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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN JOAQUIN
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15 **THE PEOPLE OF THE STATE OF
CALIFORNIA ex rel. VAL DOLCINI,
16 Director of the California Department of
Pesticide Regulation, and XAVIER
17 BECERRA, Attorney General of California,**


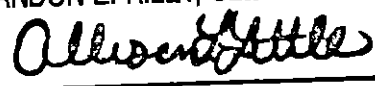
18 Plaintiffs,

19 v.

20 **ALPINE HELICOPTER SERVICE, INC., a
California corporation; JOEL C.
21 DOZHIER; WILLIAM C. HEPPE II;
22 CHARLES HEPPE; and DOES 1 through
20, inclusive,**

23 Defendants.
24

25 **AND CONSOLIDATED ACTIONS.**
26
27
28

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BRANDON E. RILEY, CLERK
By 
DEPUTY

Lead Case No. STK-CV-UEJ-2016-4746

[Consolidated w.: STK-CV-UBT-2020-7717;
STK-CV-UCC-2020-9229]

~~PROPOSED~~ JUDGMENT

Dept: 10D
Judge: Hon. Barbara A. Kronlund

Trial Date: August 30, 2021

Action Filed: October 30, 2020

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1 **JUDGMENT**

2 The Court has considered the briefing, evidence, and arguments presented by the parties
3 during the Phase I and Phase II trials. The Court adopts the factual recitations in the Phase I
4 closing briefs filed by the California Attorney General, California Department of Pesticide
5 Regulation, and the San Joaquin County District Attorney’s Office (“the People”) for all five
6 pesticide drift incidents, which accurately reference the trial record and comport with the Court’s
7 recollection of the testimony and documentary evidence admitted. The Court finds there was
8 substantial evidence presented at trial, and the People have met their burden as to each cause of
9 action alleged in the People’s Complaints by a preponderance of the evidence as established at
10 trial. For each and every one of the consolidated cases before the Court, Defendants Alpine
11 Helicopter Service, Inc. (Alpine), Joel C. Dozhier, William C. Heppe II, and John Latham
12 (collectively, Defendants) failed to exercise the due care required of aerial pesticide applicators.
13 Credible testimony was presented by the People from numerous lay witnesses and expert
14 witnesses which was not effectively controverted, establishing each violation as alleged in the
15 Complaints. Defendants were either grossly negligent, or so careless that they were recklessly
16 indifferent to the harm they were causing to people, property, and the environment by their
17 unlawful offsite pesticide drifts. Defendants have had training to apply aerial pesticides, yet
18 repeatedly acted irresponsibly in applying the harmful substances, despite knowing the law, rules,
19 risks, and established protocols. At a minimum, Defendants failed to exercise reasonable due
20 care during their aerial operations, causing substantial pesticide drift onto neighboring properties,
21 and with the Isleton Incident, onto a person.

22 The People have proven that Defendants repeatedly failed to apply pesticides within the
23 industry standards of care by: applying during windy conditions and/or temperature inversions in
24 violation of the registered product labels; not establishing buffer zones; flying over sensitive areas
25 and releasing pesticides directly over sensitive sites; and failing to fly trim passes; all the while
26 knowing of the reasonable likelihood of contaminating adjacent property, and endangering
27 people, property, and the environment by causing substantial drift of pesticides off target.
28

1 For each incident, the Court recites critical evidence that the Court relied on in reaching
2 its findings. This summary of evidence is not intended to exhaustively recount all of the evidence
3 that the Court reviewed and considered over the course of this court trial and additional evidence
4 may be found in the record, as summarized in the People’s briefing. The Court does hereby find
5 and adjudicate that:

6 **Bouldin Island Incident (Application Dates: May 16, 2014 through May 27, 2014):**

7 Defendants Alpine and Joel C. Dozhier, Alpine’s President, Chief Executive Officer, and
8 Designated Qualified Applicator, were to eradicate all vegetation to facilitate a water-rights
9 transfer. A mix of glyphosate and imazapyr was used in greater quantities than Defendants had
10 ever used on any job before.

11 On May 16, 2014, when the spray operation began at 5:53 a.m., Defendant Joel C.
12 Dozhier proceeded with aerial pesticide spraying operations during a temperature inversion which
13 formed during the previous night and which was present through 8:00 a.m. Defendant Joel C.
14 Dozhier sprayed pesticide on May 16 until 10:22 a.m. Wind speeds were high, with gusts
15 reaching 13 mph on May 16, with the label for the herbicide listing 10 mph as the threshold above
16 which application is unsafe.

17 The next day, May 17, 2014, Defendant Joel C. Dozhier started the aerial pesticide
18 spraying operation at 5:43 a.m., again during a temperature inversion that was present until 7:00
19 a.m. Again, wind speeds were high, between 8-12 mph from 8:00 a.m.-10:00 a.m., with
20 operations continuing until 9:57 a.m.

21 On May 22, 2014, pilot Kaythan Chamberlain, an employee of Alpine, commenced aerial
22 pesticide spraying operations at 6:17 a.m., during a temperature inversion. Spraying Bouldin
23 Island during these temperature inversions caused small pesticide spray droplets to hang in the air
24 for long periods of time, moving off-site. Spraying pesticide during a temperature inversion falls
25 below the standard of care in the industry.

26 Shortly after Defendants’ aerial pesticide spraying applications as described above, the
27 San Joaquin Agricultural Commissioner’s Office received 139 reports of loss, whereas they
28 usually only received two reports per year. The Commissioner’s biologists sampled affected

1 crops (tomatoes, blueberries, corn, walnuts, asparagus, and other crops) and detected the same
2 chemicals which Defendants sprayed on Bouldin Island. A “classic drift” situation was
3 discovered with the damage to various crops being typical for the damage one would expect to
4 see from the Bouldin Island drift of chemicals.

5 In addition to the crop damage, at the Tower Park community, a dog required extensive
6 veterinary treatment after the Bouldin Island spray application. Defendants ignored the product
7 label warnings that drift potential is lowest between wind speeds of 3-10 mph. Defendant Joel C.
8 Dozhier established an 8-mph self-imposed wind speed on his company operations. Defendant
9 Alpine’s pilots ignored the label and their own company policy as far as spraying during windy
10 conditions. Defendants failed to exercise reasonable care during the Bouldin Island pesticide
11 applications in reckless disregard of the consequences. Defendants either knew or should have
12 known that they were causing drift with the high likelihood of great damage therefrom. The
13 evidence is overwhelming that Defendants caused the pesticide drift in violation of the standard
14 of care in the industry.

15 Defendants Alpine and Joel C. Dozhier are liable for the following violations of statutes
16 and regulations for causing substantial amounts of pesticide drift from the target site onto
17 adjacent properties, in violation of the product labels:

- 18 1. Defendants Alpine and Joel C. Dozhier violated Health and Safety Code section 41700 on
19 May 16, 2014, May 17, 2014, and May 22, 2014, as described above. The harmful
20 pesticides applied by Defendants fall within the meaning of “air contaminants or other
21 material” as stated in section 41700. Thus, by discharging quantities of air contaminants
22 or other material that caused detriment, nuisance, and annoyance to a considerable number
23 of persons and the public and endangered the comfort, repose, health, and safety of any of
24 those persons and the public, Defendants violated section 41700. These violations were
25 acts of unfair competition as defined in Business and Professions Code section 17200.
- 26 2. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code section
27 12972 on May 16, 2014, May 17, 2014, and May 22, 2014, as described above, by failing
28 to use pesticides in a manner such as to prevent substantial drift to nontarget areas. These

1 violations were acts of unfair competition as defined in Business and Professions Code
2 section 17200.

3 3. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code section
4 12973 on May 16, 2014, May 17, 2014, and May 22, 2014, as described above, by using a
5 pesticide in conflict with the labeling of that pesticide that was registered pursuant to
6 chapter 2 of division 7 of the Food and Agricultural Code and delivered with the pesticide.
7 These violations were acts of unfair competition as defined in Business and Professions
8 Code section 17200.

9 4. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
10 section 6614, subdivision (b)(2), on May 16, 2014, May 17, 2014, and May 22, 2014, as
11 described above, by making a pesticide application when there was a reasonable
12 possibility of damage to nontarget crops and private property. These violations were acts
13 of unfair competition as defined in Business and Professions Code section 17200.

14 5. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
15 section 6614, subdivision (b)(3), on May 16, 2014, May 17, 2014, and May 22, 2014, as
16 described above, by making a pesticide application when there was a reasonable
17 possibility of contamination of nontarget private property, preventing normal use of such
18 property. These violations were acts of unfair competition as defined in Business and
19 Professions Code section 17200.

20 6. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
21 section 6600, subdivision (b), on May 16, 2014, May 17, 2014, and May 22, 2014, as
22 described above, by failing to use pesticides in a careful and effective manner. These
23 violations were acts of unfair competition as defined in Business and Professions Code
24 section 17200.

25 7. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
26 section 6600, subdivision (c), on May 16, 2014, May 17, 2014, and May 22, 2014, as
27 described above, by failing to use only methods suitable to insure proper application of
28 pesticides. These violations were acts of unfair competition as defined in Business and

1 Professions Code section 17200.

2 8. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
3 section 6600, subdivision (d), on May 16, 2014, May 17, 2014, and May 22, 2014, as
4 described above, by failing to perform pest control under climatic conditions suitable to
5 insure proper application of pesticides. These violations were acts of unfair competition
6 as defined in Business and Professions Code section 17200.

7 9. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
8 section 6600, subdivision (e), on May 16, 2014, May 17, 2014, and May 22, 2014, as
9 described above, by failing to exercise reasonable precautions to avoid contamination of
10 the environment when performing pest control. These violations were acts of unfair
11 competition as defined in Business and Professions Code section 17200.

12 **Turner School Incident (Application Date: April 22, 2017):**

13 On April 22, 2017, Defendant John Latham, an employee of Alpine, sprayed a 340-acre
14 walnut orchard with the pesticide Nu-Cop 50. The orchard was immediately adjacent to Turner
15 Academy School for special education students. Nu-Cop 50 is a copper-based fungicide that is
16 dangerous to humans and animals, causing corrosive and irreversible eye damage. It was
17 uncontroverted at trial that Turner Academy is a very sensitive site by industry standards.
18 Establishing appropriate buffer zones are standard in the industry when applying pesticides
19 adjacent to a sensitive area.

20 Defendant Joel C. Dozhier acknowledged at trial that Alpine has a policy requiring pilots
21 to always leave a buffer around a school since schools are such highly sensitive sites, even when
22 children are not present. Defendant John Latham flew in an east/west pattern perpendicular to the
23 school, making numerous turns over the school property and spraying pesticide onto the school
24 grounds. During trial, Defendant John Latham acknowledged that his GPS data showed his flight
25 path did not leave a buffer zone between the walnut orchard and Turner School.

26 On Monday morning after the application, school staff discovered blue chemical blotches
27 on the school grounds, including the blacktop, playground equipment, picnic benches, and
28 sidewalks. Once the blue chemical was detected, the staff kept the students and staff inside the

1 school for 2 days until the premises was power-washed. The Nu-Cop 50 label indicates that if the
2 chemical comes into contact with skin or clothing, the person is to take off their contaminated
3 clothing and rinse their skin immediately with plenty of water for 15-20 minutes. Chemical
4 analysis confirmed that the spots on the school grounds matched the copper substance that was
5 aerially sprayed onto the walnut orchard by Defendants, Nu-Cop 50 pesticide.

6 Defendants Alpine, Joel C. Dozhier, and John Latham failed to exercise reasonable care
7 during the Turner School application in reckless disregard of the consequences. Defendants
8 either knew or should have known that they were repeatedly spraying corrosive Nu-Cop 50 onto a
9 sensitive site with the high likelihood of great damage therefrom to persons and/or property. The
10 evidence is overwhelming that Defendants caused the improper application by not using a buffer
11 zone in violation of the standard of care in the industry.

12 Defendants Alpine, Joel C. Dozhier, and John Latham are liable for the following
13 violations of statutes and regulations for causing substantial amounts of pesticide drift from the
14 target site onto adjacent properties, in violation of the product label:

- 15 1. Defendants Alpine, Joel C. Dozhier, and John Latham violated Health and Safety Code
16 section 41700 on April 22, 2017. The harmful pesticides applied by Defendants fall
17 within the meaning of “air contaminants or other material” as stated in section 41700.
18 Thus, by discharging quantities of air contaminants or other material that caused
19 detriment, nuisance, and annoyance to a considerable number of persons and the public
20 and endangered the comfort, repose, health, and safety of any of those persons and the
21 public, Defendants violated section 41700. This violation was an act of unfair
22 competition as defined in Business and Professions Code section 17200.
- 23 2. Defendants Alpine, Joel C. Dozhier, and John Latham violated Food and Agricultural
24 Code section 12972 on April 22, 2017, by failing to use pesticides in a manner such as to
25 prevent substantial pesticide drift to nontarget areas. This violation was an act of unfair
26 competition as defined in Business and Professions Code section 17200.
- 27 3. Defendants Alpine, Joel C. Dozhier, and John Latham violated Food and Agricultural
28 Code section 12973 on April 22, 2017, by using a pesticide in conflict with the labeling

1 of that pesticide that was registered pursuant to chapter 2 of division 7 of the Food and
2 Agricultural Code and delivered with the pesticide. This violation was an act of unfair
3 competition as defined in Business and Professions Code section 17200.

4 4. Defendants Alpine, Joel C. Dozhier, and John Latham violated California Code of
5 Regulations, title 3, section 6614, subdivision (b)(2), on April 22, 2017, by making a
6 pesticide application when there was a reasonable possibility of damage to public
7 property. This violation was an act of unfair competition as defined in Business and
8 Professions Code section 17200.

9 5. Defendants Alpine, Joel C. Dozhier, and John Latham violated California Code of
10 Regulations, title 3, section 6614, subdivision (b)(3), on April 22, 2017, by making a
11 pesticide application when there was a reasonable possibility of contamination of
12 nontarget public property, preventing normal use of such property and creating a health
13 hazard. This violation was an act of unfair competition as defined in Business and
14 Professions Code section 17200.

15 6. Defendants Alpine, Joel C. Dozhier, and John Latham violated California Code of
16 Regulations, title 3, section 6600, subdivision (b), on April 22, 2017, by failing to
17 perform pest control in a careful and effective manner. This violation was an act of
18 unfair competition as defined in Business and Professions Code section 17200.

19 7. Defendants Alpine, Joel C. Dozhier, and John Latham violated California Code of
20 Regulations, title 3, section 6600, subdivision (c), on April 22, 2017, by failing to use
21 only methods suitable to insure proper application of pesticides. This violation was an
22 act of unfair competition as defined in Business and Professions Code section 17200.

23 8. Defendants Alpine, Joel C. Dozhier, and John Latham violated California Code of
24 Regulations, title 3, section 6600, subdivision (e), April 22, 2017, by failing to exercise
25 reasonable precautions to avoid contamination of the environment when performing pest
26 control. This violation was an act of unfair competition as defined in Business and
27 Professions Code section 17200.

28 **First Sports Complex Incident (Application Date: September 7, 2019):**

1 On September 7, 2019, Defendant William C. Heppe II, an employee of Alpine, applied
2 Luna Sensation, a pesticide, to a pumpkin field adjacent to the San Joaquin Regional Sports
3 Complex (Sports Complex) in windy conditions resulting in drift of the pesticide onto the Sports
4 Complex while several hundred people, many of whom were children, were present for a youth
5 soccer tournament. Winds were above 11 mph, with gusts at more than 19 mph, blowing directly
6 from the aerial application toward the Sports Complex.

7 It is uncontroverted that the Sports Complex was a sensitive site due to the presence of
8 several hundred children and their families on site during the spray application. People at the
9 Sports Complex smelled the strong odor of the pesticide being applied to the adjacent field during
10 soccer games and experienced symptoms consistent with exposure to the pesticide.

11 Biologists confirmed the presence of Luna Sensation on the Sports Complex property.
12 Witness Mr. Bogard testified that he had a headache following the spray application, and
13 Ms. Gregory testified to having congestion and coughing later the same day after the incident
14 requiring the use of her rescue inhaler. Neither Mr. Bogard nor Ms. Gregory had symptoms prior
15 to the pesticide spray drift at the Sport Complex. People at the scene testified they could smell
16 the odor of the pesticides during the aerial application.

17 Defendants Alpine, Joel C. Dozhier, and William C. Heppe II failed to perform the
18 pesticide spray application in a reasonable and competent manner, failed to leave an appropriate
19 buffer zone and opted to spray pesticides next to a highly sensitive site in high winds when the
20 operation should have been canceled in favor of another day. Given the very high winds during
21 the application, the inevitable pesticide drift from the pumpkin field target site to the occupied
22 Sports Complex was obvious. Thus, the pesticide drift was a known and foreseeable drift, or
23 should have been with the exercise of reasonable care. The spraying of the pumpkin field should
24 not have proceeded under such windy conditions in light of the nearby sensitive site, the occupied
25 Sports Complex.

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28 Defendants Alpine, Joel C. Dozhier, and William C. Heppe II are liable for the following

1 violations of statutes and regulations for causing substantial amounts of drift from the target site
2 onto adjacent properties, in violation of the product label:

- 3 1. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated Food and
4 Agricultural Code section 11791 by operating in a careless and negligent manner on
5 September 7, 2019. This violation was an act of unfair competition as defined in Business
6 and Professions Code section 17200.
- 7 2. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated Food and
8 Agricultural Code section 12972 by failing to prevent substantial pesticide drift to
9 nontarget areas on September 7, 2019. This violation was an act of unfair competition as
10 defined in Business and Professions Code section 17200.
- 11 3. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated Food and
12 Agricultural Code section 12973 by using a pesticide, in conflict with the labeling of that
13 pesticide that was registered pursuant to chapter 2 of division 7 of the Food and
14 Agricultural Code and delivered with the pesticide, on September 7, 2019. This violation
15 was an act of unfair competition as defined in Business and Professions Code
16 section 17200.
- 17 4. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated California Code of
18 Regulations, title 3, section 6600, subdivision (b), by failing to perform pest control in a
19 careful and effective manner on September 7, 2019. This violation was an act of unfair
20 competition as defined in Business and Professions Code section 17200.
- 21 5. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated California Code of
22 Regulations, title 3, section 6600, subdivision (d), by failing to perform pest control under
23 climatic conditions suitable to ensure proper application of pesticides on September 7,
24 2019. This violation was an act of unfair competition as defined in Business and
25 Professions Code section 17200.
- 26 6. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated California Code of
27 Regulations, title 3, section 6600, subdivision (e), by failing to exercise reasonable
28 precautions to avoid contamination of the environment on September 7, 2019. This

1 violation was an act of unfair competition as defined in Business and Professions Code
2 section 17200.

3 7. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated California Code of
4 Regulations, title 3, section 6614, subdivision (b)(1), by making and continuing a
5 pesticide application when there was a reasonable possibility of contamination of the
6 bodies or clothing of persons not involved in the application process on September 7,
7 2019. This violation was an act of unfair competition as defined in Business and
8 Professions Code section 17200.

9 8. Defendants Alpine, Joel C. Dozhier, and William C. Heppe II violated Health and Safety
10 Code section 41700. The pesticides applied by Defendants fall within the meaning of “air
11 contaminants or other material” as stated in section 41700. Thus, by discharging
12 quantities of air contaminants or other material that caused detriment, nuisance, and
13 annoyance to a considerable number of persons and the public and endangered the
14 comfort, repose, health, and safety of any of those persons and the public on September 7,
15 2019, Defendants violated section 41700. This violation was an act of unfair competition
16 as defined in Business and Professions Code section 17200.

17 **Second Sports Complex Incident (Application Date: September 17, 2019):**

18 Defendant Joel C. Dozhier, the President, Chief Executive Officer, and Designated
19 Qualified Applicator for Alpine, applied Fulfill, a pesticide, to a pumpkin field adjacent to the
20 Sports Complex in windy conditions resulting in dropping a significant amount of the pesticide
21 onto County Parks and Recreation employee Oscar Estoll’s parked vehicle within the Sports
22 Complex. Wind speeds during the application were 8-12.7 mph, blowing from the field to the
23 Sports Complex from 7:45 a.m.-9:00 a.m.

24 GPS data confirmed Defendant Joel C. Dozhier made 7 turns over the softball fields at the
25 Sports Complex during the application. Chemists confirmed that the pesticide Fulfill on
26 Mr. Estoll’s vehicle matched that being applied to the pumpkin field by Defendant Joel C.
27 Dozhier, and Defendant Joel C. Dozhier acknowledged that the spray drops on Mr. Estoll’s
28 vehicle came from his application of the pesticide. The ground and bleachers in the Sports

1 Complex near Mr. Estoll's vehicle likewise were covered with the pesticide.

2 Defendants Alpine and Joel C. Dozhier failed to use due care in the application of the
3 pesticide on September 17, 2019, by flying directly over the Sports Complex, making the
4 application in high-wind conditions, and failing to maintain a buffer zone, in disregard to the
5 adjacent Sports Complex being a sensitive site. Mr. Estoll was not the only person at the Sports
6 Complex; resident caretaker Vance Jarnagin was also at the site during the aerial application. The
7 evidence is clear that there were very high winds during the application and that the inevitable
8 drift from the pumpkin field target site to the occupied Sports Complex was obvious. Therefore,
9 the pesticide drift was a known and foreseeable drift, or should have been with the exercise of
10 reasonable care.

11 Defendants Alpine and Joel C. Dozhier are liable for the following violations of statutes
12 and regulations for causing substantial amounts of drift from the target site onto adjacent
13 properties, in violation of the product label:

- 14 1. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
15 section 11791 by operating in a careless and negligent manner on September 17, 2019.
16 This violation was an act of unfair competition as defined in Business and Professions
17 Code section 17200.
- 18 2. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
19 section 12972 by failing to prevent substantial pesticide drift to nontarget areas on
20 September 17, 2019. This violation was an act of unfair competition as defined in
21 Business and Professions Code section 17200.
- 22 3. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
23 section 12973 by using a pesticide, in conflict with the labeling of that pesticide that was
24 registered pursuant to chapter 2 of division 7 of the Food and Agricultural Code and
25 delivered with the pesticide, on September 17, 2019. This violation was an act of unfair
26 competition as defined in Business and Professions Code section 17200.
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28 4. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,

1 section 6600, subdivision (b), by failing to perform pest control in a careful and effective
2 manner on September 17, 2019. This violation was an act of unfair competition as
3 defined in Business and Professions Code section 17200.

4 5. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
5 section 6600, subdivision (c), by failing to use only methods and equipment suitable to
6 ensure proper application of pesticides on September 17, 2019. This violation was an act
7 of unfair competition as defined in Business and Professions Code section 17200.

8 6. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
9 section 6600, subdivision (d), by failing to perform pest control under climatic conditions
10 suitable to ensure proper application of pesticides on September 17, 2019. This violation
11 was an act of unfair competition as defined in Business and Professions Code section
12 17200.

13 7. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
14 section 6600, subdivision (e), by failing to exercise reasonable precautions to avoid
15 contamination of the environment on September 17, 2019. This violation was an act of
16 unfair competition as defined in Business and Professions Code section 17200.

17 8. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
18 section 6614, subdivision (b)(1), by making and continuing a pesticide application when
19 there was a reasonable possibility of contamination of the bodies or clothing of persons
20 not involved in the application process on September 17, 2019. This violation was an act
21 of unfair competition as defined in Business and Professions Code section 17200.

22 **Isleton Incident (Application Date: July 4, 2020):**

23 Charles Heppe, an employee of Defendant Alpine, applied Zeal to a field adjacent to
24 Michelle Burke's property in Isleton. Charles Heppe's application resulted in drift onto
25 Ms. Burke's body and onto her property, including her animals and her garden, and onto a
26 reclamation ditch between the target field and Ms. Burke's property.

27
28 Flight data establishes that Charles Heppe made numerous turns outside of the target area

1 directly over Ms. Burke's property during the application of Zeal, with photos taken of the actual
2 spraying of Ms. Burke's property. Samples collected from Ms. Burke's hat and yellow tote
3 confirmed pesticide drift from the application to the adjacent property.

4 Uncontroverted evidence established that there was no buffer zone created by Defendants
5 to protect the Burke property and her person from drift. And that Charles Heppe failed to fly trim
6 passes, which is standard in the industry considering the sensitive area of the Burke property next
7 door. This application fell below the standard of care in the industry and establishes that
8 Defendants Alpine and Joel C. Dozhier caused substantial drift onto Ms. Burke's person and
9 property.

10 The Court found Ms. Burke to be a particularly credible and compelling witness.

11 Zeal's label indicates that the product is hazardous to animals and humans, causing
12 moderate eye irritations, and that people should avoid breathing the dust and having contact with
13 one's eyes, skin, and clothing. The pesticide is not supposed to be sprayed in a manner such that
14 it can come into contact with water sources.

15 Defendants Alpine and Joel C. Dozhier are liable for the following violations of statutes
16 and regulations for causing substantial amounts of drift from the target site onto adjacent
17 properties, in violation of the product label:

- 18 1. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
19 section 11791 by operating in a careless and negligent manner on July 4, 2020. This
20 violation was an act of unfair competition as defined in Business and Professions Code
21 section 17200.
- 22 2. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
23 section 12972 by failing to prevent substantial pesticide drift to nontarget areas on July 4,
24 2020. This violation was an act of unfair competition as defined in Business and
25 Professions Code section 17200.
- 26 3. Defendants Alpine and Joel C. Dozhier violated Food and Agricultural Code
27 section 12973 by using a pesticide, in conflict with the labeling of that pesticide that was
28 registered pursuant to chapter 2 of division 7 of the Food and Agricultural Code and

1 delivered with the pesticide, on July 4, 2020. This violation was an act of unfair
2 competition as defined in Business and Professions Code section 17200.

3 4. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
4 section 6600, subdivision (b), by failing to perform pest control in a careful and effective
5 manner on July 4, 2020. This violation was an act of unfair competition as defined in
6 Business and Professions Code section 17200.

7 5. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
8 section 6600, subdivision (c), by failing to use only methods and equipment suitable to
9 ensure the proper application of pesticides on July 4, 2020. This violation was an act of
10 unfair competition as defined in Business and Professions Code section 17200.

11 6. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
12 section 6600, subdivision (e), by failing to exercise reasonable precautions to avoid
13 contamination of the environment on July 4, 2020. This violation was an act of unfair
14 competition as defined in Business and Professions Code section 17200.

15 7. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
16 section 6614, subdivision (b)(1), by making and continuing a pesticide application when
17 there was a reasonable possibility of contamination of the bodies or clothing of persons
18 not involved in the application process on July 4, 2020. This violation was an act of
19 unfair competition as defined in Business and Professions Code section 17200.

20 8. Defendants Alpine and Joel C. Dozhier violated California Code of Regulations, title 3,
21 section 6614, subdivision (b)(2), by making and continuing a pesticide application when
22 there was a reasonable possibility of damage to nontarget crops, animals, and other public
23 and private property on July 4, 2020. This violation was an act of unfair competition as
24 defined in Business and Professions Code section 17200.

25 **Right to Farm:**

26 Defendants argued that the San Joaquin County “Right to Farm” Notice (Ordinance Code
27 of San Joaquin County, tit. 6, div. 9, ch. 1, § 6-9004) is of relevance to the Court’s liability
28 determination because growers for whom Defendants performed their applications had a legal

1 right to farm their crops and their “neighbors” must be prepared to deal with the inconvenience of
2 agricultural activities and risk of potential pesticide exposure. The local ordinance is irrelevant
3 because it applies to property owners claiming nuisance in an agricultural area, which is not at
4 issue in this case. Assuming arguendo the intent of the ordinance is to allow pesticide drift onto
5 nontarget persons or property without consequence, which was not established, it is preempted by
6 Food and Agricultural Code section 11501.1, which provides that Food and Agricultural Code
7 divisions 6 and 7 are of “statewide concern and occupy the whole field of regulation regarding the
8 . . . use of pesticides to the exclusion of all local regulation. . . . [N]o ordinance or regulation . . .
9 may prohibit or in any way attempt to regulate any matter relating to the . . . use of pesticides, and
10 any of these ordinances, laws, or regulations are void”

11 **Prior Violations:**

12 Important to the Court’s analysis, is that despite there having been 4 prior incidents
13 wherein Alpine was cited for various drift violations from 2013-2016, Alpine was fined only a
14 total of \$1,700. As to the drift onto blueberry fields on Empire Tract located in San Joaquin
15 County, California on April 3, 2014, there was apparently a violation issued, as well as some civil
16 litigation, but no fine of which the Court is aware; it appears this citation was referred to the
17 District Attorney. These prior drifts involved a neighboring property’s yard, a blueberry farm,
18 landscape damage in Stanislaus County, and a vehicle being sprayed. This last incident with the
19 vehicle involved a \$500 fine which was allegedly appealed by Alpine, and affirmed. No pilot was
20 individually fined in any of these priors, nor was any injunctive relief sought of which the Court
21 is aware. None of the priors presented in the Phase II trial were particularly serious.

22 The Court was unable to locate any case law which addressed what is considered to be a
23 “prior” for purposes of imposing enhanced civil penalties in a case like this. Counsel likewise
24 indicated they knew of no such case law, but rather, only referenced the plain language of the
25 statutes. It does appear the Legislature has intentionally drafted legislation in this area very
26 broadly, and has specifically included mandatory penalties, leaving the Court without a lot of
27 discretion.

28 With regard to the issue of whether or not Defendants must receive elevated penalties due

1 to a “second or subsequent violation,” (see Food & Ag. Code, § 12998), the Plaintiffs must show
2 that the second or subsequent violation (1) “is the same as a prior violation or (2) is similar to a
3 prior violation or (3) whose intentional violation resulted or reasonably could have resulted in the
4 creation of a hazard to human health or the environment or in the disruption of the market of the
5 crop or commodity involved.” (*Ibid.*). Although the Court was initially skeptical as to whether or
6 not Plaintiffs fulfilled this obligation, after oral argument, the Court is convinced that Plaintiffs
7 met this burden as to the Sisley Incident (pesticide drift onto a residence located in Stockton,
8 California on August 27, 2013), the Modesto Incident (pesticide drift onto a residence located in
9 Modesto, California on May 19, 2016), and the Alpine Road Incident (pesticide drift onto a
10 person and a vehicle located in Stockton, California on September 20, 2016), all involving
11 violation of Cal. Code Regs., tit. 3, §§ 6600 and 6614 for overspray, drift, and possible nozzle
12 leaks leading to application of pesticides onto non-target areas. Essentially any of these priors
13 can be used to elevate or enhance the civil penalties here. Therefore, under the Food and Ag.
14 Code, section 12998 definition, the priors do appear to require an enhanced civil penalty as they
15 were of the same or similar character to the current violations involved in this trial, i.e., drift and
16 overspray.

17 **Alpine’s Vicarious Liability:**

18 Having considered the evidence and arguments presented, the Court will not order joint
19 and several liability on the civil penalties except as to Joel Dozhier and Alpine Helicopter;
20 Dozhier, as corporate officer and decision-maker is ultimately responsible for the acts of Alpine.
21 However, the other pilots were merely employees of Alpine, in the course and scope of their
22 duties for Alpine.

23 **Civil Penalties:**

24 As a preliminary matter, the Court has no desire to put Defendants out of business, nor
25 feels that is necessary. The Court does want Defendants to comply with all of the laws and
26 regulations governing pesticide application, and the Court believes towards that end, the
27 Injunction is much more important here than the monetary civil penalties. Although, the civil
28 penalties do play a role in effectuating compliance.

1 The Court agrees with the Defense that the pesticide drift at these five incident locations
2 should be penalized once for each violation. Each drift is a single act, so it would be excessive
3 and serve no legitimate purpose to stack on penalties for the sake of stacking on penalties. The
4 Court is tasked with using reasoned judgment when imposing penalties in cases like this, and
5 must consider the totality of the circumstances in arriving at its decision.

6 Further, despite there being three consolidated cases involving five incidents before the
7 Court spanning a period of six years, it's important to note as Plaintiffs' brief points out at
8 page 15, lines 16-20, that "Alpine is a major provider of agricultural aerial application of
9 pesticides that performs pesticide applications to thousands of acres every year. Alpine has
10 conducted pesticide applications in Sacramento, San Joaquin, Stanislaus, Calaveras, Amador,
11 Sonoma, Marin, and San Mateo counties. The evidence demonstrates that Alpine and Dozhier
12 conduct a high volume of aerial application business....". (Citations omitted).

13 Why this is important is because when one looks at the volume of business that Alpine
14 does, compared to its drift incidents along with priors, it appears that overall, Alpine has a pretty
15 good track record when looking at the big picture.

16 The Defense cites to various mitigating factors in their Closing Brief, all of which the
17 Court concurs: None of the four pilots named in the current actions have had adverse enforcement
18 actions pursued against them individually; these incidents were not malicious or intentional acts,
19 but rather reckless and avoidable accidents; Chas Heppe and John Latham are no longer pilots for
20 Alpine; Chas Heppe is out of state, and John Latham is a medical pilot now; and the "priors"
21 presented by the People in the Phase II trial did not involve any of these four pilots.

22 For these reasons, the Court will not be imposing penalties against Chas Heppe or John
23 Latham individually, except as to the injunctive relief sought, in the event they engage in any
24 aerial pesticide spraying in California during the period of the injunction.

25 Under Business and Professions Code section 17206, the Court looks at the following
26 factors:

- 27 -Nature and seriousness of the misconduct;
- 28 -Number of violations;

- 1 -Persistence of misconduct;
- 2 -Defendants' assets, liabilities, and net worth.

3 Based on the foregoing, Defendants are liable for civil penalties under the Health and
4 Safety Code section 42402.2, subdivision (a), Food and Agricultural Code sections 11893
5 and 12998, and Business and Professions Code section 17206. The Court hereby finds, orders,
6 and decrees that:

7 1. For the **Bouldin Island Incident, Application Dates May 16, 2014 through May 27,**
8 **2014:** The Bouldin Island drifts caused the most significant and widespread damage. Alpine and
9 Joel C. Dozhier shall be jointly and severally liable for a civil penalty of **\$62,500.00**. The Court
10 found violations of California's laws and regulations on May 16, 2014, May 17, 2014, and May
11 22, 2014 as described above. The Court, however, declines to award penalties for each day of
12 violations and instead awards the below total penalties for the incident. The total penalty amount
13 represents the sum of the penalties below:

- 14 a. **\$0** for the violation of Health and Safety Code section 41700.
- 15 b. **\$5,000.00** for the violation of Food and Agricultural Code section 12972 under
16 Food and Agricultural Code section 12998. This violation was a second or subsequent
17 violation that is the same as a prior violation or similar to a prior violation.
- 18 c. **\$5,000.00** for the violation of Food and Agricultural Code section 12973 under
19 Food and Agricultural Code section 12998. This violation was a second or subsequent
20 violation that is the same as a prior violation or similar to a prior violation.
- 21 d. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
22 subdivision (b)(2) under Food and Agricultural Code section 12998. This violation was a
23 second or subsequent violation that is the same as a prior violation or similar to a prior
24 violation.
- 25 e. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
26 subdivision (b)(3) under Food and Agricultural Code section 12998. This violation was a
27 second or subsequent violation that is the same as a prior violation or similar to a prior
28 violation.

1 f. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
2 subdivision (b) under Food and Agricultural Code section 12998. This violation was a
3 second or subsequent violation that is the same as a prior violation or similar to a prior
4 violation.

5 g. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
6 subdivision (c) under Food and Agricultural Code section 12998. This violation was a
7 second or subsequent violation that is the same as a prior violation or similar to a prior
8 violation.

9 h. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
10 subdivision (d) under Food and Agricultural Code section 12998. This violation was a
11 second or subsequent violation that is the same as a prior violation or similar to a prior
12 violation.

13 i. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
14 subdivision (e) under Food and Agricultural Code section 12998. This violation was a
15 second or subsequent violation that is the same as a prior violation or similar to a prior
16 violation.

17 j. **\$22,500.00** for all acts of unfair competition found for the Bouldin Island
18 application under Business and Professions Code section 17206. This total represents a
19 penalty of **\$2,500.00** for each of the **nine** acts of unfair competition found by the Court for
20 the Bouldin Island Incident.

21 **2. For the Turner School Incident, Application Date: April 22, 2017**, which is the second
22 most serious drift, Alpine and Joel C. Dozhier shall be jointly and severally liable for a civil
23 penalty of **\$20,000.00**. This amount represents the sum of the penalties below:

24 a. **\$12,500.00** for the violation of Health and Safety Code section 41700 on April 22,
25 2017, under Health and Safety Code section 42402.2, subdivision (a).

26 b. **\$7,500.00** for all acts of unfair competition found for the Turner School Incident
27 under Business and Professions Code section 17206. This total represents a penalty of
28 **\$937.50** for each of the **eight** acts of unfair competition found by the Court for the Turner

1 School Incident.

2 **3.** For the **First Sports Complex Incident, Application Date: September 7, 2019**, the
3 Court finds the Defense argument compelling that the penalties should be \$8,000, which was the
4 amount initially being sought, but then due to the COVID pandemic, Defendants were arguably
5 denied the right to a hearing on the proposed \$8,000 combined fine. Further, the Sports Complex
6 drifts were not significant in terms of the exposures and damages from the drifts at issue.

7 Further, it's inappropriate to penalize a defendant for exercising their constitutional right to a
8 trial. Alpine and Joel C. Dozhier shall be jointly and severally liable for a civil penalty of
9 **\$36,050.00**. This amount represents the sum of the penalties below:

- 10 a. **\$0** for the violation of Health and Safety Code section 41700 on September 7,
11 2019.
- 12 b. **\$5,000.00** for the violation of Food and Agricultural Code section 11791 on
13 September 7, 2019, under Food and Agricultural Code section 11893.
- 14 c. **\$5,000.00** for the violation of Food and Agricultural Code section 12972 on
15 September 7, 2019, under Food and Agricultural Code section 12998. This violation was a
16 second or subsequent violation that is the same as a prior violation or similar to a prior
17 violation.
- 18 d. **\$5,000.00** for the violation of Food and Agricultural Code section 12973 on
19 September 7, 2019, under Food and Agricultural Code section 12998. This violation was a
20 second or subsequent violation that is the same as a prior violation or similar to a prior
21 violation.
- 22 e. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
23 subdivision (b)(1), on September 7, 2019, under Food and Agricultural Code section
24 12998. This violation was a second or subsequent violation that is the same as a prior
25 violation or similar to a prior violation.
- 26 f. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
27 subdivision (b), on or about September 7, 2019, under Food and Agricultural Code section
28 12998. This violation was a second or subsequent violation that is the same as a prior

1 violation or similar to a prior violation.

2 g. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
3 subdivision (d), on September 7, 2019, under Food and Agricultural Code section 12998.

4 This violation was a second or subsequent violation that is the same as a prior violation or
5 similar to a prior violation.

6 h. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
7 subdivision (e), on September 7, 2019, under Food and Agricultural Code section 12998.

8 This violation was a second or subsequent violation that is the same as a prior violation or
9 similar to a prior violation.

10 i. **\$1,050.00** for all acts of unfair competition found for the September 7, 2019, First
11 Sports Complex Incident under Business and Professions Code section 17206. This total
12 represents a penalty of **\$150.00** for each of the **seven** acts of unfair competition found by
13 the Court for the First Sports Complex Incident.

14 **4. For the Second Sports Complex Incident, Application Date: September 17, 2019,**
15 **Alpine and Joel C. Dozhier shall be jointly and severally liable for a civil penalty of \$41,200.00.**
16 This amount represents the sum of the penalties below:

17 a. **\$5,000.00** for the violation of Food and Agricultural Code section 11791 on
18 September 17, 2019, under Food and Agricultural Code section 11893.

19 b. **\$5,000.00** for the violation of Food and Agricultural Code section 12972 on
20 September 17, 2019, under Food and Agricultural Code section 12998. This violation was
21 a second or subsequent violation that is the same as a prior violation or similar to a prior
22 violation.

23 c. **\$5,000.00** for the violation of Food and Agricultural Code section 12973 on
24 September 17, 2019 under Food and Agricultural Code section 12998. This violation was
25 a second or subsequent violation that is the same as a prior violation or similar to a prior
26 violation.

27 d. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
28 subdivision (b)(1), on September 17, 2019, under Food and Agricultural Code section

1 12998. This violation was a second or subsequent violation that is the same as a prior
2 violation or similar to a prior violation.

3 e. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
4 subdivision (b), on or about September 17, 2019, under Food and Agricultural Code
5 section 12998. This violation was a second or subsequent violation that is the same as a
6 prior violation or similar to a prior violation.

7 f. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
8 subdivision (c), on September 17, 2019, under Food and Agricultural Code section 12998.
9 This violation was a second or subsequent violation that is the same as a prior violation or
10 similar to a prior violation.

11 g. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
12 subdivision (d), on September 17, 2019, under Food and Agricultural Code section 12998.
13 This violation was a second or subsequent violation that is the same as a prior violation or
14 similar to a prior violation.

15 h. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
16 subdivision (e), on September 17, 2019, under Food and Agricultural Code section 12998.
17 This violation was a second or subsequent violation that is the same as a prior violation or
18 similar to a prior violation.

19 i. **\$1,200.00** for all acts of unfair competition found for the September 17, 2019,
20 Second Sports Complex Incident under Business and Professions Code section 17206.

21 This total represents a penalty of **\$150.00** for each of the **eight** acts of unfair competition
22 found by the Court for the Second Sports Complex Incident.

23 **5. For the Isleton Incident, Application Date: July 4, 2020**, Alpine and Joel C. Dozhier shall
24 be jointly and severally liable for a civil penalty of **\$58,200.00**. This amount represents the sum of
25 the penalties below:

26 a. **\$5,000.00** for the violation of Food and Agricultural Code section 11791 on
27 July 4, 2020, under Food and Agricultural Code section 11893.

28 b. **\$5,000.00** for the violation of Food and Agricultural Code section 12972 on

1 July 4, 2020, under Food and Agricultural Code section 12998. This violation was a
2 second or subsequent violation that is the same as a prior violation or similar to a prior
3 violation.

4 c. **\$5,000.00** for the violation of Food and Agricultural Code section 12973 on
5 July 4, 2020, under Food and Agricultural Code section 12998. This violation was a
6 second or subsequent violation that is the same as a prior violation or similar to a prior
7 violation.

8 d. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
9 subdivision (b)(1), on July 4, 2020, under Food and Agricultural Code section 12998. This
10 violation was a second or subsequent violation that is the same as a prior violation or
11 similar to a prior violation.

12 e. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6614,
13 subdivision (b)(2), on July 4, 2020, under Food and Agricultural Code section 12998. This
14 violation was a second or subsequent violation that is the same as a prior violation or
15 similar to a prior violation.

16 f. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
17 subdivision (b), on or about July 4, 2020, under Food and Agricultural Code section
18 12998. This violation was a second or subsequent violation that is the same as a prior
19 violation or similar to a prior violation.

20 g. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
21 subdivision (c), on July 4, 2020, under Food and Agricultural Code section 12998. This
22 violation was a second or subsequent violation that is the same as a prior violation or
23 similar to a prior violation.

24 h. **\$5,000.00** for the violation of California Code of Regulations, title 3, section 6600,
25 subdivision (e), on July 4, 2020, under Food and Agricultural Code section 12998. This
26 violation was a second or subsequent violation that is the same as a prior violation or
27 similar to a prior violation.

28 j. **\$18,200.00** for all acts of unfair competition found for the July 4, 2020, Isleton

1 Incident under Business and Professions Code section 17206. This total represents a
2 penalty of **\$2,275.00** for each of the **eight** acts of unfair competition found by the Court
3 for the Isleton Incident.

4 **Payment:**

5 Within 30 days of the Entry of this Judgment, Alpine and Joel C. Dozhier shall submit the
6 following payments for the civil penalties outlined above:

7 (1) As and for all civil penalties ordered above under the Food and Agricultural Code, a
8 check in the amount of **\$155,000.00** made payable to “CASHIER, DEPARTMENT OF
9 PESTICIDE REGULATION” shall be delivered to: c/o/ Jeannie Alloway, Legal Analyst, Office
10 of Legal Affairs, Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento
11 CA 95812-4015.

12 (2) As and for all civil penalties ordered above under the Health and Safety Code, a check
13 in the amount of **\$12,500.00** made payable to “SAN JOAQUIN VALLEY AIR POLLUTION
14 CONTROL DISTRICT” shall be delivered to: San Joaquin Valley Air Pollution Control District,
15 Northern Region, 4800 Enterprise Way, Modesto, CA 95356-6475.

16 (3) As and for civil penalties ordered above for all claims brought by the San Joaquin
17 County District Attorney’s Office arising under the Business and Professions Code section 17200
18 et seq. and for one-half of the civil penalties ordered above for all claims brought by the Attorney
19 General arising under the Business and Professions Code section 17200 et seq., a check in the
20 amount of **\$40,225.00** made payable to the “TREASURER OF SAN JOAQUIN COUNTY” shall
21 be delivered to: San Joaquin County Office of the District Attorney, Environmental Crimes Unit,
22 222 E. Weber Avenue, Stockton, CA 95202.

23 (4) As and for one-half of the civil penalties ordered above for all claims brought by the
24 Attorney General arising under the Business and Professions Code section 17200 et seq., a check
25 in the amount of **\$10,225.00** made payable to the “CALIFORNIA DEPARTMENT OF JUSTICE
26 LITIGATION DEPOSIT FUND” shall be delivered to: Yuting Yvonne Chi, Deputy Attorney
27 General, Environment Section, Bureau of Environmental Justice, Office of the Attorney General,
28 1515 Clay Street, 20th Floor, Oakland, CA 94612. The check shall bear on its face the case name

1 “Alpine Helicopters” and internal docket number in this matter “SA2020303247.” The California
2 Attorney General’s Office shall transfer all \$10,225.00 to the General Fund.

3 **Permanent Injunction:**

4 The Court agrees with the People that a permanent injunction is appropriate in light of
5 there being an inadequate remedy at law and potentially irreparable harm to the public’s safety if
6 one is not imposed. However, an inadequate remedy at law is not a prerequisite for issuance of an
7 injunction in this type of case. (Health & Saf. Code, § 41513.) A permanent injunction is
8 necessary for the People to be able to ensure Alpine’s compliance with the law and decrease the
9 likelihood of continuing future pesticide drifts and exposure incidents from Alpine’s crop-dusting
10 business. The Court grants this permanent injunction pursuant to its authority under Health and
11 Safety Code, section 41513; Business and Professions Code, sections 17203 and 17204, and the
12 Court’s equitable authority, as codified in Civil Code, section 3422. Consistent with its prior
13 ruling regarding the preliminary injunction in this matter, the Court finds that any aspects of the
14 injunctive terms below that require Defendants to engage in affirmative acts are merely incidental
15 to the injunction’s objective to prohibit Defendants from further violating California’s pesticide
16 laws and regulations and consumer protection laws, and as such, the Court finds that the
17 injunction granted by this Judgment is prohibitory in nature and will remain in effect should this
18 Judgment be appealed. (*People ex rel. Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333,
19 342.)

20 The Court orders that the terms of this permanent injunction shall be:

21 **From Date of Entry of Judgment to December 31, 2027:**

22 Beginning with the date that this Judgment is signed and continuing until December 31,
23 2027, Defendants Alpine and Joel C. Dozhier and their employees, agents, and persons acting
24 with them or on their behalf, are enjoined from conducting any aerial pesticide application in
25 California unless and until Alpine complies with all of the following requirements:

26 **Term 1:** For all aerial pesticide applications, use global positioning system software to
27 capture and record throughout any pesticide application: (a) the position of any aircraft used
28 during the pesticide application; (b) the speed of any such aircraft; and (c) whether the pesticide

1 application system control valve is open or closed. Alpine must also maintain the native log file
2 data captured by such software for five (5) years from the date of the application, and provide
3 such native log file data upon request to the local County Agricultural Commissioner's (CAC)
4 office, California Department of Pesticide Regulation (DPR), any county District Attorney's
5 Office, or the California Attorney General's Office.

6 Term 2: For all aerial pesticide applications, have a person holding a current Qualified
7 Applicator Certificate issued by DPR, a current Qualified Applicator License issued by DPR, a
8 current Journeyman Pilot Certificate issued by DPR, or a current Apprentice Pilot Certificate
9 issued by DPR, who is not Joel C. Dozhier, William C. Heppe II, Charles Heppe, Khaythan
10 Chamberlain, Stephen Brunskill, or John Latham, observe the application from a position on the
11 ground that is within 100 feet of the boundary of the intended area to be treated with pesticides,
12 and ensure such person has a means to communicate instantaneously with the pilot conducting the
13 application and has the authority to require the application pilot to immediately cease the
14 application if pesticide drift is observed or becomes reasonably likely to occur. Within 72 hours
15 after any application, this observer must complete a certification under penalty of perjury, that:
16 (a) the person was present at the application site on the ground within 100 feet of the boundary of
17 the intended area to be treated with pesticides; (b) the person monitored the entirety of the
18 application; (c) the person did not observe any pesticide drift onto nontarget persons or property,
19 or other unintended contamination during the application, or if drift, exposure, or contamination
20 was observed, describing with specificity all facts observed, including, at a minimum, weather
21 and wind conditions, names and contact information of persons affected, and description and
22 nature of property drifted upon; and (d) the person did not observe any departure from the
23 exercise of due care by the applicator during the application, or if any departures were observed,
24 all facts relating to any observed departures. Alpine must maintain these certifications, along
25 with the name and DPR license number of the observer, for five (5) years from the date of the
26 application; and provide such information and certifications upon request to the local CAC's
27 office, DPR, any county District Attorney's Office, or the California Attorney General's Office.
28 If the person who monitored the application observes any drift, exposure, or contamination, or

1 any departures from the exercise of due care by the applicator during the application, Alpine must
2 send the certification to the local CAC's office, via email, and to DPR, via email to
3 pesticidenotice@cdpr.ca.gov within 96 hours of the application's completion.

4 Term 3: For all aerial pesticide applications, prior to loading any pesticide material into
5 the aircraft's tanks: (1) have a person positioned within 100 feet of the boundary of the area
6 intended to be treated with pesticides; (2) ensure that person uses a digital anemometer to
7 measure the wind speed and direction; and (3) ensure that person takes a photograph of the
8 anemometer's wind speed and direction measurement using a camera device that automatically
9 captures the time and location at which a photograph is taken, such as a cell phone camera.
10 Alpine must maintain these photographs in native format for five (5) years from the date of the
11 application; and provide such photographs in native format upon request to the local CAC's
12 office, DPR, any county District Attorney's Office, or the California Attorney General's Office.

13 Term 4: For all aerial pesticide applications, have a person positioned within 100 feet of
14 the boundary of the area intended to be treated with pesticides use a digital anemometer to
15 measure the wind speed and direction after each reload of the aircraft's tanks with additional
16 pesticide material and record the wind speed and direction for each measurement. Alpine must
17 maintain the record of these measurements and the date and time they were taken for five (5)
18 years from the date of the application; and provide such information upon request to the local
19 CAC's office, DPR, any county District Attorney's Office, or the California Attorney General's
20 Office.

21 Term 5: For all aerial pesticide applications made within one-quarter mile of a sensitive
22 site,¹ at least 48 hours prior to the pesticide application, notify the occupants of the sensitive site,
23 in writing in both English and Spanish, of: (1) the date and time of the anticipated application;
24 (2) the location of the anticipated application; (3) the pesticide anticipated to be applied, including

25 ¹ For purposes of this Judgment, "sensitive site" is defined to mean areas frequented by
26 non-occupational bystanders (especially children). These include residential lawns, pedestrian
27 sidewalks, outdoor recreational areas such as school grounds, athletic fields, parks, and all
28 property associated with buildings occupied by humans for residential or commercial purposes.
Sensitive sites include homes, farmworker housing, or other residential buildings, schools,
daycare centers, nursing homes, and hospitals. (U.S. EPA, Office of Chemical Safety and
Pollution Prevention, Decision 059101, July 16, 2012.)

1 the active ingredient, the name of the product, and the EPA Registration number; (4) the
2 telephone number of the applicator; and (5) early signs and symptoms of exposure to the
3 pesticide(s) anticipated to be applied. This notice must include the following language: “This
4 application will occur no earlier than the date and time contained in this notice, but may occur up
5 to 96 hours after the date and time contained in this notice.” The notice must also include the
6 following language: “For information about reporting pesticide problems, visit the California
7 Department of Pesticide Regulation’s website at
8 <https://www.cdpr.ca.gov/docs/dept/quicklinks/report.htm>.” This notice may be provided: (1) by
9 hand-delivering the written notice to the occupants of the sensitive site at least 48 hours prior to
10 the anticipated application; (2) by placing the written information at occupants’ property in
11 hangers left on occupants’ doors at least 48 hours prior to the anticipated application; or (3) by
12 placing the written information on the doorstep of the primary building on the property that is a
13 sensitive site at least 48 hours prior to the anticipated application.² If the pesticide application
14 does not commence within 96 hours of the date and time provided in the notice, a new notice
15 must be provided before the application may occur. For five years, Alpine must maintain a copy
16 of each notice it provides, a record of the recipients who received the notice, and a record of when
17 the notice occurred. Alpine must provide such records upon request to the local CAC’s office,
18 DPR, any county District Attorney’s Office, or the California Attorney General’s Office.

19 Term 6: Comply with all existing laws and regulations and any laws and regulations which
20 may enter into force prior to December 31, 2027.

21 _____
22 ² For an application that will not be made with Restricted Materials but will be made
23 within one-quarter mile of a sensitive site, Alpine may send a written request via email to DPR
24 at pesticidenotice@cdpr.ca.gov to shorten the required notification times listed in Terms 5 and 7
25 from 48 hours to 12 hours, and upon receiving written email approval from DPR and complying
26 with Terms 5 and 7 at least 12 hours prior to the start of the application, any such application may
27 proceed. DPR will consider approving such a request, up to 12 times per calendar year, for
28 applications that are: (1) made to address a local emergency pursuant to Government Code
section 8630, (2) made to address a local emergency declared by the U.S. Department of
Agriculture or the California Department of Food and Agriculture, or (3) made to control a
quarantine pest declared by the U.S. Department of Agriculture or the California Department of
Food and Agriculture. DPR’s written email approval has no effect on Alpine’s obligations under
any other term of this permanent injunction or under California’s pesticide laws and regulations
in place at the time of the application.

1 From Date of Entry of Judgment to December 31, 2024:

2 Beginning with the date that this Judgment is signed and continuing until December 31,
3 2024, Alpine and their employees, agents, and persons acting with them or on their behalf, are
4 enjoined from conducting any aerial pesticide application in California unless and until Alpine
5 additionally complies with all of the following requirements:

6 Term 7: For all aerial pesticide applications made within one-quarter mile of a sensitive
7 site, notify, in writing, the DPR, via email to pesticidenotice@cdpr.ca.gov, and the CAC's Office
8 in the county in which the application will occur, via email, at least 48 hours in advance,³ and
9 include in such notice the name of the pilot, the date and time of the anticipated application, the
10 location of the application, the approximate acres to be treated, the pesticide to be used, a copy of
11 the notice that has been or will be provided to the occupants of the sensitive sites required by
12 Term 5, and a list of all sensitive sites notified. If the pesticide application does not commence
13 within 96 hours of the date and time provided in the notice, notify, in writing, DPR via email to
14 pesticidenotice@cdpr.ca.gov, and the CAC's Office in the county in which the application was to
15 occur, via email, within 48 hours after the 96-hour period has elapsed, that the application did not
16 occur. If the pesticide application does not commence within 96 hours of the date and time
17 provided in the notice, a new notice must be provided before the application may occur.

18 Term 8: For all pesticide applications of pesticides designated as Restricted Materials
19 under California Code of Regulations, title 3, section 6400, notify, in writing, DPR, via email to
20 pesticidenotice@cdpr.ca.gov, and the CAC's Office in the county in which the application will
21 occur, via email, at least 48 hours in advance, and include in such notice a copy of the Notice of
22 Intent required by California Code of Regulations, title 3, section 6434 for the anticipated
23 pesticide application, a copy of the notice that has been or will be provided to the occupants of
24 sensitive sites required by Term 5 if any sensitive sites are within a quarter-mile of the boundary
25 of the area that is to be treated with pesticides, and a list of all of the properties notified, if any. If
26 the pesticide application does not commence within the 96 hours of the date and provided in the

27 _____
28 ³ The procedure to seek approval to shorten the notice period set forth in the preceding
footnote shall also apply to this notice period.

1 notice, notify, in writing, DPR, via email to pesticidenotice@cdpr.ca.gov, and the CAC's Office
2 in the county in which the application will occur, via email, within 48 hours after the timeframe
3 provided in the notice has elapsed, that the application did not occur. If the pesticide application
4 does not commence within 96 hours of the timeframe provided in the notice, a new notice must
5 be provided before the application may occur.

6 From January 1, 2025 to December 31, 2027:

7 Beginning January 1, 2025, and continuing until December 31, 2027, Defendants Alpine
8 and Joel C. Dozhier and their employees, agents, and persons acting with them or on their behalf
9 are enjoined from conducting any aerial pesticide application in California unless and until Alpine
10 additionally complies with the following requirement:

11 Term 9: Submit a report on the first business day of each month to the DPR, via email to
12 pesticidenotice@cdpr.ca.gov, that lists all of the sensitive sites notified during the prior month
13 under Term 5, details the methods used to notify each site under Term 5, and includes a copy of
14 all of the notices provided during the prior month under Term 5.

15 From January 1, 2024 to December 31, 2027:

16 Beginning with January 1, 2024, and continuing until December 31, 2027, Defendants
17 Alpine and Joel C. Dozhier and their employees, agents, and persons acting with it or on their
18 behalf are enjoined from conducting any aerial pesticide application in California unless and until
19 Alpine additionally complies with the following requirement:

20 Term 10: Submit a report annually via email to pesticidenotice@cdpr.ca.gov by the first
21 business day of January that is prepared by a Compliance Coordinator and that details the dates of
22 all pesticide applications by Alpine that were observed by the Compliance Coordinator during the
23 preceding 12 months, any violations of California's pesticide laws and regulations committed by
24 Alpine during the preceding 12 months, and all steps taken to correct such violations. The
25 Compliance Coordinator must observe at least 25 applications by Alpine or 5 percent of all of
26 Alpine's applications in the preceding 12 months, whichever is larger. The Compliance
27 Coordinator may not be an employee of Alpine and must hold a current Qualified Applicator
28

1 License issued by DPR. The Compliance Coordinator's name and DPR license number must be
2 included in the report.

3 From April 1, 2023 to December 31, 2027:

4 Beginning April 1, 2023, and continuing until December 31, 2027, Joel C. Dozhier is
5 enjoined from conducting any aerial pesticide application in California unless and until Joel C.
6 Dozhier complies with all of the following requirements:

7 Term 11: Joel C. Dozhier must take and pass the Qualified Applicator License
8 examination offered by DPR at any time between the Date of Entry of this Judgment and
9 December 31, 2027.

10 Term 12: Joel C. Dozhier must take and pass the Journeyman Pilot Certificate
11 examination offered by DPR at any time between the Date of Entry of this Judgment and
12 December 31, 2027.

13 Term 13: Joel C. Dozhier must annually submit verification of completion of two hours
14 of Continuing Education courses designated as "Law" courses to DPR's Legal Office via email to
15 pesticidesnotice@cdpr.ca.gov that are in addition to the Continuing Education courses that Joel C.
16 Dozhier submits in support of a request to renew his DPR license.

17 From April 1, 2023 to December 31, 2027:

18 Beginning April 1, 2023, and continuing until December 31, 2027, William C. Heppe II is
19 enjoined from conducting any aerial pesticide application in California unless and until, William
20 C. Heppe II complies with all of the following requirements:

21 Term 14: William C. Heppe II must take and pass the Journeyman Pilot Certificate
22 examination offered by DPR at any time between the Date of Entry of this Judgment and
23 December 31, 2027.

24 Term 15: William C. Heppe II must annually submit verification of completion of two
25 hours of Continuing Education courses designated as "Law" courses to DPR's Legal Office via
26 email to pesticidesnotice@cdpr.ca.gov that are in addition to the Continuing Education courses
27 that William C. Heppe II submits in support of a request to renew his DPR license.

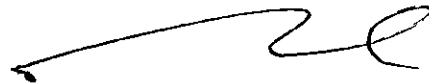
28 From January 1, 2023 to December 31, 2027:

1 Beginning January 1, 2023, and continuing until December 31, 2027, John Latham is
2 enjoined from conducting any aerial pesticide application in California unless and until, John
3 Latham complies with all of the following requirements:

4 Term 16: John Latham must annually submit verification of completion of two hours of
5 Continuing Education courses designated as "Law" courses to DPR's Legal Office via email to
6 pesticidesnotice@cdpr.ca.gov that are in addition to the Continuing Education courses that John
7 Latham submits in support of a request to renew his DPR license.

8
9 **IT IS SO ORDERED.**

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11 DATED: 12/9/22



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Hon. Barbara A. Kronlund
Judge of the Superior Court