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April 16, 2024

VIA CERTIFIED MAIL

California Avocado Commission
12 Mauchly, Suite L
Irvine, CA 92618
Attention: Board of Directors

Re: California Avocado Commission (the "Commission"): Conflicts of Interest

Dear Board of Directors:

We represent a number of California avocado growers (the "Growers") who are concerned about the future of the California avocado industry. Each Grower is a "producer" as defined in the California Avocado Commission Law (the "CAC Law") and each of the Growers pays a portion of its gross revenues to the Commission pursuant to the CAC Law and the Commission's bylaws.

On behalf of the Growers, we are writing to demand that the Board of Directors of the Commission (the "Board") take certain actions to ensure that (i) the Commission operates consistently with the purposes for which it was established, and (ii) all Board members comply with their fiduciary requirements and ethical obligations in the performance of their duties.

Legal Framework

A. The Commission's Purpose and Legal Authority

The Commission was established in 1978 for the purpose of promoting the avocado industry in California and, specifically, to maximize the revenues for California producers and to ensure that California producers can compete in the marketplace. The following provisions are set forth in the Commission's enabling law:

"Avocados produced *in this state* constitute one of the state's principal tree fruit crops. The avocado industry *in this state* is expanding. The industry constitutes an important source of jobs for many people *in the state*, a high proportion of whom are from underprivileged and historically deprived segments of the population."¹

¹ CAC Law § 67001 (emphasis added)

“The establishment of a commission is imperative for the efficient development and management of a national and international advertising program which will ensure that the California avocado industry can compete successfully in the marketplace and increase revenues to avocado producers.”²

“The production and marketing of avocados produced in this state is hereby declared to be affected with public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.”³

As stated throughout the CAC Law, the Commission’s authorized role is not to promote the avocado industry generally; instead, the CAC Law is – and the Commission therefore is required to be – focused exclusively on promoting the business interests of California growers. California growers compete with growers primarily from Chile, Mexico, and Peru, and the Commission is obligated to help California growers compete against those foreign growers. Increasing the sale of foreign avocados is of no concern to the Commission.⁴ In addition, there is a separate organization – the Hass Avocado Board – whose purpose is to promote Hass avocados in the United States, regardless of their country of origin.⁵ In contrast, the country of origin is critical for evaluating whether the Commission is operating in compliance with the CAC Law – i.e., to promote California avocados and support California growers in their competition against foreign producers.

B. Board Fiduciary Duties

As stated in the Commission’s Code of Conduct and Ethics, “[e]thical conduct and loyalty are inherent obligations and Board members are expected to act in the best interests of CAC and to comply with CAC policies and procedures.” Among a director’s duties is the duty of loyalty, which requires that a director avoid any conflicts of interest. The Commission’s conflict of interest policy defines a decision as having a conflict of interest “if it is reasonably foreseeable that the decision will have a material effect, financial or otherwise, on the [person or their family] that is distinguishable from its effect on all persons subject to the Commission’s jurisdiction.”

Thus, just as the Commission – acting through the Board – must act exclusively to further the interests of the California avocado industry, each individual Board member must avoid any conflicts of interest and act exclusively in the best interests of the California avocado growers the Commission was intended to represent.

² CAC Law § 67003 (emphasis added)

³ CAC Law § 67004 (emphasis added)

⁴ Foreign competitors have their own advocacy organizations: Chilean growers are represented by the Chilean Avocado Importers Association; Mexican growers are represented by the Mexican Hass Avocado Importers Association; and Peruvian growers are represented by the Peruvian Avocado Commission.

⁵ Hass Avocado Promotion, Research, and Information Act, § 7801(b).

Commission and Board Composition

A. Commission Actions

The Commission's mission statement is "to maximize grower returns by enhancing premium brand positioning for California Avocados and improving grower sustainability".⁶ The Commission's business plan notes that "California Avocado growers face a staggering array of challenges – ... an ever-expanding volume of foreign fruit that constantly exerts downward pressure on farm-gate prices." These words strike the right tone and accurately describe what the Commission should be doing, but they are meaningless unless and until the Commission actually takes meaningful steps to implement those plans.

Based on our review of the actions and inactions of the Board, and the difficult competitive position that many California growers now find themselves in, it appears as if the Commission is failing to achieve its legally mandated purpose and also that some members of the Board are failing to comply with their fiduciary and ethical obligations.

The California avocado industry has been losing ground to its foreign competitors.⁷ Despite those economic realities, the Commission has suppressed and continues to suppress actions that would have benefited California growers, instead focusing on efforts to increase the volume of avocado sales generally, regardless of their country of origin. That is the opposite of the Commission's legal mandate to fight exclusively for the interests of California growers.

There are a few notable examples of such actions.

First, it appears as if there has never been an examination of the trade imbalances and the disparities of the cost of doing business between foreign and California avocado growers. The Commission had an opportunity to address these imbalances in 2020 when the United States Trade Representative was investigating whether to include avocados in its analysis of potential threats from agricultural imports. The Commission voted against participating in that investigation.

Second, the California legislature has had two bills introduced to it (AB710 and AB865) that would have included avocados among the fruits that must meet state labor and environmental standards. That would have provided California avocado growers with a marketing advantage over its foreign competitors by highlighting the benefits to consumers of choosing California avocados over those that are produced outside of the country and not subject to these standards. The Commission's representative evidently asked for avocados to be removed from the fruits identified in AB710, and, when approached concerning AB865, the Board voted to maintain a neutral stance. At the same time, the Commission's product promotion strategy can be shown to have had significant success in assisting the marketing of foreign avocados, but despite the CAC Board authorizing over \$100 million on marketing over the past ten years, there has been no material benefit for the California growers. This promotion of foreign avocados has occurred in spite of clear evidence that the foreign avocado industry has contributed to the destruction of the environment, through massive deforestation and soil

⁶ CAC 2023-24 Business Plan

⁷ Over the past 15 years, the California avocado producing acreage has declined by approximately 30%, and California grown avocados now make up less than 10% of the world market.

erosion, which has had a devastating impact on climate change, biodiversity, and species extinction.

Third, the CAC Board recently rejected a request from the Avocado Growers California (AGC) to schedule a referendum of the Hass Avocado Board (HAB). A referendum would allow California growers to express their opinion on whether HAB is achieving its statutory purpose and whether the significant funds that California growers pay to HAB are being put to good use. Despite not having a HAB referendum for over 23 years, the CAC Board rejected this request and prevented the California growers' voices from being heard.

B. Board Composition

The Commission Board consists of 13 members: 10 "producer" members, 2 "handler" members, and 1 "public" member.⁸ A producer member must be "engaged within [California] in the business of producing, or causing to be produced, avocados for market."⁹ In order to be eligible to be a producer board member, one must "have a financial interest" in a producer.¹⁰ It is clear that the intent of the CAC Law was to ensure that the Commission Board be represented by a supermajority of producers and for all board members to be aligned in the common mission of promoting the California avocado industry and not the avocado industry of any other country.

While the CAC Law does not prohibit producer board members from also having a separate interest in a handler, nor does it prohibit a handler board member from being involved in the importation and sale of foreign avocados, those prohibitions were not necessary back in 1978 when the Commission was established. When the CAC Law was enacted, a USDA ban was in effect that prohibited avocado imports from Mexico.¹¹ Thus, even though handlers were in the business of receiving and selling avocados, for at least the first two decades of the Commission's existence, the vast majority of those avocados were grown in California. There would have been no reason for the CAC Law to prohibit handler board members from importing and selling foreign-grown avocados, since that prohibition essentially was already in effect. That is no longer the case, and now there is a majority of producer board members who are employees or owners of farm management concerns which are not growers, and/or have an interest in a handler entity which is in the business of importing, or has substantial investments in companies engaged in importing and selling, foreign avocados. Any member of the Board who has a financial interest in the importation or sale of foreign avocados is in direct competition with California growers, and has an unwaivable conflict of interest given the Commission's mission and legal mandate.

On behalf of the California avocado growers that we represent, we demand that the Commission take prompt and affirmative steps to advocate for legislative and regulatory measures that advance the best interests of the California growers, and to pursue appropriate legal and other actions that will allow them to compete better against foreign producers. We further demand that any member of the Board who has a direct or indirect interest in any

⁸ There are 7 alternates; and it appears as if one of the handler positions is currently vacant.

⁹ CAC Law § 67039

¹⁰ CAC Law § 67054(a)

¹¹ The USDA banned imports of Mexican avocados in 1914 to prevent entry of avocado seed weevils into the United States. The ban remained in effect until 1997 shortly after the adoption of the North American Free Trade Agreement and nearly 20 years after the CAC Law went into effect.

enterprise that grows, imports, or sells foreign avocados resign their position immediately, and that no person with such an interest be eligible to serve on the Board.

This letter does not limit or effect any rights or remedies that the Growers, or any of their owners or members, may have against the Commission in law or equity, all of which are expressly reserved.

Sincerely,

A handwritten signature in black ink that reads "Nazak Nikakhtar". The script is cursive and fluid.

Nazak Nikakhtar
Tom Antonucci

Enclosures

- CAC Conflict of Interest Policy
- CAC Board Vote on Trade Investigation
- CAC Board Position on AB 865
- CAC Board Vote on Request for HAB Referendum

Adopted by the CAC Board October 15, 1998

Approved by CAC Board March 17, 2016

SUMMARY DEFINITION OF CONFLICT OF INTEREST

It is each member's and alternate's responsibility to determine whether they have a conflict of interest and whether they should excuse themselves from a particular discussion or vote during a meeting. To assist you in this evaluation, the following Summary Definition of Conflict of Interest may be helpful.

A Commission member or employee has a conflict of interest in a decision of the Commission if it is reasonably foreseeable that the decision will have a material financial effect, financial or otherwise, on the member or employee or a member of his or her immediate family that is distinguishable from its effect on all persons subject to the Commission's jurisdiction.

No Commission member or employee shall make, or participate in making, any decision in which he or she knows or should know he or she has a conflict of interest.

No Commission member or employee shall, in any way, use his or her position to influence any decision in which he or she knows or should know he or she has a conflict of interest.



CALIFORNIA AVOCADO COMMISSION
AB 2720 Roll Call Vote Tally Summary
To be attached to the Meeting Minutes

Meeting Name: <i>California Avocado Commission Regular Board Meeting</i>	Meeting Location: <i>Zoom Web/Teleconference</i>	Meeting Date: <i>February 8, 2021</i>
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<i>Attendees Who Voted</i>	<u>MOTION 21-2-8-1</u>	<u>MOTION 21-2-8-2</u>	<u>MOTION 21-2-8-3</u>
Ryan Rochefort	Yea	Yea	Nay
Jessica Hunter	Yea	Yea	Nay
Ohannes Karaoghlanian	Nay	Yea	Yea
John Cornell	Yea	Yea	Yea
Rob Grether	Did Not Vote	Did Not Vote	Did Not Vote
John Lloyd-Butler	Yea	Yea	Nay
Jason Cole	Yea	Yea	Nay
Rachael Laenen	Yea	Yea	Nay
Randy Douglas	Yea	Yea	Yea
Andrew Prechtl	Yea	Yea	Nay
Peter Shore	Yea	Yea	Nay
Gary Caloroso	Yea	Yea	Nay
Daniella Malfitano	Yea	Yea	Nay
<i>Outcome</i>	11 Yea 1 Nay	Unanimous	3 Yea 9 Nay

MOTION:

Move to instruct CAC's attorneys begin the process of asking the United States Trade Representative to make a request to the International Trade Commission (ITC) to monitor imports of the Hass avocados under the perishable agricultural product provisions of section 202(d)(1) of the Trade Act, and Section 332 (g) of the Tariff of 1930. Such a request should emphasize that the ITC's fact-finding 89-day monitoring should take place during our domestic 2021 harvesting season, and include the collection and analysis of information that would expedite a potential 201 investigation.

(Cornell/Karaoghlanian) MSF 3 Yea/9 Nay

MOTION 21-2-8-3



INDUSTRY AFFAIRS

Legislative Activity

- AB 865 – sponsor, Eduardo Garcia, Sale of agricultural products (*bell peppers, blueberries, dates, honeydew melons, lemons, olives, or table grapes*): requirements for sale (previously AB 710, introduced 2021)
 - A grower or producer that sells an agricultural product to a distributor shall attest to the distributor under penalty of perjury, using a **self-attestation form** developed by the department pursuant to subdivision (e), whether the agricultural product was produced in compliance with specified California health and environmental protection laws and specified California labor laws.
 - The bill would provide that a violation of these provisions is subject to a \$500 civil penalty for each violation.
 - **Support:** California Date Commission, California Farm Bureau Federation, California Fresh Fruit Association, Hadley Date Gardens, Riverside County Farm Bureau, Twenty-nine Palms Band of Mission Indians
 - **Opposition:** California Grocers Association, California Retailers Association
 - **CAC board position:** monitor the bill
 - **Bill status:** referred to Committee on Appropriations
 - https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB865



BOARD OF DIRECTORS MEETING, February 22, 2024

BOARD ACTION

ITEM 9: REQUEST FROM AVOCADO GROWERS OF CALIFORNIA THAT "CAC PETITION USDA TO ORGANIZE A REFERENDUM FOR THE HASS AVOCADO BOARD ALLOWING HAB ASSESSMENT PAYING MEMBERS TO EXPRESS THEIR COLLECTIVE POSITION"

SUMMARY:

On January 8, 2024 CAC Chairman Jason Cole received the attached letter from the Avocado Growers of California requesting that "CAC petition USDA to organize a referendum for the Hass Avocado Board allowing all HAB assessment paying members to express their collective position." In response to this letter, Chairman Cole has brought this item before the CAC Board for consideration.

FISCAL ANALYSIS:

- N/A

BOARD OPTIONS:

- Approve that "CAC petition USDA to organize a referendum for the Hass Avocado Board allowing all HAB assessment paying members to express their collective position."
- Take other action
- Take no action

STAFF RECOMMENDATION:

- Staff defers to the board's judgement in this matter

EXHIBITS / ATTACHMENTS:

- AGC Letter to Chairman Cole, dated January 8, 2024

Note: the CAC board voted 9-2 to oppose the motion that would have allowed California growers to have an opportunity to vote on a HAB referendum.