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California Department of Food and
 8 *Agriculture, State of California by and*
 9 *through the California Department of Food*
Agriculture, Karen Ross and Keith Okasaki

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **EVERGREEN DISTRIBUTORS, INC.,**
 15 **d/b/a EVERGREEN NURSERY, a**
 16 **California Corporation,**

17 Petitioner and Plaintiff,

18 v.

19 **CALIFORNIA DEPARTMENT OF FOOD**
 20 **AND AGRICULTURE, an agency of the**
 21 **State of California; STATE OF**
 22 **CALIFORNIA, by and through the**
 23 **California Department of Food and**
 24 **Agriculture; KAREN ROSS, in her**
 25 **individual capacity, and KEITH OKASAKI,**
 26 **in his individual capacity,**

27 Respondents and
 28 Defendants.

Case No. **'25CV3442 W JLB**

**NOTICE OF REMOVAL OF ACTION
 TO THE UNITED STATES DISTRICT
 COURT FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA BY
 DEFENDANTS ROSS AND OKASAKI**

26 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
 27 SOUTHERN DISTRICT OF CALIFORNIA, ALL PARTIES, AND THEIR
 28 RESPECTIVE ATTORNEYS OF RECORDS:

1 PLEASE TAKE NOTICE, Respondents and Defendants Karen Ross and
2 Keith Okasaki (hereinafter “Individual Defendants”) file this Notice of Removal
3 pursuant to 28 U.S.C. §§ 1441-1451 and Federal Rules of Civil Procedure 81(c).
4 Individual Defendants remove the state court action to the United States District
5 Court for the Southern District of California based on applicable federal law and the
6 allegations contained within Petitioner and Plaintiff Evergreen Distributors Inc.
7 d/b/a Evergreen Nursery’s (“Evergreen”) operative Verified Petition for Writ of
8 Mandate and Complaint for Damages (“Complaint”). Pursuant to 28 U.S.C. §
9 1446(a), true and correct copies of all process, pleadings and orders served upon
10 Individual Defendants to date are attached to this Notice as Exhibits A-D.
11 Immediately after filing this Notice, Individual Defendants will file and serve a
12 copy of this Notice on the superior court and all adverse parties as required. 28
13 U.S.C. § 1446(d).

14 **I. RELEVANT BACKGROUND**

15 The California Department of Food and Agriculture (“CDFA”) has established
16 regulations to prevent the spread of Huanglongbing (“HLB”), a plant disease that
17 presents “a clear and present danger to California’s citrus industry, as well as to
18 other commodities and plant life.” Cal. Food & Ag. Code, § 5911(a). California
19 regulation provides that when “a single host plant tests positive for” HLB, CDFA
20 must establish a quarantine area consisting of a minimum 5-mile radius
21 “surrounding the site of the plant that contains an HLB infestation.” Cal. Code
22 Reg., tit. 3, § 3439. Nursery stock inside such a quarantine area that is not
23 maintained pursuant to certain requirements is declared a public nuisance and
24 becomes subject to abatement. *Id.*, §§ 3439, 3639; Cal. Food & Ag. Code §§ 5762,
25 5763. Pursuant to these statutes and regulations, following detection of an HLB-
26 infected plant, CDFA established a quarantine area which included Evergreen’s
27 nursery.

1 CDFA brought an administrative action against Evergreen for violation of
2 state HLB regulations within the quarantine area; following a hearing, an
3 Administrative Law Judge issued a proposed decision holding that Evergreen’s
4 citrus trees were out of compliance with state HLB regulations and ordering CDFA
5 to abate the trees as a nuisance. (Exh. B ¶¶ 41-44.) CDFA adopted the proposed
6 decision. (*Id.* ¶ 5.)

7 Evergreen responded by filing its Complaint in the California Superior Court
8 for the County of San Diego. The Complaint included claims against CDFA under
9 state law as well as claims against two CDFA employees, Keith Okasaki and
10 Secretary Karen Ross, under 42 U.S.C. § 1983. The section 1983 claims are
11 premised on contentions that Mr. Okasaki and Secretary Ross violated Plaintiff’s
12 due process rights (Exh. B ¶¶ 63-67 [Second Cause of Action]) and denied Plaintiff
13 equal protection under the law (*id.*, ¶¶ 68-73 [Third Cause of Action].)

14 **II. REMOVAL OF THIS CASE IS TIMELY**

15 A notice of removal is timely if filed “within 30 days after the receipt by the
16 defendant, through service or otherwise, of a copy of the initial pleading,” or within
17 30 days “after the service of summons upon the defendant if such initial pleading
18 has then been filed in court and is not required to be served on the defendant, which
19 ever period is shorter.” 28 U.S.C. § 1446(b). The thirty-day removal window is not
20 triggered until a party is properly served with the summons and complaint and
21 “brought under a court’s authority, by formal process.” *Elat Properties, LLC v.*
22 *Falls Lake National Ins. Co.*, No. 2:24-cv-05030, 2024 WL 4149713, at *3 (C.D.
23 Cal. Sept. 11, 2024); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.
24 344, 347–48 (1999) (holding that “a named defendant’s time to remove is triggered
25 by simultaneous service of the summons and complaint, or receipt of the complaint,
26 ‘through service or otherwise,’ after and apart from service of the summons, but not
27 by mere receipt of the complaint unattended by any formal service”). Here,
28 Individual Defendants were served with the summons and Complaint on November

1 7, 2025. (Exh. D.) Removal is therefore timely because it was filed by the
2 December 5 deadline.

3 **III. THE COURT HAS SUBJECT MATTER JURISDICTION OVER THE CLAIMS**
4 **IN THIS CASE**

5 Removal to federal court is permitted for any civil action of which the district
6 courts have original jurisdiction founded on a claim or right “arising under the
7 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1441(c)(1)(A)
8 (referencing 28 U.S.C. § 1331). “The presence of federal-question jurisdiction ‘is
9 governed by the well-pleaded complaint rule, which provides that federal
10 jurisdiction exists only when a federal question is presented on the face of the
11 plaintiff’s properly pleaded complaint.’” *Estate of Nunis v. City of Chula Vista*, No.
12 21-cv-1627, 2021 WL 5411290, at *1 (S.D. Cal. Nov. 19, 2021) (quoting
13 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). In its Complaint, Evergreen
14 asserts two causes of action against Individual Defendants, pursuant to 42 U.S.C. §
15 1983 for alleged violations of its right to due process and equal protection under the
16 law. (Exh. B ¶¶ 63-73.) The supposed violations arose from Individual Defendants’
17 participation in CDFA’s administrative proceeding, which ultimately resulted in an
18 order allowing CDFA to abate Evergreen’s citrus trees as a public nuisance due to
19 the threat posed by HLB in the quarantine area. This Court has original jurisdiction
20 over these federal law claims, and removal is therefore appropriate. See *Mory v.*
21 *City of Chula Vista*, No. 10-cv-252, 2011 WL 777914, at *1 (S.D. Cal. Mar. 1,
22 2011) (noting for purpose of removal that the “Court has original jurisdiction over
23 Plaintiff’s claims under 42 U.S.C. § 1983”).

24 In addition to these federal causes of action, Evergreen’s Complaint includes
25 numerous state-law claims against a separate respondent and defendant, CDFA.
26 This Court can exercise supplemental jurisdiction over these claims should it find
27 that they “are so related to claims in the action within such original jurisdiction that
28 they form part of the same case or controversy.” 28 U.S.C. § 1367(a). Under this

1 standard, supplemental jurisdiction exists where the federal and state law claims
2 arise from “a common nucleus of operative facts...such that a plaintiff would
3 ordinarily be expected to try them in one judicial proceeding.” *Tr. of Constr. Indus.*
4 *and Laborers Health and Welfare Trust v. Desert Valley Landscape & Maint., Inc.*,
5 333 F.3d 923, 925 (9th Cir. 2003) (internal quotations removed).

6 That common nucleus of operative facts exists here. As with Evergreen’s 42
7 U.S.C. § 1983 allegations, its state claims pertain to the administrative order
8 permitting CDFA to abate Evergreen’s citrus trees as a public nuisance.

9 Specifically, in its Complaint, Evergreen seeks:

10 1. a writ of mandate, pursuant to California Code of Civil Procedure §
11 1094.5, to overturn the administrative ruling adopted by CDFA to abate the public
12 nuisance posed by Evergreen’s citrus plants (Exh. B, ¶¶ 52-62);

13 2. a writ of mandamus, pursuant to California Code of Civil Procedure
14 §1085, to invalidate CDFA’s administrative order to quarantine Evergreen’s citrus
15 plants and declare them a public nuisance (*id.*, ¶¶ 89-96);

16 3. a declaration that California Food and Agriculture Code §§ 5762
17 and 5763—which authorize CDFA to declare plants as a public nuisance and abate
18 that nuisance—are unconstitutional (*id.*, ¶¶ 74-80); and

19 4. compensation, pursuant to Article I, section 19 of the California
20 Constitution, for the alleged financial impact of CDFA’s quarantine order on
21 Evergreen (*id.*, ¶¶ 81-88).

22 Given the overlap in operative facts underlying Evergreen’s federal and state
23 claims, this Court has jurisdiction over the entire action, and removal is appropriate.
24 Alternatively, if the Court does not intend to exercise supplemental jurisdiction
25 over Evergreen’s state-law claims, Individual Defendants respectfully request that
26 the Court dismiss those claims without prejudice, or sever and remand those claims
27 to state court. *See Mory v. City of Chula Vista*, 2011 WL 777914, at *2.

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1 **IV. CONSENT TO REMOVAL**

2 Removal in civil actions requires unanimous consent from all properly served
3 defendants. 28 U.S.C. § 1446(b)(2)(A). Individual Defendants initiated these
4 removal proceedings and consent to removal.

5 CDFA, represented by the undersigned counsel, also consents to removal
6 should the Court exercise supplemental jurisdiction over the state-law claims. The
7 Complaint does not assert any federal claims against CDFA. Therefore, should the
8 Court elect to sever or dismiss the state law claims, CDFA need not consent to
9 removal. 28 U.S.C. § 1441(c)(2) (“Only defendants against whom a claim” falls
10 within the original jurisdiction of federal district courts “are required to join in or
11 consent to the removal”).

12 **V. THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT IS**
13 **THE PROPER VENUE FOR REMOVAL IN THIS CASE**

14 A matter may be removed to the “district court of the United States for the
15 district and division embracing the place where such action is pending.” 28 U.S.C.
16 § 1441(a). The Complaint was filed in the California Superior Court in San Diego
17 County because the subject property and public nuisance are located within San
18 Diego County, California. (Exh. B, ¶ 7.) For the same reason, venue in the United
19 States District Court for the Southern District of California is appropriate.
20 *Lycurgan, Inc. v. Rood*, No. 13-cv-2504, 2013 WL 6229231, at *2 (S.D. Cal. Dec.
21 2, 2013) (finding in removal action that “[a]s the San Diego Superior Court is
22 located in the Southern District of California, venue is proper in this court.”)

1 Dated: December 5, 2025

Respectfully submitted,

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ROB BONTA
Attorney General of California

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PHILLIP M. HOOS
Deputy Attorney General
*Attorneys for Defendants and
Respondents California Department of
Food and Agriculture, State of
California by and through the
California Department of Food
Agriculture, Karen Ross and Keith
Okasaki*

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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W. Broadway
 MAILING ADDRESS: 330 W. Broadway
 CITY AND ZIP CODE: San Diego, 92101
 BRANCH NAME: Central
 TELEPHONE NUMBER: 619-450-7072

PLAINTIFF(S) / PETITIONER(S): Evergreen Distributors Inc

DEFENDANT(S) / RESPONDENT(S): California Department of Food and Agriculture

EVERGREEN DISTRIBUTORS INC VS CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

**NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT
 CONFERENCE
 (CIVIL)**

CASE NUMBER:
 25CU045341C

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: MARCELLA O. MCLAUGHLIN

Department: C-72

COMPLAINT/PETITION FILED: 08/27/2025

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT
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Case Management Conferences (CMCs) may be conducted virtually or in person. Anyone wishing to appear remotely should visit the "Appearing for Hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John W. Howard (SBN 80200) Peter C. Shelling (SBN 351159) JW Howard/Attorneys, LTD., 600 West Broadway, Ste. 1400, San Diego, CA 92101		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 8/27/2025 2:35:58 PM Clerk of the Superior Court By B. Montijo ,Deputy Clerk
TELEPHONE NO.: 619-234-2842 FAX NO.: EMAIL ADDRESS: Johnh@jwhowardattorneys.com / pshelling@jwhowardattorneys.com ATTORNEY FOR (Name): Plaintiff, Evergreen Nursery		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Courthouse		
CASE NAME: Evergreen Distributors, Inc., d/b/a Evergreen Nursery v. Karen Ross, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$35,000)	<input type="checkbox"/> Limited (Amount demanded is \$35,000 or less)	CASE NUMBER: 25CU045341C
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): seven

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 27, 2025
 John W. Howard

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner
Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

California Department of Food and Agriculture, an agency of the State of California, (Please see attached list of Defendants)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/27/2025 2:35:58 PM

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Evergreen Distributors, Inc., d/b/a Evergreen Nursery, a California Corporation

Clerk of the Superior Court
By B. Montijo, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 25CU045341C

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
John W. Howard, 600 West Broadway, Ste. 1400, San Diego, CA 92101 Tel: (619)234-2842

DATE: 8/28/2025
(Fecha)

Clerk, by  B. Montijo, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Evergreen Nursery v. California Department of Food and Agriculture, et al.	CASE NUMBER
--	-------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

State of California, by and through the California Department of Food and Agriculture,
 Karen Ross, in her individual capacity,
 Keith Okasaki, in his individual capacity

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EXHIBIT B

1 John W. Howard (SBN 80200)
2 Michelle D. Volk (SBN 217151)
3 Peter C. Shelling (SBN 351159)
4 **JW HOWARD | ATTORNEYS, LTD.**
5 600 West Broadway, Ste. 1400
6 San Diego, California 92101
7 Telephone: (619) 234-2842
8 Email: Johnh@jwhowardattorneys.com
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10 Pshelling@jwhowardattorneys.com

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Superior Court of California,
County of San Diego
8/27/2025 2:35:58 PM
Clerk of the Superior Court
By B. Montijo ,Deputy Clerk

11 Attorneys for Evergreen Distributors, Inc., d/b/a
12 Evergreen Nursery

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**

15 EVERGREEN DISTRIBUTORS, INC.,
16 d/b/a/ EVERGREEN NURSERY, a
17 California Corporation,
18
19 Petitioner and Plaintiff

Case No. 25CU045341C

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DAMAGES**

20 v.

21 CALIFORNIA DEPARTMENT OF FOOD
22 AND AGRICULTURE, an agency of the
23 State of California, Respondent;

Jury Trial Demand

24 STATE OF CALIFORNIA, by and through
25 the California Department of Food and
26 Agriculture, Defendant;

27 KAREN ROSS, in her individual capacity,
28 and KEITH OKASAKI, in his individual
capacity, Defendants.

INTRODUCTION

1. This lawsuit concerns Petitioner/Plaintiff Evergreen Nursery (“Evergreen”), a local nursery striving to stay in business despite the attempts of the Respondent/Defendants, California Department of Food and Agriculture (“CDFA”) and its officials, to destroy tens of thousands

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- 1 of healthy trees on its property.
- 2 2. Evergreen seeks a peremptory writ of mandate under Code of Civil Procedure section 1094.5
- 3 to compel CDFA to vacate its decision ordering the unprecedented destruction of
- 4 Evergreen’s healthy citrus nursery stock, issued following an administrative hearing in OAH
- 5 Case No. 2025010225.
- 6 3. In addition to seeking judicial review, Evergreen also brings this action for declaratory relief,
- 7 and damages, based on constitutional violations of its rights to due process and equal
- 8 protection under 42 U.S.C. § 1983 against Secretary Karen Ross (“Ms. Ross”) and Keith
- 9 Okasaki (“Mr. Okasaki”) in their individual capacities.

JURISDICTION AND VENUE

- 11 4. This action is brought pursuant to California Code of Civil Procedure section 1094.5 to
- 12 obtain judicial review of a final administrative decision made by the California Department
- 13 of Food and Agriculture, following a hearing conducted by the Office of Administrative
- 14 Hearings in OAH Case No. 2025010225.
- 15 5. The proposed decision, issued on July 3, 2025, ordered the destruction of Petitioner’s citrus
- 16 trees based on CDFA’s declaration that they constituted a public nuisance. Thereafter, on
- 17 July 29, 2025 the CDFA notified Evergreen that it was adopting the decision.
- 18 6. This Court has jurisdiction under Code of Civil Procedure section 1094.5 because CDFA is a
- 19 state agency whose final decision has substantially affected the vested property rights of
- 20 Evergreen. Evergreen has no plain, speedy, or adequate remedy in the ordinary course of law.
- 21 7. Venue is proper in this Court under Code of Civil Procedure section 393 because the acts and
- 22 omissions giving rise to this action occurred in the County of San Diego, where Evergreen’s
- 23 citrus nursery is located and where the effects of the challenged agency action will occur.
- 24 8. Petitioner/Plaintiff has exhausted all administrative remedies available to it. The Proposed
- 25 Decision issued by the Administrative Law Judge and adopted by CDFA constitutes final
- 26 agency action subject to judicial review under California law.

TIMELINESS

- 27
- 28 9. This petition is timely under Government Code § 11523. The CDFA adopted the Proposed

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1 Decision on July 29, 2025 and served Evergreen the same day. The adopted order was signed
2 by Secretary Karen Ross.

3 10. Evergreen filed this petition on August 27, 2025, within 30 days after the last day on which
4 reconsideration could be ordered. Evergreen requests that CDFA prepare and lodge the
5 administrative record, and that the Court set a briefing schedule pursuant to § 11523.

6 11. Evergreen is beneficially interested in the subject matter of the decision as its property will
7 be destroyed without the relief of this Court.

8 **STATEMENT OF FACTS**

9 12. Evergreen is a family-owned, third-generation wholesale nursery business that has operated
10 in San Diego County for over 50 years. Evergreen currently specializes in citrus tree
11 production, cultivating a wide variety of citrus.

12 13. Evergreen’s owner, Mark Collins (“Mr. Collins”), is a highly experienced nurseryman with
13 extensive knowledge and generational wisdom concerning citrus cultivation and pest
14 management.

15 14. Mr. Collins has maintained a successful nursery for decades and has kept his stock pest free
16 through the implementation of pest control protocols and practices, even before the CDFA
17 and United States Department of Agriculture (“USDA”) mandated such protocols.

18 15. These practices have also prevented Evergreen’s stock from any contamination from the
19 complained of threat of the Asian Citrus Psyllid (“ACP”) which is a vector for the bacterium
20 causing Huanglongbing disease (“HLB”).

21 16. In the name of protecting the public good, CDFA clearly only aims at protecting a portion of
22 the citrus industry: the large commercial growers and marketers. CDFA has implemented a
23 heavy-handed regulatory scheme and issued sweeping quarantine zones preventing small
24 businesses like Evergreen from continuing its operations providing healthy, pest free,
25 affordable citrus plants for public planting.

26 17. The problem is, Evergreen has never had any tree infected with HLB and there has never
27 been a find of any ACP pest on its property, nor within 250 meters or within the admitted
28 1.5-mile flight potential of the ACP psyllid.

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Overview of ACP and HLB in California

18. ACP was first detected in California in 2008. Subsequently HLB was first detected in California in 2012. Unelected officials at CDFA, by emergency proclamation, implemented regulations to contain the threat, including 5-mile quarantine zones around ACP finds, without public review or scientific foundation.

19. Though HLB was presumed to present a threat to the large scale commercial Citrus fruit growers it is not uniformly devastating across all regions due to differences in climate, topography, and whether a nursery implements best management practices.

20. For example, there has never been a single find of HLB on any commercial citrus property in California, while most finds have been in dense residential areas (primarily coastal where there are contiguous areas of high humidity and great potential for human transport).

21. This may be attributed to the lack of treatment protocols implemented by residential citrus tree owners, giving residences minimal defense against HLB. But the threat is far less severe to commercial groves, as evidenced by the fact no HLB has ever been found in a commercial grove.

22. And while HLB severely impacted Florida’s citrus industry, covering hundreds of thousands of acres and 34 counties within 3 years, it has been over 17 years since the first ACP finds in California, and to date no HLB has been found in commercial citrus groves. California’s drier, colder and more varied climate, with numerous topographical barriers, has also limited its spread.

Evergreen’s Property and Its Pest Control Program

23. Evergreen’s 230-acre property in Escondido is uniquely situated in a sheltered valley surrounded by mountains, a 5,000-acre park of sagebrush and rocks, with no nearby citrus nurseries or citrus groves.

24. The natural barriers provide a topographical defense against pest intrusion. On top of that, for more than a decade, Mr. Collins has maintained a comprehensive pest management program, including spraying, soil treatments, and other widely accepted preventative measures.

25. Mr. Collins’ protocols were in place years before such practices were required under CDFA

1 and USDA regulations. This program has proven to be highly effective.

2 26. The property has maintained HLB free stock for decades, and Evergreen has thrived,
3 consistently providing healthy and strong nursery stock to its customers.

4 **CDFA’s HLB Eradication Area Proclamation**

5 27. But now, CDFA seeks to destroy what remains of Evergreen’s robust and healthy citrus stock
6 numbering around 35,000 individual trees before the CDFA began to stifle Evergreen’s
7 operations. Approximately 10,000 trees have perished as a result of the CDFA hold order
8 since they were not sustainable in smaller containers without the ability to provide larger
9 containers.

10 28. In August 2023, unelected officials at CDFA issued another emergency order creating an
11 HLB eradication area in northern San Diego County, establishing a work plan that required
12 removal of infected trees and treatment (via insecticide sprays and root injections) of
13 uninfected “host” trees within a 250-meter radius of a find, but did not mandate destruction
14 of healthy trees beyond that zone.

15 29. Despite this, on November 30, 2023, CDFA declared a quarantine zone that purportedly
16 included Evergreen, based on an undisclosed HLB find stated to be approximately five miles
17 away. While Evergreen is located in northern San Diego County, it has never been factually
18 demonstrated that Evergreen is within the quarantine zone.

19 30. That is because CDFA refused to reveal the exact location of the find, citing privacy
20 concerns, even though such disclosure was essential for Evergreen to verify its inclusion in
21 the zone and challenge the boundary.

22 31. On December 1, 2023, CDFA issued a hold notice on Evergreen’s outdoor citrus stock,
23 prohibiting sales or movement, despite no evidence of infection. Evergreen complied fully
24 with this and all prior hold orders, maintaining its treatment and monitoring protocols.

25 **CDFA’s Compliance Demands and Evergreen’s Response**

26 32. After Evergreen was designated as within the quarantine zone, CDFA issued an impossible
27 ultimatum in a letter sent by Mr. Okasaki on March 28, 2024. A response was demanded by
28 April 5, 2024.

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1 33. The letter required under threat that Evergreen either: (1) move all 35,000 trees into approved
2 insect-resistant structures within 14 days; (2) plant them in the ground; or (3) face the
3 unprecedented destruction of its entire stock. These options were impractical and impossible:
4 constructing sufficient structures (requiring over 400,000 square feet at a cost exceeding \$2.4
5 million) would take years, not a handful of days; planting 35,000 trees was infeasible given
6 the limited amount of tillable land on Evergreen’s property (citrus trees are normally planted
7 100 trees per acre requiring 350 acres); and, lastly, destruction of 3 million dollars’ worth of
8 Evergreen’s trees would present an existential threat to the nursery.

9 34. Mr. Collins timely and substantially responded on April 3, 2024, explaining the
10 impossibility of compliance and reaffirming Evergreen’s commitment to treatment and
11 monitoring. Mr. Collins sought to work collaboratively with CDFA, but it refused to do so.
12 This coercive action by CDFA was compounded when CDFA and Mr. Okasaki falsely
13 claimed in its accusation that no response was received though Mr. Collins did in fact
14 respond before the April 5 deadline.¹

15 35. On May 14, 2024, CDFA declared the 35,000 healthy trees a public nuisance under its
16 regulatory scheme.

17 **The “Find” Location Is Withheld From Evergreen**

18 36. Notably, the Accusation against Evergreen was premised on a supposed insect or disease find
19 made in 2023. CDFA later attempted to rely on a separate “find” in approximately April
20 2025, after the Accusation had been filed.

21 37. But Evergreen had no notice or discovery opportunity concerning the later purported find.

22 38. CDFA further refused to disclose the exact location or coordinates of either purported “find,”
23 preventing Evergreen from verifying whether its property fell inside any quarantine
24

25
26 ¹ At the administrative hearing, the ALJ specifically said in the proposed decision that “The department did not receive a
27 response from respondent by April 5, 2024” but later stated “although [Mr. Collins] sent a letter, he did not respond to
28 the questions asked.” (Dept. of Food & Agric., In the Matter of the Accusation Against Evergreen Nursery (Agency Case
No. PID 14626, OAH No. 2025010225, Proposed Decision at p38). The truth is that the letter sent by Mr. Collins was a
response – CDFA just did not like his response because Mr. Collins explained the impossibility of complying with its
demands.

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boundary.

39. CDFA and Mr. Okasaki cited the privacy concerns of a third-party not involved in the dispute, elevating a non-party’s purported privacy right above Evergreen’s Constitutionally guaranteed and *fundamental* right to Due Process of law despite Evergreen’s offer to sign a non-disclosure agreement.

40. CDFA and its officials applied a five-mile radius around an alleged 2023 find without considering mandatory factors required in the CDFA work plan such as geographic barriers, mountain ranges, or prevailing environmental conditions that shield Evergreen from psyllid migration. This refusal to exercise discretion rendered the quarantine boundary arbitrary and unsupported by substantial evidence.”

Administrative Hearing Before the OAH

41. The dispute resulted in a formal accusation brought by the CDFA against Evergreen. The OAH hearing was conducted on two separate days on May 1 and May 19, 2025 before the OAH.

42. During the entire proceeding, CDFA presented no evidence of a single find of ACP on Evergreen’s property.

43. It presented no evidence that any of Evergreen’s trees have ever had HLB. The CDFA officials admitted that the five-mile radius designation has no scientific support and that the unassisted flight radius of the psyllid is 1.5 miles and that Evergreen’s treatments align with CDFA protocols.

44. Evergreen demonstrated through testimony and records that its trees are healthy, and it is located in an insulated basin, shielded from the flight of ACP pests. Other testimony confirmed that the CDFA treats citrus nurseries more harshly than residential properties or fruit industry commercial groves, where healthy trees near finds are merely treated, not destroyed. CDFA’s map of the quarantine zone, admitted over objection on due process grounds, failed to identify the find’s location or Evergreen’s precise position, violating Evergreen’s Constitutionally entitled due process rights. On July 3, 2025, the ALJ issued a Proposed Decision and order requiring the CDFA to “destroy and remove the trees” and

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1 imposed a \$2,500 penalty. Ms. Ross formally signed and adopted the decision on July 29,
2 2025.

3 45. The decision, with scant analysis, ignored the undisputed facts that there is no infection of
4 any of Evergreen’s 35,000 trees, and that the state’s alternatives for compliance were
5 unattainable, providing an existential threat to Evergreen’s business, and that CDFa seeks an
6 unprecedented and punitive remedy to destroy an entire business.

7 46. On this record, the ALJ decision amounts to a miscarriage of justice, with an arbitrary
8 decision that lacks substantial evidence or support, and denies Evergreen due process and
9 equal protection under the California and United States Constitutions and constitutes a
10 taking.

11 **REQUEST FOR STAY**

12 47. Pursuant to CCP § 1094.5(g) and Gov’t Code § 11523, to prevent the irreversible destruction
13 of 35,000 healthy citrus trees, uninfected with HLB, Evergreen seeks a stay pending
14 judgment of this case.

15 48. Evergreen has faced and will continue to face irreparable harm to its business and to its
16 goodwill.

17 49. Evergreen is likely to prevail given the decision’s lack of substantial evidence, the
18 withholding of critical boundary data, the erroneous admission of the uncontestable “find”
19 location and due process and equal treatment constitutional violations.

20 50. The balance of hardships favors preserving the status quo.

21 51. A temporary stay is not against the public interest because the trees have never tested
22 positive for HLB or ACP and are under ongoing treatment, and their preservation during
23 judicial review poses no demonstrated risk of HLB spread.

24 **FIRST CAUSE OF ACTION**

25 **(Code of Civil Procedure § 1094.5 vs. CDFa)**

26 52. Evergreen hereby incorporates all preceding factual allegations as though fully set forth
27 herein.

28 53. Evergreen seeks judicial review of a final administrative decision issued by CDFa that

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- 1 ordered the destruction of approximately 35,000 healthy citrus trees based on regulatory
- 2 noncompliance and a declaration of public nuisance.
- 3 54. Given the nature of the deprivation involving the Constitutionally recognized fundamental
- 4 right of due process of law, this record requires de novo review. (See *Ramirez v. City of Indio*
- 5 (2024) 105 Cal.App.5th 939, 948 [“We review a challenge to the procedural fairness of the
- 6 administrative hearing de novo on appeal ‘since the ultimate question of procedural fairness
- 7 amounts to a question of law.’”].)
- 8 55. The decision is subject to review under Code of Civil Procedure section 1094.5. The
- 9 administrative decision is not supported by the findings, and the findings are not supported
- 10 by the weight of the evidence.
- 11 56. Evergreen has exhausted all administrative remedies. A writ of mandate should issue
- 12 compelling Respondents to vacate the decision.
- 13 57. Evergreen has no plain, speedy, or adequate remedy at law other than review by writ of
- 14 mandate.
- 15 58. The decision constitutes an abuse of discretion because CDFA failed to proceed in the
- 16 manner required by law, issued findings not supported by the evidence, and imposed
- 17 unprecedented and grossly disproportionate remedies to the alleged violations.
- 18 59. Evergreen was denied a fair hearing and fundamental due process of law as the
- 19 administrative court admitted material evidence onto the record that Evergreen was inside of
- 20 the five-mile quarantine zone without proof and failed to consider mitigating environmental
- 21 factors as stated in the CDFA’s work plan and confirmed by testimony.
- 22 60. As discussed above, Evergreen was never provided that location and therefore had no
- 23 opportunity to contest the evidence by taking its own measurements despite Evergreen’s
- 24 offer to sign a non-disclosure agreement.
- 25 61. Further, CDFA failed to proceed in the manner required by law, misapplied applicable
- 26 statutory and regulatory provisions, and acted in excess of its jurisdiction.
- 27 62. Accordingly, a writ of mandate should issue under Code of Civil Procedure section 1094.5
- 28 commanding CDFA to vacate and set aside its unlawful decision.

SECOND CAUSE OF ACTION

(42 U.S.C. § 1983 – Procedural Due Process – vs. Individual Defendants)

63. Evergreen hereby incorporates all preceding factual allegations as though fully set forth herein.

64. Ms. Ross and Mr. Okasaki (“Individual Defendants”), acting under color of law, deprived Evergreen of property without due process of law by failing to provide meaningful notice or a fair opportunity to challenge the basis for the quarantine order and the tree destruction directive.

65. Individual Defendants refused to disclose the specific location of the “HLB find” upon which the quarantine was based, denying Petitioner a fair and meaningful hearing or a meaningful opportunity to challenge that evidence.

66. Individual Defendants knew that Evergreen needed the specific location of the alleged “find” in order to measure the distance of the location of its Nursery to the alleged “find”.

Individual Defendants deprived Evergreen of this critical information with the knowledge that Evergreen would be unable to contest the measurement of the quarantine zone, which forms the basis of this entire dispute.

67. The procedures used by Individual Defendants were constitutionally inadequate and resulted in the deprivation of substantial property rights protected under the United States and California Constitutions.

THIRD CAUSE OF ACTION

(42 U.S.C. § 1983 – Equal Protection – vs. Individual Defendants)

68. Evergreen hereby incorporates all preceding factual allegations as though fully set forth herein.

69. Individual Defendants have treated Evergreen unequally in comparison to similarly situated citrus tree owners, including residential property owners and commercial fruit growers.

70. Specifically, citrus trees found to be infected with HLB on residential properties are destroyed but trees that are tested and found to be HLB free may remain on site and treated by the state.

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71. Conversely, uninfected trees belonging to a nursery grower within a five-mile radius of an HLB positive tree are required to be destroyed.

72. The purported purpose of the quarantine and other policies is to prevent the spread of HLB and protect the citrus industry.

73. The differing rules applied to commercial fruit growers and residential home owners vs. nurseries is arbitrary and capricious, a violation of Evergreen’s right to equal protection of the law.

FOURTH CAUSE OF ACTION
(Declaratory Relief vs. CDFA)

74. Evergreen hereby incorporates all preceding factual allegations as though fully set forth herein.

75. Evergreen contends that sections 5762 and 5763 of the California Food and Agriculture Code is unconstitutional on its face, and as applied to Evergreen, because it gives the unelected officials at CDFA the power to deprive individuals of property without notice or an opportunity to be heard based only on a statement that the action is “reasonably necessary for the immediate preservation of the public peace, health, safety, or general welfare.” Evergreen also contends that these statutes are unconstitutional because, in addition to authorizing the CDFA to deprive individuals of property without due process, it does not provide individuals with an adequate opportunity to challenge the unfettered capacity of the agency to declare property as a “public nuisance”. Evergreen also contends that the statutes, particularly as applied to Evergreen are overly broad. These sections offend the constitutional principle that “a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *Zwickler v. Koota*, 389 U.S. 241, 250 (1967).

76. Further, this statutory scheme creates an irrebuttable presumption. The arbitrary and capricious application of this presumption, despite years of compliant treatments, and no detection of ACP or HLB at Evergreen, violated Evergreen’s federal and state due process rights.

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1 77. On information and belief, Evergreen contends that sections 5762 and 5763 of the California
2 Food and Agriculture Code are unconstitutional on its face and as applied in this situation.

3 78. Pursuant to CCP section 1060, Evergreen seeks a judicial declaration that sections 5762 and
4 5763 of the California Food and Agriculture Code are unconstitutional on its face and as
5 applied in this situation.

6 79. A judicial determination of these issues is necessary and appropriate because such a
7 declaration will clarify the parties’ rights and obligations, permit them to have certainty
8 regarding those rights and potential liability, and avoid a multiplicity of actions.

9 80. Evergreen also seeks injunctive relief barring the CDFA from continuing to enforce its order
10 based on the illegal declaration that the healthy citrus stock is a public nuisance.

11 **FIFTH CAUSE OF ACTION**

12 **(Inverse Condemnation vs. State of California by and through the CDFA)**

13 81. Evergreen hereby incorporates all preceding factual allegations as though fully set forth
14 herein.

15 82. Article I, section 19 of the California Constitution provides that private property may not be
16 taken or damaged for public use without the payment of just compensation.

17 83. Evergreen is the owner of approximately 35,000 healthy citrus trees located on its nursery
18 property in Escondido, San Diego County, with an aggregate market value of approximately
19 \$3,000,000. These trees, and Evergreen’s rights to possess, use, grow, sell, and move them in
20 commerce, constitutes a protected private property interest.

21 84. On December 1, 2023, CDFA issued a hold order prohibiting the sale or movement of
22 Evergreen’s citrus stock, depriving Evergreen of all economically beneficial use of its
23 property.

24 85. On May 14, 2024, CDFA declared Evergreen’s healthy citrus trees a public nuisance.

25 86. On July 3, 2025, an Administrative Law Judge issued a Proposed Decision upholding
26 CDFA’s order requiring destruction of Evergreen’s entire citrus inventory, and on July 29,
27 2025, CDFA adopted that decision as its final agency action.

28 87. CDFA’s actions are for a public use to the extent the CDFA maintains its statewide citrus

JW HOWARD/ ATTORNEYS, LTD.
600 WEST BROADWAY, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

1 pest eradication and disease prevention program is in the public interest.

2 88. As a direct and proximate result of CDFA’s actions, Evergreen has suffered the total loss of
3 its citrus stock and the destruction of its business operations, sustaining damages in excess of
4 \$3,000,000, plus consequential damages, loss of goodwill, and loss of future business
5 opportunities, in an amount to be proven at trial. Accordingly, Evergreen is entitled to just
6 compensation under Article I, section 19 of the California Constitution.

7 **SIXTH CAUSE OF ACTION**

8 **(Code of Civil Procedure § 1085 vs. CDFA)**

9 89. Evergreen hereby incorporates all preceding factual allegations as though fully set forth
10 herein.

11 90. CDFA acted in excess of their statutory authority by issuing orders that were not supported
12 by factual findings or specific statutory mandates.

13 91. Respondent CDFA has a duty to act within the scope of authority granted by the Food and
14 Agricultural Code and to proceed in the manner required by law.

15 92. Evergreen has a direct and beneficial interest in CDFA’s compliance with these duties, as
16 CDFA’s orders directly affect Evergreen’s 35,000 trees, its operations, and its ability to
17 conduct business.

18 93. Evergreen has no plain, speedy, or adequate remedy at law.

19 94. CDFA acted in excess of its statutory authority by declaring Evergreen’s stock to be a public
20 nuisance and by seeking the removal of its stock without just compensation, without a single
21 finding of pest detection or disease. CDFA treated Evergreen unequally compared to other
22 parallel agricultural operations where uninfected stock was destroyed, for example chicken
23 farmers who had their disease free flocks destroyed for the “public good” were compensated
24 for the fair market value of the birds “taken”.

25 95. Such actions are arbitrary, capricious, and contrary to law, and constitute an abuse of
26 discretion.

27 96. These actions exceeded the scope of authority granted by the Food and Agricultural Code
28 and violate fundamental principles of administrative law.

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PRAYER FOR RELIEF

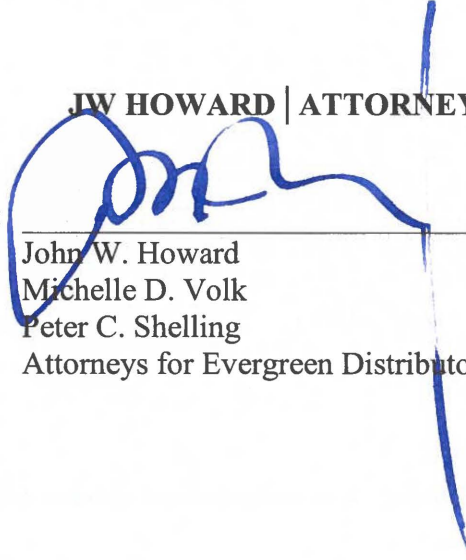
WHEREFORE, petitioner prays as follows:

- (a) A peremptory writ of mandate issue, under Code of Civil Procedure §1094.5, directed to Respondents, and compelling Respondents to set aside its decision affirming the decision of the administrative law judge affirming the determination of the CDFA to require the destruction of Evergreen’s 35,000 healthy and uninfected trees;
- (b) For economic damages to be proven at trial;
- (c) For punitive damages to the extent authorized by law;
- (d) For an injunction prohibiting the CDFA from seizing and destroying Evergreen’s citrus trees without just compensation;
- (e) For costs and attorneys fees under CCP § 1021.5, 42 U.S.C. § 1988;
- (f) And such other relief as the Court deems just and proper.

Dated: August 27, 2025

JW HOWARD | ATTORNEYS, LTD.

By:



John W. Howard
Michelle D. Volk
Peter C. Shelling
Attorneys for Evergreen Distributors, Inc.

JW HOWARD/ ATTORNEYS, LTD.
600 WEST BROADWAY, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

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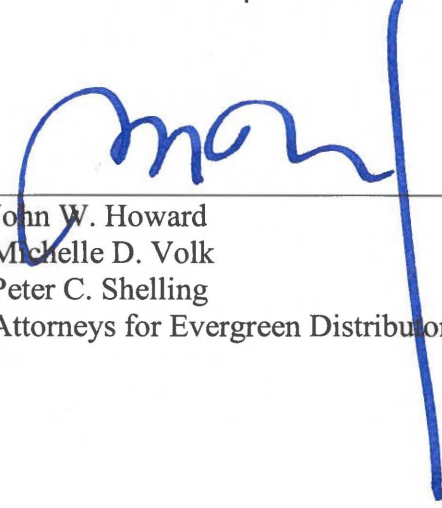
JURY TRIAL DEMAND

Plaintiff/Petitioner hereby requests a trial by jury on all claims for which it is available.

DATED: August 27, 2025

JW HOWARD | ATTORNEYS, LTD.

By:



John W. Howard
Michelle D. Volk
Peter C. Shelling
Attorneys for Evergreen Distributors, Inc.

JW HOWARD/ ATTORNEYS, LTD.
600 WEST BROADWAY, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

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VERIFICATION

I am the President of the petitioner corporation in this proceeding. On information and belief, the facts alleged in the above petition are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on August 27, 2025 at San Diego, California



Mark Collins
President of Evergreen Distributors, Inc.
Petitioner and Plaintiff

JW HOWARD/ ATTORNEYS, L.TD.
600 WEST BROADWAY, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

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EXHIBIT C

1 ROB BONTA
 Attorney General of California
 2 MICHAEL P. CAYABAN
 Supervising Deputy Attorney General
 3 PHILLIP M. HOOS (SBN 288019)
 NATALIE E. COLLINS (SBN 338348)
 4 Deputy Attorney General
 600 West Broadway, Suite 1800
 5 San Diego, CA 92101
 Telephone: (619) 738-9301
 6 E-mail: Phillip.Hoos@doj.ca.gov
 Attorneys for Respondent California Department
 7 of Food and Agriculture

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SAN DIEGO
 11

12
 13 **EVERGREEN DISTRIBUTORS, INC.,**
 d/b/a **EVERGREEN NURSERY, a**
 14 **California Corporation,**

15 Petitioner and Plaintiff,

16 v.

17
 18 **CALIFORNIA DEPARTMENT OF FOOD**
AND AGRICULTURE, an agency of the
 19 **State of California; STATE OF**
CALIFORNIA, by and through the
 20 **California Department of Food and**
Agriculture; KAREN ROSS, in her
 21 **individual capacity, and KEITH OKASAKI,**
 22 **in his individual capacity,**

23 Respondents and
 24 Defendants.
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Case No. 25CU045341C

**NOTICE REGARDING DEADLINE FOR
 RESPONSIVE PLEADING TO VERIFIED
 PETITION FOR WRIT OF MANDATE
 AND COMPLAINT FOR DAMAGES**

Dept.: C-72
 Judge: The Honorable Marcella O.
 McLaughlin

Action Filed: August 27, 2025

1 Respondent California Department of Food and Agriculture (CDFA), by and through its
2 attorneys of record, represent as follows:

3 1. On or around August 27, 2025, petitioner and plaintiff Evergreen Nursery
4 (Evergreen) filed its verified petition for writ of mandate and complaint for damages (Petition)
5 against the California Department of Food and Agriculture (CDFA), and CDFA Secretary Karen
6 Ross and staffer Keith Okasaki in their individual capacities.

7 2. CDFA accepted service of the Petition on October 9, 2025. Ms. Ross and Mr. Okasai
8 have yet to be properly served.

9 3. CDFA is unable to respond to the Petition at this time, because the administrative
10 record has not been completed.

11 4. CDFA’s answer or other responsive pleading is not due until 30 days after
12 certification of the administrative record. (Code Civ. Proc. § 1089.5.)

13 5. CDFA will file its responsive pleading(s) within 30 days after certification of the
14 administrative record.

15 This notice is made without prejudice to any and all rights of CDFA to file any motions or
16 assert any rights or defenses in this matter, or to individual defendants Secretary Karen Ross and
17 Keith Okasaki who have yet to be properly served.

18
19 Dated: November 5, 2025

Respectfully submitted,
Rob Bonta
Attorney General of California
Michael P. Cayaban
Supervising Deputy Attorney General



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25 By: _____
26 PHILLIP M. HOOS
27 Deputy Attorneys General
28 *Attorneys for Respondent and Defendant
California Department of Food and
Agriculture*

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EXHIBIT D

11/18/2025 8:44:17 AM
 POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John W. Howard (SBN 80200) Peter C. Shelling (SBN 351159) Michelle D. Volk (SBN 217151) JW HOWARD/ATTORNEYS, LTD. 600 West Broadway, Ste. 1400, San Diego, CA 92101 TELEPHONE NO.: 619-234-2842 FAX NO. (Optional): E-MAIL ADDRESS (Optional): johnh@jwhowardattorneys.com / michelle@jwhowardattorneys.com ATTORNEY FOR (Name): Plaintiff Evergreen Distributors, Inc.	FOR COURT USE ONLY Clerk of the Superior Court By T. Automation, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Civil Division	
PLAINTIFF/PETITIONER: Evergreen Distributors Inc. DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.	CASE NUMBER: 25CU045341C
AMENDED PROOF OF SERVICE OF SUMMONS	

Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): Notice of Case Assignment and Case Management Conference
3. a. Party served (specify name of party as shown on documents served):
Karen Ross
- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Phillip M. Hoos, Attorney for Defendant, Karen Ross
4. Address where the party was served:
600 West Broadway, Ste. 1800, San Diego, CA 92101
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): _____ (2) at (time): _____
 - b. **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): _____
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

POS-010

PLAINTIFF/PETITIONER: Evergreen Distributors Inc.	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.	25CU045341C

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. **by other means** (*specify means of service and authorizing code section*):

Via email to Phillip M. Hoos at Phillip.Hoos@doj.ca.gov

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (*specify*): _____
- c. as occupant.
- d. On behalf of (*specify*): _____

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: Michelle D. Volk
- b. Address: 600 West Broadway, Ste. 1400, San Diego, CA 92101
- c. Telephone number: 619/234-2842
- d. **The fee** for service was: \$ _____
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.: _____
- (iii) County: _____

8. **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. **I am a California sheriff or marshal and** I certify that the foregoing is true and correct.

Date: November 7, 2025

Michelle D. Volk

 (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



 (SIGNATURE)

11/18/2025 8:44:17 AM
 POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John W. Howard (SBN 80200) Peter C. Shelling (SBN 351159) Michelle D. Volk (SBN 217151) JW HOWARD/ATTORNEYS, LTD. 600 West Broadway, Ste. 1400, San Diego, CA 92101 TELEPHONE NO.: 619-234-2842 FAX NO. (Optional): E-MAIL ADDRESS (Optional): johnh@jwhowardattorneys.com / michelle@jwhowardattorneys.com ATTORNEY FOR (Name): Plaintiff Evergreen Distributors, Inc.	FOR COURT USE ONLY Clerk of the Superior Court By T. Automation, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Civil Division	
PLAINTIFF/PETITIONER: Evergreen Distributors Inc. DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.	CASE NUMBER: 25CU045341C
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): Notice of Case Assignment and Case Management Conference
3.
 - a. Party served (specify name of party as shown on documents served):
Keith Okasaki
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Phillip M. Hoos, Attorney for Defendant, Keith Okasaki
4. Address where the party was served:
600 West Broadway, Ste. 1800, San Diego, CA 92101
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): _____ (2) at (time): _____
 - b. **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): _____
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

POS-010

PLAINTIFF/PETITIONER: Evergreen Distributors Inc.	CASE NUMBER: 25CU045341C
DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.	

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. **by other means** (specify means of service and authorizing code section):

Via email to Phillip M. Hoos at Phillip.Hoos@doj.ca.gov

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify): _____
- c. as occupant.
- d. On behalf of (specify): _____

under the following Code of Civil Procedure section:

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| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: _____ |

7. **Person who served papers**

- a. Name: Michelle D. Volk
- b. Address: 600 West Broadway, Ste. 1400, San Diego, CA 92101
- c. Telephone number: 619/234-2842
- d. **The fee** for service was: \$ _____
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.: _____
- (iii) County: _____

8. **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. **I am a California sheriff or marshal and** I certify that the foregoing is true and correct.

Date: November 7, 2025

Michelle D. Volk

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

10/10/2025 12:45:36 PM

POS-010

Clerk of the Superior Court
 By T. Automation, Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) John W. Howard (SBN 80200) Peter C. Shelling (SBN 351159) Michelle D. Volk (SBN 217151) JW HOWARD/ATTORNEYS, LTD. 600 West Broadway, Ste. 1400, San Diego, CA 92101 TELEPHONE NO.: 619-234-2842 FAX NO (Optional): E-MAIL ADDRESS (Optional): johnh@jwhowardattorneys.com / michelle@jwhowardattorneys.com ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Civil Division		
PLAINTIFF/PETITIONER: Evergreen Distributors Inc. DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.		CASE NUMBER: 25CU045341C
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): Notice of Case Assignment and Case Management Conference
3.
 - a. Party served (specify name of party as shown on documents served):
 California Department of Food and Agriculture, an agency of the State of California
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
 600 West Broadway, Ste. 1800, San Diego, CA 92101
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): October 9, 2025 (2) at (time): 3:00 p.m.
 - b. **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

POS-010

PLAINTIFF/PETITIONER: Evergreen Distributors Inc.	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Food and Agriculture, et al.	25CU045341C

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. **by other means** (*specify means of service and authorizing code section*):
email to Natalie Collins at natalie.collins@doj.ca.gov

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. as an individual defendant.
- b. as the person sued under the fictitious name of (*specify*): _____
- c. as occupant.
- d. On behalf of (*specify*): California Department of Food and Agriculture, an agency of the State of California under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input checked="" type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: _____ |

7. **Person who served papers**

- a. Name: Lorena Hernandez
- b. Address: 600 West Broadway, Ste. 1400, San Diego, CA 92101
- c. Telephone number: _____
- d. **The fee** for service was: \$ _____
- e. I am:
- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.: _____
- (iii) County: _____

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: October 9, 2025

Lorena Hernandez

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

▶ 

(SIGNATURE)

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF REMOVAL OF ACTION TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA BY DEFENDANTS ROSS AND OKASAKI

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 5, 2025, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

John W. Howard
JW HOWARD ATTORNEYS LTD
600 West Broadway, Suite 1400
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 5, 2025, at San Diego, California.

J. Llorens
Declarant


Signature

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Evergreen Distributors, Inc. d/b/a Evergreen Nursery

(b) County of Residence of First Listed Plaintiff San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

'25CV3442 W JLB

(c) Attorneys (Firm Name, Address, and Telephone Number)

JW Howard/Attorneys, Ltd.; 600 W. Broadway Ave. Suite 1400, San Diego, CA 92101; 619-234-2842

DEFENDANTS

California Department of Food and Agriculture; Secretary Karen Ross; Keith Okasaki

County of Residence of First Listed Defendant Sacramento, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Phillip Hoos (SBN 288019); California Department of Justice; 600 W. Broadway Ave. Suite 1800; 619-738-9301

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. section 1983

Brief description of cause: Challenge to state administrative proceeding authorizing the quarantine and destruction of plants

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [x] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: Dec 4, 2025 SIGNATURE OF ATTORNEY OF RECORD: /s/ Phillip Hoos

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE