

# American Copak Corporation Settlement Agreement

## SETTLEMENT/RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into by and between the California Department of Food and Agriculture (the "Department") and American Copak Corporation ("Respondent") and its President, Steven Brooker ("Brooker"). The Department, Respondent, and Brooker 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 handler with the California State Organic Program and maintained National Organic Program Certificate Number C0029843-NOPHPC-4, first issued on September 22, 2005.
2. On October 29, 2012, Respondent's third-party certifying agent, Quality Assurance International ("QAI"), issued a Combined Notice of Noncompliance and Proposed Suspension ("Notice") of the Respondent's certification to the National Organic Program ("NOP") alleging noncompliance with the federal Organic Foods Production Act of 1990 ("OFPA"), the regulations promulgated under the OFPA, Title 7 of the Code of Federal Regulations, Part 205, et seq., the California Organic Products Act of 2003 ("COPA"), Food and Agricultural Code sections 46000 et seq., and the regulations promulgated under the COPA, Title 3 of the California Code of Regulations, sections 1391, et seq., and further alleging that Respondent knowingly and repeatedly violated the NOP regulations pertaining to labeling and record keeping dating as far back as 2006.
3. Respondent appealed the October 29, 2012 Notice, and on May 6, 2013, the Hearing Officer of the Department's Division of Inspection Services issued a Recommendation based upon the review of the documents submitted by QAI in support of a proposed suspension of registration and certification, and documents submitted by Respondent in support of their appeal of the proposal. The Recommendation was to uphold the Notice of Noncompliance and Proposed Suspension. The Hearing Officer found that there is sufficient evidence for the suspension based on six years of repeated willful violations of NOP regulations, noting violations involving problems with Individual Product Profiles (IPPs), including: discrepancies between IPPs and batch records; discrepancies between IPP's and ingredient statements on labels; and changes to formulas that were not disclosed to QAI, making labels noncompliant dating back to 2006.
4. In May 2013, Respondent ceased doing business, closed its production facilities, and all of its assets were liquidated. Respondent is no longer registered as an organic manufacturer/packager with the California State Organic Program, and Respondent has withdrawn its organic certification with its former third-party certifying agent (QAI) and has not substituted any other third-party certifying agent.
5. In light of Paragraph 4, above, the Parties wish to settle the issues raised by the October 29, 2012 Notice and the findings made in the May 6, 2013 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 admission of liability.



## TERMS

6. **Refrain from Seeking Organic Registration/Certification.** Respondent will not seek or obtain organic registration or certification for a period of five years commencing from the Effective Date of this Agreement, and Brooker will not seek or obtain organic registration or certification for a period of two years commencing from the Effective Date of this Agreement.

7. **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 October 29, 2012 Notice and the findings made in the May 6, 2013 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.

8. **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.

9. **Non-waiver.** Should the Department decline to take immediate disciplinary action for a violation of a statute, regulation, or any term(s) of this Agreement, this shall not constitute a waiver by the Department of the right to raise that violation at a later date in a disciplinary or other judicial proceeding, or any other context.

10. **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.

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

12. **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.

13. **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.



14. **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.

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

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

17. **Authority of Signatories.** Each person executing this Agreement does hereby represent and warrant to the other signatories that s/he 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 they have respectively 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 Party has executed this Agreement as of the date set forth beside their signature below.

For American Copak Corporation

Dated: 10/29, 2013



Steven Brooker, President

For the Secretary of the California Department of Food and Agriculture

Dated: 11/5, 2013



Rick S. Jensen, Director, Inspection Services