

**BEFORE THE DIRECTOR
OF THE
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of Unlawful Sales
and Deliveries of Pesticides by

Marquez Produce, Inc.
1890 E. 25th Street
Vernon, CA 90021

SETTLEMENT AGREEMENT
Case Nos.: 16-001R and 18-006R

Respondent/

This Settlement Agreement (“Agreement”) is entered into by and between the California Department of Pesticide Regulation (“the Department”), and Marquez Produce, Inc. (“Marquez”), collectively referred to as the Parties.

A. Background

Case Number 16-001R

1. On March 3, 2017, the Director of the Department served Marquez via personal service a Notice of Proposed Action (“NOPA”) in Case Number 16-001R. The NOPA found that Marquez violated section 12671 of the Food and Agricultural Code twenty-one (21) times between March 7, 2015, and March 7, 2016, by selling or packaging products carrying pesticide residue in excess of the permissible tolerance. The NOPA advised Marquez that if it wished to contest the NOPA, Marquez “must request a hearing no later than 20 days after receiving” the NOPA. Marquez failed to request a hearing by March 23, 2017, within 20 days of receipt. Thereafter, the Director issued a final Decision and Order on April 7, 2017, ordering Marquez to pay \$105,000.00 in civil penalties. Since Marquez failed to request a hearing, Marquez cannot appeal the Director’s Decision and Order. Accordingly, the Director’s Decision and Order became final on May 22, 2017. On June 1, 2017, the Department filed an Application to Enter Decision and Order as Judgment in Sacramento County Superior Court, case number 34-2017-00213326, ordering Marquez to immediately pay the Department \$105,435.00 (\$105,000.00 plus \$435.00 in filing fees) (“\$105,435.00 Judgment”). As of the date of this Agreement, Marquez has not paid the \$105,435.00 Judgment to the Department.

Case Number 18-006R

2. On February 19, 2019, the Director of the Department served Marquez via personal service a NOPA in Case Number 18-006R. The NOPA found that Marquez violated section 12671 of the Food and Agricultural Code fourteen (14) times between February 22, 2017, and October 23, 2018, by selling or packaging products carrying pesticide residue in excess of the permissible tolerance. The NOPA advised Marquez that if it wished to contest the NOPA, Marquez “must request a hearing no later than 20 days after receiving” the NOPA. Marquez

failed to request a hearing by March 11, 2019, within 20 days of receipt. Thereafter, the Director issued a final Decision and Order in Case Number 18-006R on April 11, 2019, ordering Marquez to pay \$70,000 in civil penalties. Since Marquez failed to request a hearing, Marquez could not appeal the Director's Decision and Order. Accordingly, the Director's Decision and Order requiring Marquez to pay the Department \$70,000 ("\$70,000 Penalty") became final on May 16, 2019.

3. On April 20, 2019, Marquez contacted the Department to arrange a payment plan for the \$70,000 Penalty. In response, the Department again informed Marquez that the \$105,435 Judgment is also outstanding. In total, Marquez owes the Department \$175,435 for the Judgment (\$105,435) and the Penalty (\$70,000) associated with Cases 16-001R and 18-006R, respectively.

4. The Parties agree by this Agreement to resolve these matters without the need for formal litigation.

B. Agreement

In consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

5. The Department shall take no further civil or criminal action regarding the illegal produce packed, shipped, or sold during the time periods specified in paragraphs 1 and 2 for Cases 16-001R and 18-006R, unless it sets aside this Agreement as specified under paragraph 8.

6. Marquez shall pay the Department a total of \$175,435 in monthly payments as follows:

- \$5,000 on or before May 31, 2019;
- \$5,000 on or before June 30, 2019;
- \$5,000 on or before July 31, 2019;
- \$5,000 on or before August 31, 2019;
- \$5,000 on or before September 30, 2019;
- \$5,000 on or before October 31, 2019;
- \$10,000 on or before November 30, 2019;
- \$10,000 on or before December 31, 2019;
- \$10,000 on or before January 31, 2020;
- \$10,000 on or before February 29, 2020;
- \$10,000 on or before March 31, 2020;
- \$10,000 on or before April 30, 2020;
- \$10,000 on or before May 31, 2020;
- \$10,000 on or before June 30, 2020;
- \$10,000 on or before July 31, 2020;

- \$10,000 on or before August 31, 2020;
- \$10,000 on or before September 30, 2020;
- \$10,000 on or before October 31, 2020;
- \$10,000 on or before November 30, 2020;
- \$10,000 on or before December 31, 2020; and
- \$5,435 on or before January 31, 2021.

The payments shall be made payable by check **made out to:**

Cashier, Department of Pesticide Regulation

and mailed to:

c/o Lynette Komar, Staff Attorney
Office of Legal Affairs
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015

A copy of this agreement shall accompany the first payment.

7. Marquez shall not pack, ship, or sell any produce carrying pesticide residue in excess of the permissible tolerance after the execution of this agreement. **Within 30 days of signing this agreement**, Marquez shall develop, implement, and provide the Department with a written description of control measures Marquez will take to ensure that Marquez will not pack, ship, or sell produce carrying pesticide residue in excess of the permissible tolerance, and send it to:

Chief Counsel, Legal Office
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015

8. The Department may set aside this Agreement and proceed with action against Marquez for any and all unlawful sales, shipments, or packing of produce carrying pesticide residue in excess of the permissible tolerance should the Department discover that Marquez: (a) did not comply with paragraph 6 of this Agreement; (b) did not provide the Department with the written control measures required under paragraph 7 of this Agreement; or (c) made unlawful sales above and beyond those represented by Marquez for purposes of this Agreement.

9. Within 30 days of Marquez's final payment as required by paragraph 6, the Department will file an Acknowledgment of Satisfaction of Judgment of the \$105,435 Judgment with the Superior Court of California, County of Sacramento.

10. This Agreement constitutes the entire understanding between the Parties, is not intended to benefit or obligate any third party, and fully supersedes all prior written or oral negotiations between the Parties.

11. This Agreement binds Marquez, its successors and assignees, subsidiary and parent corporations, and the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.

12. If any payment by Marquez is more than 30 days late without obtaining a written extension of time from the Department, the entire remaining balance becomes immediately due. In addition, if the Attorney General files a civil action to enforce this Agreement, Marquez will pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs, in the event the Department is determined to be the prevailing party.

13. This Agreement tolls the statute of limitations relative to any violation covered by this Agreement and upon breach of any terms of this Agreement, at the discretion of the Department it becomes null and void, and the Department may take action concerning that violation.

14. Each person who signs this Agreement affirms that he or she has the authority to bind that Party.

Executed by:

Original signed by _____ on June 26, 2019
Val Dolcini, Acting Director at Sacramento, California
Department of Pesticide Regulation

Original signed by _____ on _____, 2019

Rafael Marquez / President (printed name and title) at _____ (City and State)
for Marquez Produce, Inc.