

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between the California Department of Food and Agriculture (the “Department”) and Carlos Garcia, Sr. (born in 1957) d/b/a Garcia Flowers & Vegetables (“Respondent”). The Department and Respondent are referred to collectively herein as the “Parties.” The Effective Date of this Agreement is the day it is signed by the last signatory.

RECITALS

1. Respondent was registered as an organic producer with the California State Organic Program (Registration #35-001988).
2. On August 6, 2015, the California Certified Organic Farmers (“CCOF”), Respondent’s third-party certifying agent, issued a Combined Notice of Noncompliance and Proposed Suspension (“Suspension Notice”) of Respondent’s Organic Certification.
3. The Suspension Notice alleged noncompliance with the federal Organic Foods Production Act of 1990 (“Act”); the regulations promulgated under the Act (Title 7 of the Code of Federal Regulations, Part 205, et seq.); the California Organic Products Act of 2003 (“COPA”); and the regulations promulgated under the COPA (Title 3 of the California Code of Regulations, sections 1391, et seq.). Specifically, the Suspension Notice alleged Respondent willfully violated Title 7 of the Code of Federal Regulations as follows:
 - A. § 205.102 – representing nonorganic crop as an organic crop by harvesting and field packing nonorganic broccoli into organic packaging.
 - B. § 205.202 – inability or unwillingness to distinguish between nonorganic parcels and certified organic parcels on multiple occasions.
4. The Suspension Notice further alleged that Respondent had violated organic certification regulations on multiple occasions in the preceding year, which indicated a systemic failure by Respondent in implementing its Organic System Plan. The Suspension Notice stated that such regulatory violations were considered uncorrectable under the USDA National Organic Program (NOP).
5. On September 1, 2015, Respondent asked CCOF to mediate the issues set forth in the Suspension Notice. On September 10, 2015, CCOF declined to mediate the issues of the Suspension Notice. CCOF simultaneously informed Respondent that, under NOP regulations, Respondent had until October 10, 2015 to appeal the Suspension Notice.
6. On October 8, 2015, Respondent appealed CCOF’s Suspension Notice to the Department. On October 13, 2015, CCOF issued a suspension letter to Respondent, not knowing Respondent had already filed an appeal of the Suspension Notice. Therefore, on October 15, 2015, CCOF retracted the suspension to permit Respondent’s appeal to proceed.

7. Also on October 8, 2015, Respondent submitted to CCOF a form entitled Surrender of Certification, by which Respondent surrendered its organic certification and stated it would no longer represent any portion of its operation as organic in any way. The effective date of surrender was November 15, 2015. On November 6, 2015, Respondent submitted to CCOF a Revised Surrender of Certification form, by which Respondent surrendered its organic certification and stated it would no longer represent any portion of its operation as organic in any way. The effective date of surrender was November 30, 2015.

8. On February 1, 2016, the Hearing Officer of the Department's Division of Inspection Services issued a Recommendation ("Recommendation") based upon the review of the documents submitted by CCOF in support of a proposed suspension, and based on documents submitted by Respondent in support of its appeal of the proposed suspension. As part of the Recommendation, the Hearing Officer found that the Notice of Noncompliance and Proposed Suspension should be upheld. The Hearing Officer also determined that Respondent's Organic Certification should be suspended.

9. The Parties now wish to settle the issues raised by the Suspension Notice and the Recommendation. The Agreement is made to compromise the claims described in these Recitals, and there has been no final adjudication of the merits of any claim or any admission of liability.

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TERMS

10. **Refrain from Seeking Organic Registration or Certification.** Respondent will not seek or obtain organic registration or certification for a period of one year from the November 30, 2015 effective date of Respondent's organic certification surrender to CCOF. Respondent will not automatically be certified after the one-year period ends. However, after the one-year period ends, Respondent is allowed to seek reinstatement of its organic certification.

11. **Settlement of All Disputes.** In exchange for the promises made herein, the Department, on behalf of itself, its agents, representatives, attorneys, employees, subcontractors, servants, affiliates, predecessors, successors and assigns, both past and present, and any person or entity acting by, through, under or in concert with each of them, does hereby release, and forever discharge Respondent, and each of its respective agents, representatives, attorneys, employees, servants, affiliates, parents, predecessors, successors and assigns, subsidiaries, both past and present, and any person or entity acting by, through, under or in concert with each of them, from any and all actions, cause or causes of action, in law or equity, suits, liabilities, claims, demands, obligations, rights, acts, omissions, costs, attorneys' fees, expenses of any type, kind, nature, description or character whatsoever in connection with the alleged violations described in the Suspension Notice and the findings made in the Recommendation. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any violations of law other than those that are described therein.

12. **Effect of Agreement.** This Agreement is binding upon and shall inure to the benefit of the executing Parties, their respective agents, attorneys, and representatives, assigns and successors-in-interest, to the extent permitted by law.

13. **Non-waiver.** This Agreement shall not constitute a waiver by the Department of the right to raise Respondent's alleged violations at issue here at a later date in a disciplinary or other judicial proceeding, or in any other context.

14. **No Limitation.** Nothing in this Agreement shall be construed as a limitation on the powers or responsibilities of the California Department of Food and Agriculture under the laws of the State of California.

15. **Applicable Law.** The laws of the State of California shall govern and control the enforcement and interpretation of this Agreement.

16. **Subsequent Changes to Agreement.** No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

17. **Agreement Shall not be Construed as Drafted by One Party.** This Agreement is the product of negotiation between the Parties and is deemed to have been drafted equally by the Parties; any rule of construction causing a document to be construed against the party who drafted an agreement shall not be applicable to this Agreement.

18. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and supersedes any prior agreements concerning the same subject matter. No representations,

oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto.

19. **Counterparts.** This Agreement may be executed in counterparts and/or in duplicate originals.

20. **Paragraph Headings.** The paragraph headings have been inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

21. **Authority of Signatories.** Each person executing this Agreement does hereby represent and warrant to the other signatories that he or she has the authority necessary to execute this Agreement; that no other consents or approvals of anyone are required or necessary for this Agreement to be binding; and, that he or she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, causes of action, demands, damages, judgments, costs, loss of services, expenses and/or compensation referred to in this Agreement.

IN WITNESS THEREOF, each of the Parties has executed this Agreement as of the date set forth beside the corresponding signature below.

For Garcia Flowers & Vegetables

Dated: May 31, 2016 By: Carlos Garcia, Sr.
Carlos Garcia, Sr.

For Carlos Garcia, Sr.

Dated: May 31, 2016 By: Carlos Garcia, Sr.
Carlos Garcia, Sr.

For the Secretary of the California Department of Food and Agriculture

Dated: May __, 2016 By: _____
Rick S. Jensen
California Department of Food and Agriculture
Director, Inspection Services