U.S.C. § 1332(c)(1), Calyxt is a citizen of Delaware, where it is
4 incorporated, and Minnesota, where its principal place of business is located. The Morris
5 Defendants are all citizens of Arizona. Except for D'Arrigo Brothers, which is a citizen of
6 California, the Tri-Rotor Defendants are all citizens of Arizona. The amount in controversy
7 far exceeds \$75,000.00, exclusive of interest and costs. Thus, the Court has subject matter
8 jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

9 18. The Court has personal jurisdiction over Defendants pursuant to the Due
10 Process Clause of the United States Constitution and pursuant to Arizona's long-arm
11 statute, ARIZ. R. CIV. P. 4.2(a), as follows.

12 19. The Court has general personal jurisdiction over Defendants because, on
13 information and belief, Defendants have conducted substantial and continuous business in,
14 and have substantial and continuous contact with, the District of Arizona. Among other
15 things, Defendants conduct regular agricultural-related business within Arizona and, in
16 particular, in and around Yuma, Arizona. All of the Defendants are citizens of Arizona
17 except for D'Arrigo Brothers, which is a citizen of California. On information and belief,
18 D'Arrigo Brothers also conducts substantial agricultural business in Arizona, including in
19 Yuma.

20 20. The Court also has specific personal jurisdiction over Defendants. As alleged
21 herein, each of the Defendants has undertaken actions relating to farmland that they owned,
22 operated, and/or sprayed with chemical herbicides that drifted onto the two Calyxt fields
23 located in Yuma, Arizona, resulting in the destruction of significant portions of Calyxt's
24 valuable high fiber wheat crops. These acts give rise to Calyxt's claims.

25 21. Venue is also proper in this judicial district pursuant to 28 U.S.C.
26 § 1391(b)(2). A substantial part of the acts and events giving rise to Calyxt's claims
27 occurred in this judicial district, and the property damaged as a result of those acts is located
28 in this judicial district.

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