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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 19 2010

John A. Clarke, Executive Officer/Clerk

By  Naul Sanchez, Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

13 **STATE OF CALIFORNIA DEPARTMENT**
14 **OF PESTICIDE REGULATION,**

15 Plaintiff,

16 v.

17 **TITO BALLING, INC. DBA CALIFORNIA**
18 **WATER SERVICES, et al.**

19 Defendants.

Case No. BC 433811

**NOTICE OF ENTRY OF CONSENT
DECREE BETWEEN PLAINTIFF
AND CALANDRI AND WHEELER
DEFENDANTS**

Action Filed: March 15, 2010

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

A Consent Decree between Plaintiff State of California Department of Pesticide Regulation and Defendants Calandri/Sonrise Farms, LP; Calandri/Sonrise Farms, LLC; John A. Calandri; Gene Wheeler Farms, Inc.; EC Wheeler LLC; and Eugene C. Wheeler was entered in this action on November 17, 2010. A copy of the Consent Decree is attached as Exhibit 1 to this notice.

Dated: November 19, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California



SARAH E. MORRISON
Deputy Attorney General
*Attorneys for Plaintiff Department of
Pesticide Regulation*

LA200860217

Exhibit 1



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ORIGINAL FILED
NOV 17 2010
LOS ANGELES
SUPERIOR COURT

*Attorneys for Plaintiff California
Department of Pesticide Regulation*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

STATE OF CALIFORNIA DEPARTMENT
OF PESTICIDE REGULATION,

Plaintiff,

v.

TITO BALLING, INC. DBA CALIFORNIA
WATER SERVICES, et al.,

Defendants.

Case No. BC 433811

~~PROPOSED~~ CONSENT DECREE
BETWEEN PLAINTIFF AND
CALANDRI AND WHEELER
DEFENDANTS

Judge: Hon. Teresa Sanchez-Gordon
Dept.: 74
Action Filed: March 15, 2010

Plaintiff, the STATE OF CALIFORNIA DEPARTMENT OF PESTICIDE
REGULATION (“DPR”), and defendants Calandri/Sonrise Farms, LP; Calandri/Sonrise Farms,
LLC; John A. Calandri; Gene Wheeler Farms, Inc.; EC Wheeler LLC; and Eugene C. Wheeler
(collectively referred to as “Settling Defendants”) enter into this Consent Decree to settle the
above-captioned action as set forth below.

1 INTRODUCTION

2 On or about January 2, 2009, DPR issued a Notice of Violation (“Notice of Violation”) to
3 one or more of the Settling Defendants alleging violations of the Food and Agricultural Code and
4 implementing regulations.

5 On or about April 1, 2010, DPR filed a first amended complaint (“Complaint”) against
6 Settling Defendants and other defendants seeking civil penalties and injunctive relief for alleged
7 violations of sections of the Food and Agricultural Code and implementing regulations relating to
8 the sale, application, or use of pesticides, including chlorine gas, in California.

9 DPR and Settling Defendants (hereinafter referred to as “the Parties”) enter into this Consent
10 Decree to avoid the costs and uncertainties of further litigation and to further the public interest.
11 For good and valuable consideration, the Parties hereby agree as follows:

12 TERMS OF SETTLEMENT

13 1. This Consent Decree sets forth the Parties’ compromise and settlement of the disputed
14 claims in this action. The Parties believe that the resolution embodied in this Consent Decree is
15 fair and reasonable, and in the public interest.

16 2. **Jurisdiction and Venue.** The Parties agree that this Court has jurisdiction over the
17 subject matter of this action, and personal jurisdiction over the Parties, and that venue is proper.

18 3. **Civil Penalties.**

19 3.1. Defendants Calandri/Sonrise Farms, LP; Calandri/Sonrise Farms, LLC; and John
20 A. Calandri (collectively referred to as “Calandri Defendants”) are jointly and severally liable for
21 civil penalties in the amount of sixty thousand dollars (\$60,000), for violations of Food and
22 Agricultural Code section 12973 and California Code of Regulations, Title 3, sections 6600,
23 6624, 6626, 6627, 6670, 6672, and 6724 alleged in the Complaint. Defendant Calandri/Sonrise
24 Farms, LP shall pay civil penalties to DPR in two installments of twenty-three thousand dollars
25 (\$23,000), with the first payment due within thirty (30) days following the effective date of this
26 Consent Decree, and the second payment due within one year following the effective date of the
27 Consent Decree. Fourteen thousand dollars (\$14,000) of the total civil penalties shall be
28 suspended as provided in paragraph 3.6.

1 3.2. In the event that Calandri/Sonrise Farms, LP fails to pay civil penalties in
2 accordance with paragraphs 3.1 and 3.7, the Calandri Defendants shall be jointly and severally
3 responsible for immediately making payments for the total amount of civil penalties owed to DPR
4 under paragraph 3.1.

5 3.3. Defendants Gene Wheeler Farms, Inc.; EC Wheeler LLC; and Eugene C. Wheeler
6 (collectively referred to as "Wheeler Defendants") are jointly and severally liable for civil
7 penalties in the amount of fifty thousand dollars (\$50,000), for violations of Food and
8 Agricultural Code section 12973 and California Code of Regulations, Title 3, sections 6600,
9 6624, 6626, 6627, 6670, 6672, and 6724 alleged in the Complaint. Defendant Gene Wheeler
10 Farms, Inc. shall pay to DPR the civil penalties in two installments of eighteen thousand dollars
11 (\$18,000), with the first payment due within thirty (30) days following the effective date of this
12 Consent Decree, and the second payment due within one year following the effective date of the
13 Consent Decree. Fourteen thousand dollars (\$14,000) of the total civil penalties shall be
14 suspended as provided in paragraph 3.6.

15 3.4. In the event that Gene Wheeler Farms, Inc. fails to pay civil penalties in
16 accordance with paragraph 3.3 and 3.8, the Wheeler Defendants shall be jointly and severally
17 responsible for immediately making payments for the total amount of civil penalties owed to DPR
18 under paragraph 3.2.

19 3.5. All checks shall be made payable to "Cashier, Department of Pesticide
20 Regulation," and shall be delivered to:

21 Polly Frenkel, Chief Counsel
22 Department of Pesticide Regulation
23 1001 I Street
24 P.O. Box 4015
25 Sacramento, CA 95812-4015

26 3.6. Suspended Penalties. Of the Settling Defendants' total liability set forth in
27 paragraph 3.1, fourteen thousand (\$14,000), shall be suspended for both the Calandri Defendants
28 and the Wheeler Defendants on the following conditions:

1 3.6.1. Within four years of the Effective Date of the Consent Decree, the Settling
2 Defendants, or any of them, shall not violate any provision of Divisions 6 and 7 of the Food
3 and Agricultural Code or the regulations promulgated under these Divisions (except for any
4 violation of California Code of Regulations, title 3, sections 6434, subd. (b); 6584; 6622;
5 6626, subs. (a),(c), and (e); 6627; and 6761, subd. (b), if such violation is corrected within
6 30 days.)

7 3.6.2. Within four years from the Effective Date of this Consent Decree, during
8 business hours and within 72 hours of a request to inspect or records demand, the Settling
9 Defendants, and each of them, shall: (1) consent to allow DPR, the county agricultural
10 commissioner, or any of their agents to immediately enter and inspect, and/or sample the
11 items referred to in California Code of Regulations, title 3, section 6140, subd. (a), in order to
12 determine compliance with Divisions 6 and 7 of the Food and Agricultural Code and
13 implementing regulations; and (2) make the required records referred to in California Code
14 of Regulations, title 3, section 6140, subd. (b), immediately available to DPR, the county
15 agricultural commissioner, or any of their agents upon demand.

16 3.7. If the Calandri Defendants, or any of them, fail to comply with one or more of the
17 conditions in subparagraphs 3.6.1. or 3.6.2, Calandri/Sonrise Farms, LP shall pay a suspended
18 penalty of fourteen thousand dollars (\$14,000) to DPR. Nothing in this Consent Decree shall
19 preclude any separate enforcement action or proceeding for violations of the Food and
20 Agricultural Code or implementing regulations.

21 3.8. If the Wheeler Defendants, or any of them, fail to comply with one or more of the
22 conditions in subparagraphs 3.6.1. or 3.6.2, Gene Wheeler Farms, Inc. shall immediately pay the
23 suspended penalty of fourteen thousand dollars (\$14,000) to DPR. Nothing in this Consent
24 Decree shall preclude any separate enforcement action or proceeding for violations of the Food
25 and Agricultural Code or implementing regulations.

26 3.9. Nothing in paragraph 3.6.2 is meant to restrict any powers, obligations, or
27 remedies under Food and Agricultural Code section 11456 or California Code of Regulations,
28 title 3, section 6140, including notice requirements, if any.

1 4. **Admissions.** Settling Defendants, and each of them, admit to the violations as alleged
2 against the Settling Defendants in the First, Fifth, Sixth, Seventh, and Eighth Causes of Action of
3 the Complaint only for the purposes of any subsequent action brought pursuant to the Food and
4 Agricultural Code if brought within four (4) years of the effective date of the Consent Decree.

5 5. **Injunctive Provisions.**

6 5.1. Pursuant to sections 11737.5, 11895.5, and 13000.1 of the Food and Agricultural
7 Code and the Court's equitable powers, Settling Defendants, and each of them, are permanently
8 enjoined from the following:

9 5.1.1. Using or handling a pesticide required to be labeled with the signal word
10 "DANGER," under Title 40 of the Code of Federal Regulations ("CFR"), section 156.64(a)
11 (hereinafter referred to as "danger-level pesticides"), including chlorine gas, in a way or for a
12 use not permitted by labeling registered for that pesticide, as prohibited by Food and
13 Agricultural Code section 12973.

14 5.1.2. Failing to maintain personal control over danger-level pesticides, including
15 chlorine gas, in a manner that would avoid contact by unauthorized persons, and failure to
16 store such pesticides in locked enclosures as required by California Code of Regulations, title
17 3, sections 6670 and 6672(b).

18 5.1.3. Failing to post warning signs around storage areas for containers of danger-
19 level pesticides, including chlorine gas, as required by California Code of Regulations, title
20 3, section 6674.

21 5.1.4. Failing to submit monthly use reports for use of danger-level pesticides,
22 including chlorine gas, to the appropriate county agricultural commissioner, as required by
23 California Code of Regulations, title 3, sections 6624, 6626, and 6627.

24 5.2. Failure to comply with this injunction may subject Settling Defendants to
25 sanctions, including, but not limited to, contempt and additional penalties.

26 6. **Enforcement of this Consent Decree.**

27 6.1. DPR may move this Court for additional relief for any violation of any provision
28 of this Consent Decree, including but not limited to contempt, additional injunctive provisions, or

1 additional penalties as may be applicable by law and this Consent Decree.

2 6.2. If DPR determines that Settling Defendants, or any of them, fail to comply with
3 the Consent Decree, DPR shall notify the non-complying Settling Defendant(s) of the non-
4 compliance. DPR may move this Court to enforce compliance with the Consent Decree, and to
5 award appropriate relief.

6 6.3. Nothing in this Consent Decree shall prevent DPR or any government entity from
7 taking any action deemed necessary to respond to an immediate threat or hazard to public health
8 or the environment.

9 6.4. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in
10 any way limiting the ability of DPR to seek any other remedies or sanctions available by virtue of
11 violation of this Consent Decree by Settling Defendants, or any of them.

12 7. **Request for Extension of Time.** At least thirty (30) days prior to the expiration of a
13 time period in the Consent Decree, Settling Defendants, or any of them, may apply to DPR, in
14 writing, for an extension of any of the time periods specified in this Consent Decree. If DPR does
15 not timely approve an extension, Settling Defendants, or any of them, may apply to the Court for
16 an extension.

17 8. **Matters Covered by Consent Decree.** This Consent Decree, upon entry by the Court,
18 shall constitute a complete, final, and binding resolution and settlement of all claims, violations,
19 or causes of action alleged against Settling Defendants in the Complaint and of all claims,
20 violations or causes of action which could have been asserted by DPR against Settling
21 Defendants, based on the facts alleged in the Complaint, including, but not limited, to violations
22 of Food and Agricultural Code sections 12973, and California Code of Regulations, Title 3,
23 sections 6600, 6624, 6626, 6627, 6670, 6672, and 6724 ("Covered Matters").

24 9. Except as provided in paragraph 10 (Reservation of Rights) of this Consent Decree and
25 expressly conditioned on Settling Defendants' full compliance with the terms of the Consent
26 Decree, DPR covenants not to file any other complaint, whether judicial or administrative, against
27 Settling Defendants, and each of them, for the Covered Matters. This covenant not to sue
28 extends only to Settling Defendants and does not extend to any other person. The parties

1 acknowledge that pursuant to Food and Agricultural Code section 12999.5, the county
2 agricultural commissioner cannot levy civil penalties against the Settling Defendants for the same
3 violations alleged in the Complaint which are resolved by this Consent Decree.

4 10. **Reservation of Rights.** This Consent Decree has no effect on the ability of DPR to
5 enforce the terms of the Consent Decree, or to pursue or file separate or additional action for any
6 violation of statutes or regulations which is not a Covered Matter.

7 11. Except as expressly provided in paragraph 9 of this Consent Decree, nothing in this
8 Consent Decree shall constitute or be construed as satisfaction or release from liability for any
9 conditions or claims arising as a result of past, current, or future acts or operations of Settling
10 Defendants, or any of them.

11 12. Nothing in this Consent Decree is intended, nor shall it be construed, to preclude any
12 other state or county government agency from taking appropriate enforcement actions or
13 otherwise exercising its authority under any law, statute, or regulation.

14 13. Nothing in this Consent Decree shall relieve Settling Defendants from the obligation to
15 comply with applicable laws and regulations.

16 14. Settling Defendants, and each of them, covenant not to sue or pursue civil or
17 administrative claims against DPR or other agencies of the State of California arising out of or
18 relating to the Covered Matters, including, but not limited to, this litigation, any inspection,
19 enforcement, or other regulatory action relating to the Covered Matters. The Settling Defendants
20 reserve the right to defend against DPR's enforcement of the Consent Decree and to defend
21 against any action by DPR for any alleged violation of statutes or regulations which is not a
22 Covered Matter.

23 15. **Entry of Judgment.** Pursuant to Code of Civil Procedure section 664.6, this Consent
24 Decree may be entered by the Court without further notice to the Parties. By entering this
25 Consent Decree, the Court finds that this Consent Decree results in a full, fair, and final resolution
26 of the claims alleged in the Complaint.

27 16. **Retention of Jurisdiction.** Pursuant to Code of Civil Procedure section 664.6 and at
28 the parties' joint request, the Court shall retain jurisdiction of this matter and over the parties to

1 enforce this Consent Decree until Settling Defendants fully perform their obligations specified in
2 this Consent Decree.

3 17. **Appeal Rights Waived.** Settling Defendants, and each of them, waive their right to a
4 hearing on any claims, violations, or causes of action alleged in the Complaint prior to the entry
5 of the Consent Decree by this Court. Settling Defendants also waive the right to appeal, to
6 attempt to set aside or vacate, or otherwise to attack, directly or collaterally, this Consent Decree.

7 18. **Notice.** All submissions and notices required by this Consent Decree shall be sent to:

8 For DPR:

9 Polly Frenkel, Chief Counsel
10 Department of Pesticide Regulation
11 1001 I Street
12 P.O. Box 4015
13 Sacramento, CA 95812-4015

14 For the Calandri Defendants:

15 John A. Calandri
16 Calandri/SonRise Farms, LP
17 43511 N. 70th Street East
18 Lancaster CA 93535

19 For the Wheeler Defendants:

20 Eugene C. Wheeler
21 Gene Wheeler Farms, Inc.
22 220 West Avenue H-6
23 Lancaster, CA 93534

24 19. **Compliance with Applicable Laws.** Settling Defendants, and each of them, shall
25 carry out their obligations under this Consent Decree in compliance with all local, state, and
26 federal requirements.

27 20. **Government Liabilities.** The State of California shall not be liable for any injury or
28 damage to persons or property resulting from acts or omissions by Settling Defendants or their
directors, officers, employees, agents, representatives, or contractors in carrying out activities
pursuant to this Consent Decree; nor shall the State of California be held as a party to or
guarantor of any contract entered into by Settling Defendants, or their directors, officers,
employees, agents, representatives, or contractors in carrying out activities required pursuant to

1 this Consent Decree.

2 21. **Payment of Costs and Fees.** The Parties shall each pay their own fees, attorneys fees,
3 costs, and all other costs of litigation incurred prior to and as of the effective date of the Consent
4 Decree.

5 22. **Parties Bound.** This Consent Decree shall apply to and be binding upon Settling
6 Defendants, and each of them, and their officers, directors, agents, employees, contractors,
7 consultants, receivers, trustees, successors, and assignees, including, but not limited to
8 individuals, partners, and subsidiary and parent corporations, and upon DPR and any successor
9 agency of the State of California that may have responsibility for and jurisdiction over the subject
10 matter of this Consent Decree.

11 23. **Equal Authorship.** This Consent Decree and all of its provisions shall be deemed to
12 have been drafted equally by the Parties.

13 24. **Signatories.** Each signatory to this Consent Decree certifies that he or she is fully
14 authorized by the party he or she represents to enter into this Consent Decree, to execute it on
15 behalf of the party represented, and to legally bind that party.

16 25. **Integration.** This Consent Decree constitutes the entire agreement between the Parties
17 regarding the matters covered herein and expressly supersedes any and all prior oral or written
18 judgments, agreements, covenants, representations and warranties (express or implied)
19 concerning the subject matter of this Consent Decree. This Consent Decree and all of its
20 provisions shall be deemed to have been drafted equally by all parties hereto.

21 26. **Counterparts.** This Consent Decree may be executed in counterparts, and such
22 counterparts together constitute the original document.

23 27. **Modification.** This Consent Decree may be modified only upon written consent by
24 the Parties and the modification shall not take effect until approved by the Court.

25 28. **Effective Date.** The effective date of this Consent Decree shall be the date upon which
26 this Consent Decree is entered by the Court.


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FOR PLAINTIFF STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION

Dated: 5 October 2010

By: 

Mary-Ann Warmerdam, Director
California Department of Pesticide Regulation

FOR DEFENDANT CALANDRI/SONRISE FARMS, LP

Dated: _____ By: _____

FOR DEFENDANT CALANDRI/SONRISE FARMS, LLC

Dated: _____ By: _____

FOR DEFENDANT JOHN A. CALANDRI

Dated: _____ By: _____

1 IT IS SO AGREED AND STIPULATED.

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FOR PLAINTIFF STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION

Dated: _____

By: _____

Mary-Ann Warmerdam, Director
California Department of Pesticide Regulation

FOR DEFENDANT CALANDRI/SONRISE FARMS, LP

Dated: 10-1-10

By: *John A. Calandri*

FOR DEFENDANT CALANDRI/SONRISE FARMS, LLC

Dated: 10-1-10

By: *John A. Calandri*

FOR DEFENDANT JOHN A. CALANDRI

Dated: 10-1-10

By: *John A. Calandri*

1 FOR DEFENDANT EC WHEELER LLC

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Dated: 10-7-2010

By: *EC Wheeler*

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FOR DEFENDANT GENE WHEELER FARMS, INC.

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Dated: 10-7-2010

By: *EC Wheeler*

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FOR DEFENDANT EUGENE C. WHEELER

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Dated: 10-7-2010

By: *EC Wheeler*

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IT IS SO ORDERED, ADJUDGED, AND DECREED.

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Dated: 11-17-10

TERESA SANCHEZ-GOPF
JUDGE OF THE SUPERIOR COURT

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **State of California Department of Pesticide Regulation v. Tito Balling, Inc.,
et al.**

No.: **BC 433811**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 19, 2010, I served the attached **Notice of Entry of Consent Decree Between Plaintiff and Calandri and Wheeler Defendants (entered 11/17/2010)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Richard G. Zimmer, Esq.
Clifford & Brown
1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301-5230

Teresa A. Dunham, Esq.
Somach, Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

Dale Dorfmeier, Esq.
Petrie, Dorfmeier & Morris LLP
2014 Tulare Street, Suite 830
Fresno, CA 93721

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 19, 2010, at Los Angeles, California.

Olivia Padilla

Declarant



Signature