

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE WIND DOWN COMMITTEE OF THE  
CALIFORNIA TOMATO COMMISSION**

WHEREAS, Division 22, Part 2, Chapter 24 of the California Food and Agriculture Code (§ 78601 et seq.) creating the California Tomato Commission (the “Commission”) was suspended effective February 29, 2008, pursuant to a referendum of tomato producers and handlers; and

WHEREAS, the Commission is now concluding its operations in accordance with, without limitation, sections 78714 and 78724 of the California Food and Agricultural code; and

WHEREAS, the Commission approved a Wind-Down Plan on September 4, 2007, which was approved by the California Department of Food and Agriculture (the “CDFA” or the “Department”) on or before March 24, 2008; and

WHEREAS, the Board of Directors of the Commission was appointed by the Secretary through his designee as the Wind-Down Committee (the “Committee” or the “Commission”) for the purpose of engaging in limited activities and expending funds as necessary to address issues needing resolution as of February 29, 2008; and

WHEREAS, the California Superior Court for Fresno County on June 20, 2008, denied the petition of the Commission for the appointment of a receiver to oversee the winding down of the Commission; and

WHEREAS, the Commission, and now the Committee, is and will continue to be subject to the Cease and Desist Order issued by the CDFA on April 16, 2007, that requires Commission expenditures to be approved by the CDFA until the order is finally terminated or the issues needing resolution are settled; and

WHEREAS, the Committee's remaining activities as of September 30, 2008, involve defending and prosecuting, respectively, the complaint and cross-complaint in *Gonzales Packing Company v. The California Tomato Commission*, Fresno County Superior Court Case No. 06 CE CG 02695 AMC, and collecting assessments from three delinquent handlers.

NOW, THEREFORE BE IT RESOLVED, that:

1. The Commission directs the fiscal audit of the Commission's operations for the fiscal years ending 2007 and 2008 be completed and authorizes \$2,000 in expenditures for auditing services to complete the fiscal year ending 2008 audit and up to \$5,000 in expenditures for legal services to advise the Chairman regarding management representations requested by the auditor for the 2007 and 2008 fiscal audits.

2. The Commission hereby authorizes the payment of \$27,927.08 immediately to CDFA for its supervision services and legal fees incurred by the Department with the California Attorney General.

3. The Commission through the Committee will continue to defend the *Gonzales Packing Company v. The California Tomato Commission* lawsuit, Fresno County Superior Court Case No. 06 CE CG 02695 AMC, until the Commission concludes the matter by dispositive motion, trial or appeal, the matter is settled. The Chairman is authorized to execute any and all documents necessary for the Commission's defense or settlement of the matter. The Committee and Baker Manock & Jensen ("BMJ") agree that all further fees and costs the Committee incurs with BMJ for the defense of Gonzales Packing's complaint will be paid solely from the Federal Insurance Company policy, managed by the Chubb Group of Insurance Companies, which is currently paying for the Commission's defense. If and when the insurance coverage is exhausted, BMJ may be relieved as the Commission's counsel unless other arrangements are made. Further, in regard to this litigation, the Commission:

a. Instructs Monfort Management to immediately create a reserve of \$25,000 for the Department's legal expenses for defending the Secretary.

b. Instructs Monfort Management to create a reserve of \$10,000 for any judgment or settlement.

4. The Commission will continue to prosecute its Cross-Complaint for Gonzales Packing Company's unpaid assessments, filed in *Gonzales Packing Company v. The California Tomato Commission*, using the balance of the \$15,000 of Commission funds previously approved by the Department for that purpose. Monfort Management is instructed to create a reserve in the amount of that balance.

5. The Commission authorizes the payment of \$75,000 immediately to BMJ and to pay the firm for all such other amounts reasonable and necessary, as funds become available, for legal services rendered to the Commission's defense in the *Gonzales Packing v. California Tomato Commission* matter to date and other legal matters as requested before and after this date by the Commission and/or the Committee.

6. The Commission authorizes the Chairman to pursue the collection of unpaid assessments from three delinquent handlers, in addition to Gonzales Packing, including payment for legal services, as necessary, until collection or settlement.

7. The Commission authorizes Monfort Management to set up a \$10,000 reserve for any further expenses expected to be incurred for management services from Monfort Management.

8. The Commission authorizes Monfort Management to set up a reserve of up to \$5,000 for any further expenses expected to be incurred for the storage of the

Commission's records at the direction of the CDFA. At the appropriate time, the Chairman may direct Monfort Management to pay the CDFA or the storage facility to store the Commission records until February 28, 2013.

9. The Chairman is authorized to seek approval of CDFA for all expenditures and actions authorized in this Resolution.

I, Ron Oneto, Chairman of The California Tomato Commission and/or the Wind-Down Committee of The California Tomato Commission, attest that the above is a true and correct copy of the Resolution passed by The California Tomato Commission and/or the Wind-Down Committee of The California Tomato Commission at its duly noticed meeting on September 30, 2008.

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Date

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Ron Oneto, Chairman, The  
California Tomato Commission  
and/or the Wind-Down Committee  
of The California Tomato  
Commission

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In regard to the fourth recital above, the CDFA notes that under the Wind-Down Plan the Commission appointed the members of the Wind-Down Committee and the CDFA concurred in that appointment. With that qualification, the CDFA concurs with the Resolution set forth above as an addendum to the Wind-Down Plan approved by The California Tomato Commission on September 24, 2007, and approved by the CDFA on March 24, 2008.

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Date

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Robert Maxie, Chief, CDFA  
Marketing Branch

October 17, 2008 (3:04pm)  
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