

## **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 Travis Moreda Dairy ("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. The California Department of Food and Agriculture's (CDFA) State Organic Program (SOP) is authorized by the United States Department of Agriculture's (USDA) National Organic Program (NOP) to implement and enforce their federal regulations as well as state laws related to the SOP.
2. Respondent was registered as an organic producer with the California State Organic Program (Department Registration #49-002993).
3. On July 25, 2016, Organic Certifiers ("OC"), Respondent's third-party certifying agent, issued a Combined Notice of Noncompliance and Proposed Revocation ("Revocation Notice") of Respondent's Organic Certification.
4. The Revocation 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"), now known as the California Organic Food and Farming Act of 2016; and the regulations promulgated under the COPA (Title 3 of the California Code of Regulations, sections 1391, et seq.). Specifically, the Revocation Notice alleged Respondent willfully violated Title 7 of the Code of Federal Regulations (CFR) as follows:
  - A. Failing to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances. Title 7 CFR § 205.272(a).
  - B. Failing to immediately notify the certifying agent of any application of a prohibited substance to any livestock and failing to inform the certifier after a load of milk from Respondent's dairy was rejected by the creamery. Title 7 CFR § 205.400.
  - C. Failing to clearly identify livestock treated with a prohibited substance and representing milk from livestock treated with a prohibited substance as organically produced. Title 7 CFR § 205.238(c).
5. The Revocation Notice further alleged that Respondent had falsely denied having a load of milk rejected for testing positive for antibiotics, that Respondent was not in compliance with the requirements of the Act, that Respondent willfully violated the Act, and that correction of a noncompliance was not possible under the USDA National Organic Program (NOP).

6. On July 28, 2016, Respondent asked OC to mediate the issues set forth in the Revocation Notice. On August 16, 2016, OC declined to mediate the issues of the Revocation Notice. OC simultaneously informed Respondent that, under NOP regulations, Respondent had until September 16, 2016 to appeal the Revocation Notice.

7. On August 22, 2016, Respondent appealed OC's Suspension Notice to the Department.

8. On January 25, 2017, the Hearing Officer of the Department's Division of Inspection Services issued a Recommendation ("Recommendation") based upon the review of the documents submitted by OC 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 Revocation should be upheld.

9. The Parties now wish to settle the issues raised by the Revocation 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.

## **TERMS**

10. **Period of Suspension and Refraining from Seeking Organic Registration or Certification.** The Department will issue a Notice of Suspension of Certification and Registration, and Civil Penalty. Respondent will not seek or obtain organic registration or certification for a period of three (3) years from the Effective Date of this agreement. Respondent waives any rights it may have to seek recertification prior to the end of the three-year period. Respondent agrees not to seek reinstatement under 7 C.F.R. section 205.662(f) prior to the conclusion of the three-year period, and agrees that this Agreement serves as a Notice of Suspension for the purpose of precluding any request for reinstatement to the U.S. Secretary of Agriculture, under 7 C.F. R., prior to the conclusion of the three-year period. Respondent will not automatically be certified after the three-year period ends. However, after the three-year period ends, Respondent may seek reinstatement of its organic certification.

11. **Payment of Civil Penalty to CDFA.** Respondent will pay a civil penalty in the amount of eight thousand dollars (\$8,000), to the California Department of Food and Agriculture within thirty (30) days of the Effective Date of this Agreement. The payment should be mailed to:

California Department of Food and Agriculture – Cashier's Office  
Legal Office  
1220 N Street, Suite 400  
Sacramento, CA 95814

12. **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 Revocation 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.

13. **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.

14. **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 proceeding.

15. **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.

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

17. **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.

18. **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.

19. **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.

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

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

22. **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 Travis Moreda Dairy**

Dated: November 13, 2017

By: 

Travis Moreda

**For the Secretary of the California Department of Food and Agriculture**

Dated: November 21, 2017

By: 

Natalie Krout-Greenberg  
California Department of Food and Agriculture  
Director, Inspection Services