

SUMMONS ON FIRST AMENDED COMPLAINT
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

JERICO PRODUCTS, INC., a California corporation; LIND MARINE, INC., a California corporation; and DOES 1 - 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NORTH COAST RAILROAD AUTHORITY, a public agency

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.

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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Sonoma County Superior Court
Hall of Justice Rm 107J
600 Administration Drive
Santa Rosa, CA 95403-2818

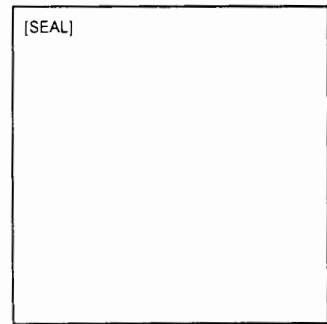
CASE NUMBER:
(Número del Caso): 235961

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):

CHRISTOPHER J. NEARY (707) 459-5551
Attorney at Law (#69220)
110 S. Main St., Ste. C
Willits, CA 95490

DATE: **JAN 04 2005** DENISE L. GORDON Clerk, by BARBIE JOHNS Deputy
(Fecha) *(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

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. 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)*:
4. by personal delivery on *(date)*:

1 CHRISTOPHER J. NEARY
2 Attorney at Law, #69220
3 110 South Main Street, Suite C
4 Willits, CA 95490

5 (707) 459-5551

6 Attorney for Plaintiff,
7 NORTH COAST RAILROAD AUTHORITY
8 a Public Agency

ENDORSED
FILED

JAN 04 2005

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

Exempt from filing fees
Pursuant to Gov. Code
§ 6103 and § 93000, *et seq.*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SONOMA

12
13 NORTH COAST RAILROAD) UNLIMITED
14 AUTHORITY, a public agency,) Case No. *SCV 235961*
15)
16 Plaintiff,)
17 v.) FIRST AMENDED COMPLAINT FOR
18) DAMAGES AND FOR PRELIMINARY
19) AND PERMANENT INJUNCTION
20 JERICO PRODUCTS, INC., a California)
21 corporation; LIND MARINE, INC., a)
22 California corporation; and DOES 1 - 100,)
23 inclusive,)
24 Defendants.)

25 Comes now, NORTH COAST RAILROAD AUTHORITY, a public agency ("NCRA")
26 for cause of action states as follows:

27 General Allegations

28 1. Plaintiff, NCRA is, and at all times herein mentioned was, a public agency
created by the California Legislature pursuant to Government Code §§ 93000, *et seq.* with
its principal office in the City of Ukiah, County of Mendocino, State of California.

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2. Defendant JERICO PRODUCTS, INC., is and at all times herein mentioned was, a California corporation (“JERICO”) with its principle office located in the City of Petaluma, County of Sonoma, State of California.

3. Defendant LIND MARINE, INC., is and at all times herein mentioned was, a California corporation (“LIND”) with its principal office in the City of Petaluma, County of Sonoma, State of California.

4. Defendants DOES 1-10, inclusive, are unknown individual persons who are the alter ego of defendants JERICO and LIND. Plaintiff sues such defendants by such fictitious names pursuant to Code of Civil Procedure § 474 and will amend this Complaint to allege such defendants' true names and capacities when ascertained.

5. Defendants DOES 11 - 20, inclusive, are shippers of materials on barges owned and operated by JERICO and LIND, whose identities are presently unknown to Plaintiff. Plaintiff sues such defendants by such fictitious names pursuant to Code of Civil Procedure § 474 and will amend this Complaint to allege such defendants' true names, capacities and liabilities when ascertained.

6. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein under the names of DOES 21 - 100, inclusive, are unknown to plaintiff at this time. Plaintiff sues such defendants by such fictitious names pursuant to Code of Civil Procedure § 474 and will amend this Complaint to allege such defendants' true names and capacities when ascertained.

7. Plaintiff is informed and believes, and based upon such information and belief alleges, that at all times mentioned in this Complaint, defendants and each of them were the agents, servants, and employees of the other defendants, and in doing the things alleged in this Complaint, defendants were each acting within the scope and authority of such agency and/or employment.

1 8. Plaintiff is informed and believes, and based upon such information and belief
2 alleges, that each of the defendants designated as a DOE defendant herein is negligently,
3 or otherwise legally responsible for the events and happenings referred to in this
4 Complaint, and negligently or otherwise, unlawfully caused the injuries and damages to
5 Plaintiff.

6 9. At all times mentioned herein, LIND was and is the owner of that certain tug
7 *Petaluma*, which typically in operation is in tow of at least one barge, with the tug having
8 a net weight of approximate 72 tons, being 64.5 feet in length, 26.1 feet in width, with steel
9 hull material built in Stockton, California in the 1960's, assigned Department of
10 Transportation Identification No. 508762, the tug and barge hereinafter collectively referred
11 to as the "*Petaluma*".

12 10. At all times mentioned herein, JERICO was and is the operator of the *Petaluma*,
13 operating the same with the permission and consent of LIND pursuant to a business
14 relationship the nature of which is currently unknown to Plaintiff.

15 11. Plaintiff is the operator of the Northwestern Pacific Railroad, a railroad
16 extending from a point near the City of Arcata, Humboldt County, California and traversing
17 a route through the counties of Humboldt, Del Norte, Mendocino, Sonoma, Marin and
18 Napa, in the State of California to a point near the City of Napa, California (hereinafter
19 referred to as the "NWP").

20 12. An intrical part of the NWP line is that certain bridge located near Blackpoint,
21 on the Petaluma River, consisting of a two-span steel truss swing bridge consisting of built
22 up-laced and plate structural members in 25 foot bays designed to swing counter-clockwise
23 to close the span across the Petaluma River channel, together with its protective abutments
24 as described in that certain Permit issued by the Department of War on or about June 2, 1911
25 under No. AUD167 (hereinafter the "Blackpoint Bridge").
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1 13. On April 30, 1996, the Northwestern Pacific Railroad Authority, a Joint Powers
2 Agency consisting of three public agencies: the Golden Gate Bridge, Highway and
3 Transportation District; the County of Marin and NCRA ("NWPR") acquired ownership
4 of the Northwestern Pacific Line from a point near Healdsburg at NWP Mile Post marker
5 68.22 to the intersection with the national rail system at Lombard, near the City of Napa, at
6 East-West Mile Post Marker 63.40, which included the Blackpoint Bridge span across the
7 Petaluma River. On or about July 30, 1996, NWPR entered into an Operating Agreement
8 with NCRA by which NCRA assumed responsibility for operation of the railroad and the
9 repair and maintenance of the Northwestern Pacific Railroad Line, including the Blackpoint
10 Bridge, and pursuant thereto a Freight Easement was granted to NCRA which easements
11 was recorded as Document No. 96-0222008 in the Official Records of Marin County, and
12 that certain Grant of Easement Agreement dated April 30, 1996 and recorded as Document
13 No. 1998-0130069 in the County of Sonoma on November 3, 1998 in favor of NCRA.
14 Pursuant thereto, the Surface Transportation Board, a decisionally independent bipartisan
15 adjudicatory body reporting to the United States Secretary of Transportation, formed
16 pursuant to the Interstate Commerce Commission Termination Act ("ICCTA") 49 USC
17 § 10101, *et seq.* granted to NCRA under Finance Docket No. 33115 the authority and
18 obligation to provide surface freight and passenger excursion service over the course of the
19 Northwestern Pacific Railroad line, including the Blackpoint Bridge.
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22 14. On or about March 1, 2004, NWPR dissolved as contemplated by Assembly
23 Bill 2224, Chapter 341 of the Laws of 2002 and codified as Public Utilities Code § 10512, *et*
24 *seq.*, which legislation established the SONOMA MARIN AREA RAPID TRANSIT
25 DISTRICT ("SMART") for the purpose of providing a unified, comprehensive institutional
26 structure for the ownership and governance of a passenger rail system within the Counties
27 of Marin and Sonoma, State of California. Pursuant to AB 2224, the ownership of the
28 Northwestern Pacific Railroad Line from Healdsburg, California to NWP Mile Post Marker

1 63.40 at Lombard, near the City of Napa, County of Napa. In acquiring such rail line,
2 SMART succeeded in interest to the Operating Agreement by and between NWPRA and
3 NCRA together with the above-described freight easements granted by NWPRA to NCRA
4 for freight service.

5 FIRST CAUSE OF ACTION

6 (Negligence)

7
8 15. Plaintiff incorporates paragraphs 1 through 14 above by this reference as
9 though fully set forth herein.

10 16. On or about June 10, 2002, at approximately 9:00 p.m., the *Petaluma* was in the
11 exclusive control of Defendants.

12 17. On or about June 10, 2002, at approximately 9:00 p.m., defendants so negligently
13 maintained and operated the *Petaluma* that the *Petaluma* struck the Blackpoint Bridge.

14 18. As a proximate result of the Defendants' negligence, Plaintiff sustained
15 damage to the Blackpoint Bridge.

16 19. As a further proximate result of the Defendants' negligence as aforesaid,
17 Plaintiff sustained damage for the loss of use of the Blackpoint Bridge.

18 20. As a further proximate result of the Defendants' negligence as aforesaid,
19 Plaintiff sustained damages for the costs of emergency response to the scene of the collision.

20 21. As a further proximate result of the Defendants' negligence, Plaintiff has
21 sustained damages and continues to incur damages for the cost of compliance with
22 environmental laws and governmental contract bidding requirements.

23 22. As a further proximate result of Defendants' negligence as aforesaid, Plaintiff
24 has incurred and continues to incur liability to the United States Coast Guard for penalties
25 in the amount of One Thousand Dollars (\$1,000) per day from and after June 20, 2002 and
26 continuing until the present.
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28 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

1 SECOND CAUSE OF ACTION

2 (Negligence)

3 23. Plaintiff incorporates paragraphs 1 through 22 above by this reference as
4 though fully set forth herein.

5 24. On or about April 20, 2003, at approximately 3:05 p.m., the *Petaluma* was in the
6 exclusive control of Defendants.

7 25. On or about April 20, 2003, at approximately 3:05 p.m., defendants so negligently
8 maintained and operated the *Petaluma* that the *Petaluma* struck the Blackpoint Bridge.

9 26. As a proximate result of the Defendants' negligence, Plaintiff sustained
10 damage to the Blackpoint Bridge.

11 27. As a further proximate result of the Defendants' negligence as aforesaid,
12 Plaintiff sustained damage for the loss of use of the Blackpoint Bridge.

13 28. As a further proximate result of the Defendants' negligence as aforesaid,
14 Plaintiff sustained damages for the costs of emergency response to the scene of the collision.

15 29. As a further proximate result of the Defendants' negligence, Plaintiff has
16 sustained damages and continues to incur damages for the cost of compliance with
17 environmental laws and governmental contract bidding requirements.

18 30. As a further proximate result of Defendants' negligence as aforesaid, Plaintiff
19 has incurred and continues to incur liability to the United States Coast Guard for penalties
20 in the amount of One Thousand Dollars (\$1,000) per day from and after June 20, 2002 and
21 continuing until the present.

22 WHEREFORE, Plaintiff prays for Judgment as hereinafter set forth.

23 THIRD CAUSE OF ACTION

24 (Negligence)

25 31. Plaintiff incorporates paragraphs 1 through 30 above by this reference as
26 though fully set forth herein.

1 32. On or about November 28, 2003, the *Petaluma* was in the exclusive control of
2 Defendants.

3 33. On or about November 28, 2003, defendants so negligently maintained and
4 operated the *Petaluma* that the *Petaluma* struck the Blackpoint Bridge.

5 34. As a proximate result of the Defendants' negligence, Plaintiff sustained
6 damage to the Blackpoint Bridge.

7 35. As a further proximate result of the Defendants' negligence as aforesaid,
8 Plaintiff sustained damage for the loss of use of the Blackpoint Bridge.

9 36. As a further proximate result of the Defendants' negligence as aforesaid,
10 Plaintiff sustained damages for the costs of emergency response to the scene of the collision.

11 37. As a further proximate result of the Defendants' negligence, Plaintiff has
12 sustained damages and continues to incur damages for the cost of compliance with
13 environmental laws and governmental contract bidding requirements.

14 38. As a further proximate result of Defendants' negligence as aforesaid, Plaintiff
15 has incurred and continues to incur liability to the United States Coast Guard for penalties
16 in the amount of One Thousand Dollars (\$1,000) per day from and after June 20, 2002 and
17 continuing until the present.

18 WHEREFORE, Plaintiff prays for Judgment as hereinafter set forth.

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21 FOURTH CAUSE OF ACTION

22 (Negligence)

23 39. Plaintiff incorporates paragraphs 1 through 38 above by this reference as
24 though fully set forth herein.

25 40. On or about December 1, 2004, the *Petaluma* was in the exclusive control of
26 Defendants.

27 41. On or about December 1, 2004, defendants so negligently maintained and
28 operated a vessel, that the vessel struck the Blackpoint Bridge, and specifically, the dolphin

1 thereof.

2 42. As a proximate result of the Defendants' negligence, Plaintiff sustained
3 damage to the Blackpoint Bridge.

4 43. As a further proximate result of the Defendants' negligence as aforesaid,
5 Plaintiff sustained damage for the loss of use of the Blackpoint Bridge.

6 44. As a further proximate result of the Defendants' negligence as aforesaid,
7 Plaintiff sustained damages for the costs of emergency response to the scene of the collision.

8 45. As a further proximate result of the Defendants' negligence, Plaintiff has
9 sustained damages and continues to incur damages for the cost of compliance with
10 environmental laws and governmental contract bidding requirements.

11 46. As a further proximate result of Defendants' negligence as aforesaid, Plaintiff
12 has incurred and continues to incur liability to the United States Coast Guard for penalties
13 in the amount of One Thousand Dollars (\$1,000) per day from and after June 20, 2002 and
14 continuing until the present.

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16 WHEREFORE, Plaintiff prays for Judgment as hereinafter set forth.

17 FIFTH CAUSE OF ACTION

18 (Preliminary and Permanent Injunction)

19 47. Plaintiff incorporates paragraphs 1 through 46 above by this reference as
20 though fully set forth herein.

21 48. Plaintiff has the legal duty to operate over and repair the damage to the
22 Blackpoint Bridge caused by Defendants' repeated collisions with the Blackpoint Bridge, by
23 reason of Plaintiff's freight easement.

24 49. Defendants' most recent collision, on or about December 1, 2004, obliterated
25 the protective fendering system for the Blackpoint Bridge so that the Blackpoint Bridge is
26 completely unprotected from Defendants' inability or unwillingness to avoid collisions with
27 the Blackpoint Bridge.
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1 50. A collision with the unprotected Blackpoint Bridge structure will result in the
2 collapse of the Blackpoint Bridge. Plaintiff will suffer irreparable harm if Defendants are
3 not restrained from colliding with the Blackpoint Bridge during the time that is consumed
4 with the replacement of the protective fendering system for the Blackpoint Bridge. In the
5 event the unprotected Bridge is struck, causing its collapse, an intrical segment of the
6 Northwestern Pacific Rail line will be lost, causing irreparable and incalculable damages
7 both to Plaintiff, SMART, and also the maritime users of the Petaluma River. Plaintiff is
8 informed and believes that the cost of replacing the Blackpoint Bridge would be in excess
9 of \$30 million and the time consumed would be in excess of three years to complete the
10 environmental review necessary to remove a collapsed bridge and replace it with a new
11 bridge.
12

13 51. In that Defendants have repeatedly struck the Blackpoint Bridge on four
14 occasions in the past two years, it is evident that Defendants are unable or unwilling to
15 operate in the Petaluma River without again striking an unprotected bridge.
16

17 52. Unless and until Defendants can demonstrate their ability to pay for the
18 damages that would be caused by another strike to the Bridge proper and/or in the
19 alternative to implement necessary procedures to prevent further collision with the
20 Blackpoint Bridge, Defendants should be restrained from operating the *Petaluma* or any
21 barges upon the Petaluma River.
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WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

SIXTH CAUSE OF ACTION

(Negligence)

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25 53. Plaintiff incorporates paragraphs 1 through 52 above by this reference as
26 though fully set forth herein.
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28 54. On or about September 26, 2004, at approximately 4:00 a.m., DOE 21 was in
the exclusive control of a certain vessel owned by Defendants.

1 55. On or about September 26, 2004, at approximately 4:00 a.m., Defendants
2 DOES 21 - 25, so negligently maintained and operated the vessel described in Paragraph 54,
3 that the vessel struck the Blackpoint Bridge.

4 56. As a proximate result of the Defendants' negligence, Plaintiff sustained
5 damage to the Blackpoint Bridge.

6 57. As a further proximate result of the Defendants' negligence as aforesaid,
7 Plaintiff sustained damage for the loss of use of the Blackpoint Bridge.

8 58. As a further proximate result of the Defendants' negligence as aforesaid,
9 Plaintiff sustained damages for the costs of emergency response to the scene of the collision.

10 59. As a further proximate result of the Defendants' negligence, Plaintiff has
11 sustained damages and continues to incur damages for the cost of compliance with
12 environmental laws and governmental contract bidding requirements.

13 60. As a further proximate result of Defendants' negligence as aforesaid, Plaintiff
14 has incurred and continues to incur liability to the United States Coast Guard for penalties
15 in the amount of One Thousand Dollars (\$1,000) per day from and after June 20, 2002 and
16 continuing until the present.

17 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them,
18 as follows:


- 19 1. General damages according to proof;
- 20 2. Special damages according to proof;
- 21 3. Interest according to law;
- 22 4. Costs of this action;
- 23 5. Equitable relief in the form of affirmative and/or prohibitive injunction, as
24 will be applied for by motion, fashioned to protect the Blackpoint Bridge from
25 further damage until such time as the protective fendering can be repaired
26 and replaced, including but not limited to such equitable relief as will be
27 applied for upon motion to limit the Defendants' use of barges until such time
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as Defendants can post surety in the amount of the cost of repairing or replacing the Bridge as may be required under the circumstances; and/or implementing necessary procedures to prevent further collision with the Blackpoint Bridge;

- 6. Such other and further relief as the Court may consider appropriate under the circumstances.

DATED: December 30, 2004


CHRISTOPHER J. NEARY
Attorney for Plaintiff,
NORTH COAST RAILROAD AUTHORITY