

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Agriculture and the Federal Crop Insurance Corporation (collectively the “United States”) and Ralph K. Hackett (“Hackett”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Hackett is a resident of the County of Fresno, California. Hackett is a member and was a manager of Broker 1, a fruit broker with operations in the State of California and the Eastern District of California.

B. Person 1 is a member of a family that, along with other individuals, during all relevant times operated Farm 1 and related entities in Fresno and Tulare Counties, in the Eastern District of California. For purposes of this Agreement, the farming operation or operations are referred to herein as Farm 1. Person 1 was a primary point of contact for her immediate family members between Farm 1 and Broker 1. Farm 1 produced table grapes, plums, and other crops, and many of those crops were sold through Broker 1 to third-party buyers.

C. Insurance Company 1 issued insurance policies for table grapes, plus, and other crops to members of Farm 1. The policies were issued through a federal crop insurance program administered and reinsured by the Federal Crop Insurance Corporation.

D. The Federal Crop Insurance Corporation (“FCIC”) is a wholly owned government corporation managed by the Risk Management Agency of the United States Department of Agriculture. The FCIC administers federal crop insurance programs by providing and underwriting crop insurance policies for crops to farmers throughout the United States. The

insurance policies are crop-specific and are purchased from and serviced by private insurance companies known as approved insurance providers for each crop year. For FCIC purposes, the crop year is generally considered to be the year in which a crop is predominately harvested, with coverage ending upon completion of the harvest. For example, crops planted in the fall of one year and harvested in the spring of the following year are deemed harvested in that following year.

E. The FCIC pays the administrative and operating costs that private insurance companies, such as Insurance Company 1, incur while selling and servicing crop insurance policies, subsidizes the farmers' premiums, and reimburses the private insurance companies for insurance payments made to the farmers for losses caused by covered, naturally occurring events such as heat waves, droughts, and floods.

F. To obtain certain types of crop insurance policies, the insured farmer is usually required to disclose his or her historical crop production numbers. The historical crop production numbers must include crop acres that are being insured, as well as crop acres that are not being insured. This information is used to determine the farmer's expected crop production numbers for the crop year, which is called the approved yield. The farmer then selects a percentage of the approved yield he or she wants to insure against damage or loss for that crop year. The approved yield multiplied by the percentage of coverage and acreage is the farmer's guarantee under the insurance policy. If an insurable event occurs during that crop year, the farmer must disclose his or her actual crop production numbers for the year, which includes both insured and uninsured crops, to the insurance company's loss adjuster. The loss adjuster then compares the farmer's guarantee to the farmer's actual crop production numbers for the crop year to determine the farmer's loss and the amount of the insurance payment that he or she is

owed. The insurance company typically makes the insurance payment to the farmer by mailing him or her a check.

G. Insurance payments under certain types of policies are ultimately funded either in whole or in part by federal government funds through the FCIC.

H. If an insured farmer, or anyone assisting the farmer, misrepresents a material fact relating to the farmer's crop insurance policy or claim, the policy is retroactively denied in its entirety and the farmer must reimburse insurance payments made under the policy for the crop year of concern.

I. Members of Farm 1 obtained insurance policies issued under, by or through Insurance Company 1 covering table grapes, plums, and other crops produced by Farm 1 for table grapes, plums and other crops for crop years 2012 through 2015.

J. The United States contends that Hackett aided and abetted Person 1 in Person 1's fraudulent scheme to obtain money from Insurance Company 1 for crop years 2012 through 2015. Specifically, the United States contends that Hackett knowingly aided and abetted Person 1 in making false statements, claims and reports for the purpose of influencing Insurance Company 1, which at all relevant times was reinsured by the FCIC, to make payments to members of Farm 1 for false crop losses to various crops produced by Farm 1 in crop years 2012 through 2015. In addition, the United States contends that Hackett knowingly caused to be made false records and statements to be provided to Person 1, at Person 1's request, that were material to false or fraudulent claims to the FCIC by Insurance Company 1 for indemnification payments for false crop losses to Farm 1's crops for crop years 2012 through 2015. This conduct is referred to below as the Covered Conduct.

K. Based on the Covered Conduct, the United States contends that it has certain civil claims against Hackett for violating the False Claims Act, 31 U.S.C. § 3729-3733 (“FCA”), the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a (“FIRREA”), and other laws.

L. On such date as may be determined by the Court, Hackett will plead guilty to one count of aiding and abetting mail fraud in violation of 18 U.S.C. §§ 1341 and 2, pursuant to a written Plea Agreement with the United States Attorney’s Office for the Eastern District of California (“Plea Agreement”) in United States v. Ralph Hackett, Criminal Action No. [to be assigned] (E.D. Cal.). Under the Plea Agreement, Hackett has agreed to pay criminal restitution in the amount of \$656,834, which the United States has credited against Hackett’s total restitution obligation to the United States and is in addition to the Settlement Amount referenced in Paragraph 1 below. As part of his guilty plea, Hackett will also admit to facts set forth in the Factual Basis for Plea attached as Exhibit A to the Plea Agreement. Nothing in this Agreement is intended in any way to affect the Plea Agreement.

M. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims referenced herein, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Hackett shall pay to the United States six hundred and five thousand dollars (\$605,000) (“Settlement Amount”), of which three hundred and fifty five thousand, four hundred and thirty two dollars (\$355,432) is restitution, within fourteen (14) business days of the receipt of wiring instructions from the Office of the United States Attorney for the Eastern District of

California, to be issued after the Effective Date of this Agreement. The Settlement Amount is in addition to and independent of Hackett's restitution obligation set forth in the Plea Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Hackett from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; FIRREA, 12 U.S.C. §1833a; common law theories of negligence, gross negligence, breach of contract, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, misrepresentation, deceit, fraud, civil conspiracy, and aiding and abetting any of the foregoing; or any other statutory or common law cause of action for civil damages or civil penalties that the Civil Division of the United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Section 0.45(d) for the Covered Conduct.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability except as set forth in the Plea Agreement;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and

e. Any liability based upon obligations created by this Agreement.

4. Hackett waives and shall not assert any defenses Hackett may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Hackett fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Hackett has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Hackett and his present or former agents in connection with:

- (1) the matters covered by this Agreement and the Plea Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Hackett's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement and the Plea Agreement; and;
- (5) the payment Hackett makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Hackett, and Hackett shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Hackett shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Hackett from the United States. Hackett agrees that the United States, at a minimum, shall be entitled to recoup from Hackett any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Hackett's books and records and to disagree with any calculations submitted by Hackett regarding any Unallowable Costs included in payments previously sought by Hackett, or the effect of any such Unallowable Costs on the amount of such payments.

7. In addition to the cooperation obligation set forth in Paragraph II.F of the Plea Agreement, Hackett agrees to cooperate fully and truthfully with the United States' investigation of the fraudulent scheme referenced in Recital Paragraph J of individuals and entities not

released in this Agreement. Hackett further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in his possession, custody, or control concerning any investigation of the Covered Conduct that he has undertaken, or that has been performed by another on his behalf. Nothing in this Paragraph is intended to contravene or supersede any provision of the Plea Agreement.

8. This Agreement is intended to be for the benefit of the Parties only.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

13. The undersigned counsel represents and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

15. This Agreement is not assignable or transferable by Hackett. This Agreement is binding on Hackett's heirs.


16. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

17. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES

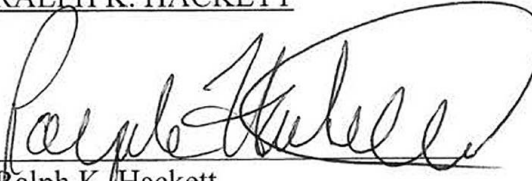
DATED: 7/14/21

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DATED: 7/13/21

RALPH K. HACKETT
BY: 
Ralph K. Hackett

APPROVED AS TO FORM AND CONTENT:

DATED: 7/14/21 BY: 
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