

# UNITED STATES DEPARTMENT OF AGRICULTURE

## BEFORE THE SECRETARY OF AGRICULTURE

I & G Docket No. 04-0001

In re: LION RAISINS, INC., a California corporation,  
formerly known as LION ENTERPRISES, INC.;  
LION RAISIN COMPANY, a partnership or unincorporated association;  
LION PACKING COMPANY, a partnership or unincorporated association;  
ALFRED LION, JR., an individual;  
BRUCE LION, an individual;  
DANIEL LION, an individual;  
ISABEL LION, an individual; and  
JEFFREY LION, an individual; and  
LARRY LION, an individual

### DECISION AND ORDER

This action was brought by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture (hereinafter “AMS”), initially against Lion Raisin, Inc., a California corporation (hereinafter “Lion”); Lion Raisin Company, a partnership or unincorporated association; Lion Packing Company, a partnership or unincorporated association; Alfred (Al) Lion, Jr., Bruce Lion, Daniel (Dan) Lion, and Jeffrey (Jeff) Lion for violations of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. § 1621, *et seq.*) and the Regulations governing the inspection and certification of processed fruits and vegetables. By later amendments, Isabel Lion and Larry Lion were added as additional Respondents.<sup>1</sup>

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<sup>1</sup> This action is the third such action brought against the Respondents seeking debarment, each of which is styled *In re Lion Raisins, et al.* I & G Docket No. 01-0001 is currently pending before United States Administrative Law Judge Jill S. Clifton. I & G Docket No. 03-0001 was dismissed as being barred by the statute of limitations and is presently on appeal before the Judicial Officer. Lion’s differences with USDA have been litigated in a variety of forums, including: *Lion Raisins, Inc. v. United States*, 51 Fed. Cl. 238 (Fed. Cl. 2001); *In re Lion Raisins*, 2002 AMA Docket No. F & V 989-1; *Lion Raisins, Inc. v. USDA*, 354 F 3d 1072 (9<sup>th</sup> Cir. 2004); *Lion Raisins, Inc., et al v. USDA*, No. CV-F-04-5844 REC DLB, (E.D. Ca. 2005); *Lion Raisin, Inc. v. United States*, 416 F 3d 1356 (Fed Cir. 2005); and *Lion Raisins, Inc. v. United States*, 64 Fed Cl. 536 (Fed Cl. 2005).

Characterized by Complainant's counsel as a case being about deception and money<sup>2</sup> and by Respondents' counsel as an absurdity of using a pro-market inspection program to shut down a 103 year old company for its conduct in seeking to better serve the needs of their customers<sup>3</sup> (suggesting that the inaccuracy of the USDA inspections made their conduct necessary), both the original and amendments to the Complaint allege that the Respondents engaged in a pattern of misrepresentation or deceptive or fraudulent practices in connection with the use of official inspection certificates and or inspection results between the period May 24, 1996 and May 11, 2000. The Respondents answered, generally denying the factual allegations contained in the Complaints, specifically denying any wrong-doing and asserting a number of affirmative defenses. By Order dated December 29, 2005, the allegations contained in numerical paragraphs 11 through 89 of the Second Amended Complaint pertaining to conduct occurring more than five years prior to the date of the filing of the Complaint were dismissed as being barred by the statute of limitations contained in 28 U.S.C. §2462.

Eight days of oral hearing were held addressing the remaining allegations, commencing on February 21, 2006 and continuing through February 23, 2006 in Washington, D.C. and then reconvening in Fresno, California on February 27, 2006 and concluding on March 3, 2006. The Complainant was represented by Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, D.C. The corporate Respondent was represented by Wesley T. Green, Esquire, Selma, California and James A. Moody, Esquire, Washington, D.C., who also represented each of the individual Respondents. During the course of the oral hearing, the Complainant called two witnesses and the Respondents thirteen. In addition to the pleadings contained in the record and the transcript of the oral hearing, the evidence includes the

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<sup>2</sup> See the opening statement of Ms. Carroll. Tr. 7

<sup>3</sup> Respondent's brief, pages 6-8.

74 exhibits introduced by the Complainant which were admitted and the 22 exhibits introduced by the Respondents that were admitted.<sup>4</sup> Both parties have submitted post hearing briefs in support of their respective positions.

In addition to filing a post hearing brief, the Respondents moved to dismiss the Complaint for lack of subject matter jurisdiction and for summary judgment limiting the scope of relief and for failure to afford pre-litigation warning and opportunity to demonstrate or achieve compliance.<sup>5</sup> The subject matter jurisdiction argument was addressed by the Department's Judicial Officer as a certified question in another case brought against Lion. In that decision, the Judicial Officer wrote:

The Secretary of Agriculture's authority to prescribe regulations for the inspection, certification, and identification of the class, quality, quantity, and condition of agricultural products and to issue regulations and orders to carry out the purposes of the Agricultural Marketing Act of 1946 includes authority to issue debarment regulations and to debar persons from benefits under the Agricultural Market Act of 1946. (footnote omitted) Moreover, the Secretary of Agriculture has long exercised debarment authority under the Agricultural Marketing Act of 1946. (footnote omitted) *In re Lion Raisins, Inc., et al.*, 63 Agric. Dec. 836 at 840 (2004)

In answering the certified question, the Judicial Officer referenced his earlier decision debarring an entity from receiving raisin inspection services under the Agricultural Marketing Act of 1946 in the case of *In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165 (2001) *aff'd*, 221 F. Supp.2d 1209 (E.D. Cal. 2002), *aff'd*, 66 Fed Appx. 706, 2003 WL 21259771 (9<sup>th</sup> Cir. 2003), as well as citing the well established line of cases relating to the withdrawal of meat

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<sup>4</sup> The record also includes all 131 exhibits of the Complainant and 1291 exhibits of the Respondent; however, only the number indicated were in fact admitted.

<sup>5</sup> These matters were previously raised prior to the hearing in a Motion for Partial Summary Judgment filed on September 14, 2005.

grading and inspection services under the Agricultural Marketing Act of 1946.<sup>6</sup>

Respondents also argue that Summary Judgment should be granted because Lion was not warned that use of their certificates was potentially unlawful and Lion was not provided a pre-litigation opportunity to demonstrate or achieve compliance, relying upon 5 U.S.C. § 558(c), a part of the Administrative Procedures Act.

5 U.S.C. § 558(c) does provide for notice by the agency and an opportunity to achieve compliance where licenses are involved:

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections [556](#) and [557](#) of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefore, the licensee has been given-

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

Both the terms “license” and “licensing” are defined in 5 U.S.C. § 551:

- (8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;
- (9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

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<sup>6</sup> Respondents assert that the Judicial Officer’s decision should not be regarded as authoritative, in part because his ruling was “simply stated in conclusory terms and without rigorous analysis.” Respondent’s Motion to Dismiss (May 11, 2006) at page 26. The Judicial Officer’s economy of language, a trait not shared by Respondent’s counsel, does not detract from the ruling’s precedential value. The *Merchant of Venice* argument that only voluntary inspections are at issue in this action also appears to have been addressed by the Ninth Circuit in *American Raisin*.

Although the above definitions are significantly broad, as neither definition appears to cover inspection services, extension of the “second chance” doctrine to the Respondents does not appear warranted in this case.

### **BACKGROUND OF THE CASE**

The Complainant’s first witness, David W. Trykowski, Chief of Investigations, Agricultural Marketing Service Compliance Office, United States Department of Agriculture, Washington, D.C., testified that the investigation of Lion was initiated after the Fresno Office of the Agricultural Marketing Service Inspection Office received an anonymous phone call indicating that USDA inspection certificates were being falsified by Lion. Tr. 37. The information from the anonymous caller was subjected to a “credibility check” which was accomplished by sending letters to 109 known overseas customers of Lion requesting that they provide information concerning the USDA certificates that they had received in connection with shipments of raisins that they had purchased from Lion. Tr. 38. The information provided in the responses received was then compared to the USDA inspection records maintained in the Fresno inspection office, a preliminary report was drafted confirming that irregularities had been found and the matter was referred to the Office of the Inspector General for criminal investigation. Tr. 38-49. Incident to the criminal investigation, a search warrant was obtained and executed on October 19, 2000 and a significant number of Lion’s records were seized, primarily consisting of those records pertaining to export customers covering the period from approximately 1995 through October of 2000. Tr. 49.

As the investigation progressed, Mr. Trykowski’s involvement increased and he personally worked through both the USDA records and the “shipping files” seized from Lion, compared the parallel sets of records for each transaction, and noted the non-conforming results

which appeared.<sup>7</sup> Three types of fraudulent conduct or misrepresentation were identified. First, existing USDA certificates were found that had been altered; second, USDA certificates which were reported by Lion as lost or unusable were instead completed by Lion reflecting results inconsistent with USDA inspections; and last, Lion certificates resembling those issued by USDA were prepared purporting to report USDA inspection results, but contained results different than those found by USDA.<sup>8</sup>

The comparison of Lion's shipping files with USDA's inspection files reflects that between November 11, 1998 and May 11, 2000 different results were reported in the respective files with respect to 33 invoices in three general areas, moisture, USDA grade and size. Moisture differences were the most prevalent, with twenty such variances. Grade differences, with changes from USDA Grade C to USDA Grade B<sup>9</sup>, accounted for thirteen variances, and there was a single instance where a mixed size determination was changed to midget size.<sup>10</sup>

Aside from the single instance in which a USDA Certificate was altered to lower the moisture results from 16.0% to 15.4% (CX 72 and 73), the allegations are primarily based upon Lion's use of facsimile certificates prepared on Lion letterhead, but prepared in the same general format and containing the same information as that used by USDA and in which the source of

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<sup>7</sup> The results of the analysis of the two sets of records are summarized in tabular form in Exhibit CX 126A. The exhibit identifies the type of conduct complained of, the alteration involved, the USDA Certificate (if applicable), the date of inspection, the customer, the product, Lion's order number, the sales amount, the cash incentive received, the applicable paragraphs of the Second Amended Complaint and the applicable Complainant's exhibit numbers.

<sup>8</sup> The second type of conduct noted above apparently was involved in other cases or counts which were dismissed, but was not present in the remaining counts involved in this case. Although Mr. Moody's opening statement suggested that the hearing would not involve any misuse of USDA Certificates, his statement apparently overlooked the allegations concerning USDA Certificate No. B-034343 (Lion Order No. 48397) contained in paragraphs 177 to 180 of the Second Amended Complaint.

<sup>9</sup> USDA Grade B requires a higher quality of raisin than USDA Grade C.

<sup>10</sup> There are two instances in which both moisture and grade changes were present. CX 56, 57 and 59.

the sample is identified as being “Officially Drawn,” a term defined in the Regulations<sup>11</sup>. 7 C.F.R. § 52.2.

The Respondents argue forcefully and with some justification that because the moisture content of raisins tends to drop rapidly after processing and even after packing, the USDA moisture testing does not accurately reflect results that are in any way representative of the moisture content of the raisins when they are received by an overseas customer. They also suggest that their customers were neither misled nor dissatisfied with the raisins that they received,<sup>12</sup> that USDA’s testing results often are so negligently performed as to be inherently unreliable due to the apparent practice of up or down rounding which resulted in serially repeated identical moisture values<sup>13</sup> which the uncontroverted testimony indicates is statistically improbable and argue that their own independent quality control moisture testing, the specifics of which differ from those used by USDA is a far more accurate indication of the actual raisin moisture content.<sup>14</sup> The Complainant concedes that mistakes are made by USDA’s inspectors and while one might generate some empathy for the Respondents’ frustration with their repeated efforts in attempting to effect changes in the way USDA inspections are performed and reported in order to meet the needs of their customers (a service for which Lion must pay), the record

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<sup>11</sup> Respondents note the use of a certificate, similar to the Lion certificate, used by SunMaid. RX 3-0187 LR 0745. On Sun Maid’s certificate; however, the source of samples is “SunMaid” rather than “Officially Drawn.”

<sup>12</sup> The testimony indicates that only one of the customers (Western Commodities) involved in this case is no longer purchasing raisins from Lion, but that the entity is no longer purchasing California raisins. Tr. 1462.

<sup>13</sup> See Tr. 651, 1435. CX 46 at 12, one of the USDA line check sheets reflects seven consecutive identical readings of 18.0% moisture. CX 98 at 8 contains five identical consecutive readings. A detailed examination of every USDA line check sheets would reflect many other such serial readings which according to the testimony would be “highly unlikely...extremely unlikely.” Tr. 651.

<sup>14</sup> The differences between USDA and Lion’s testing included the stage of processing at which the raisins were tested for moisture, with Lion testing before the application of oil in the processing, with USDA testing after application of the oil. Other differences include the timing of the testing as well as the size of the sample. Lion would also retain samples and would test the retained sample on occasion. While the question of whether the moisture testing done by USDA is appropriate for international trade possibly should be revisited by the Department in light of market preferences, this action is not the appropriate forum to obtain such relief.

amply demonstrates a pattern of repeated conduct by Lion to either deliberately alter or impermissibly misrepresented USDA inspection results to meet Lion's needs.

As a remedy,<sup>15</sup> the Complainant seeks debarment of each of the named Respondents for a period of 15 years. Tr. 374. Although the "remedy" witness, G. Neil Blevins, the Associate Deputy Administrator for Compliance Safety and Security in the Agricultural Marketing Service testified that it was not the intent of the Department to end the use of the Lion name on raisins sold from California,<sup>16</sup> he did indicate that in almost 20 years on this job, he had never seen a company as unethical in its dealing with the Agency and suggested that "it is clearly the aim of the Agency that we never wish to provide service to this corporation or this family ever again..." Tr. 375, 377. In arriving at the 15 year period, he suggested that normally two to four years for each willful violation would be appropriate in cases such as this.

On the basis of the evidence before me, I find that Lion and the individual Respondents did engage in a pattern of misrepresentation or deceptive or fraudulent practices in connection with the use of official inspection certificates and or inspection results as alleged but that the requested relief of debarment for fifteen years sought by the Complainant against all Respondents is excessive.<sup>17</sup> After considering all of the evidence, the following Findings of Fact and Conclusions of Law are made.

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<sup>15</sup> The Complainant took great pains to avoid characterizing the relief sought as a sanction, stressing that the action is remedial in nature. By way of contrast, in *American Raisin*, the Judicial Officer characterized debarment as a sanction. *In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165 at 189 (2001).

<sup>16</sup> Tr. 516. Mr. Blevins was also asked if it was the intent of the Department to put the Lion family out of the raisin growing, handling and marketing business and he answered "absolutely not and I don't see how it would do that." Tr. 522.

<sup>17</sup> It is initially noted that 7 U.S.C. § 1622 provides a maximum criminal penalty of a fine of not more than \$1,000.00 and one year's imprisonment for each offense. Given the Congressional objective of promoting the marketing of agricultural products in the enactment of the Agricultural Marketing Act of 1946, the severity of remedy requested in this case might very well adversely impact and act at cross purposes to the objectives of other agencies within the Department as well as the raisin industry's ability to retain its share of the international market, at least during the near term. No agency witness addressed this issue; however, Kalem Baserian briefly touched upon the subject in his testimony. Tr. 1318-20. Bruce Lion also testified as to the impact of a 15 year debarment



## FINDINGS OF FACT

1. The corporate Respondent, Lion Raisins, Inc., is a California corporation, formerly known as Lion Raisins and Lion Enterprises, Inc. (CX 1 at 6-14), with offices currently in Selma, California<sup>18</sup> that processes, packs and sells processed raisins both domestically and internationally,<sup>19</sup> being the second largest such company in the raisin industry. Lion is a closely held Subchapter S family corporation, with the corporation's 1000 shares of stock being held by only three individuals: Alfred Lion, Jr. (500 shares), Isabel Lion (499 shares) and Larry Lion (1 share).<sup>20</sup> Tr. 1085-86; 1113-17. Lion was incorporated in 1967;<sup>21</sup> however, members of the Lion family have been in the raisin business for over 100 years. Tr. 1117-18.

2. Prior to incorporation, Lion was known as Lion Packing Co. on filings with the Raisin Advisory Committee CX 3 at 12-46. On documents contained in Lion shipping files, the names Lion Raisin Company and Lion Packing Company are indicated as affiliated entities or businesses. CX 47 at 10, 23.

3. Alfred (Al) Lion, Jr. holds the largest number of shares of Lion, is one of its directors, and is named as Lion's President on filings with the Raisin Advisory Committee. CX 3 at 1-17.

On other filings with the California Secretary of State's Office, he is listed as the Chief

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upon Lion and his family and noted the impact upon the international market share when Dole exited the market in 1997 or 1998. Tr. 1449-1450.

<sup>18</sup> The corporation moved its operation from 3310 East California Avenue, Fresno, California to 9500 South Dewolf, Selma, California in 1999. CX 3; Tr. 1373.

<sup>19</sup> Lion Raisin Company and Lion Packing Company, both of which were named as Respondents, are alleged to be partnerships or unincorporated associations that were either a subsidiary of or affiliated with the corporate Respondent. Although not listed on the Fictitious Name Statement filed with the Fresno County Clerk's Office, documents in Lion's shipping files identify Lion Raisin Company and Lion Raisin Packing as affiliated entities or business names. CX 47-10, 23. Lion Packing was a name used both before and after incorporation. See CX 1.

<sup>20</sup> Isabel Lion is Herbert Lion's widow; Larry Lion is their son. Tr. 1086.

<sup>21</sup> Lion was initially incorporated as Lion Enterprises, Inc.; however, its failure to file an annual report with the California Secretary of State's Office allowed another to take that name and the corporation was renamed Lion Raisin, Inc. Tr. 1084.

Executive Officer and Chief Financial Officer and Registered Agent of Lion. Tr. 1186-88. CX 1 at 4, 5. Bruce Lion, Daniel Lion and Jeffrey Lion are his sons. The Lion family involvement in the raisin industry began with Alfred Lion Jr.'s grandfather; prior to Lion's incorporation, he and his brother Herbert Lion owned the partnership known as Lion Packing Company. CX 1 at 40-46, Tr. 1082.

4. Bruce Lion is listed as one of Lion's directors on the 1997 and 2000 filings with the California Secretary of State, as a Vice President of Lion on the filings with the Raisin Advisory Committee for the crop years 1996 through 2004, and exercised responsibility and control over the sales and shipping operations of Lion. CX 1 at 4,5, CX 3 at 1-11, Tr. 1129-1121. Bruce Lion testified that he was an officer and director of the corporation (Tr. 1350<sup>22</sup>) and that he exercised exclusive authority over whether raisins were to be "released." Tr. 1467.

5. During 1998, 1999 and 2000, Daniel (Dan) Lion exercised responsibility and control over Lion's production or processing department and was listed as one of Lion's Vice Presidents in the filing with the Raisin Advisory Committee only in 1997. CX 3 at 9, CX 4, Tr. 1119-21.

6. During 1998, 1999 and 2000, Jeffrey (Jeff) Lion exercised responsibility and control over Lion's ranch and grower's operations and was named as one of Lion's Vice Presidents in filings with the Raisin Advisory Committee, beginning in 1992. CX 3 at 1-15, Tr. 119-21.

7. During 1998, 1999 and 2000, Isabel Lion, the widow of Herbert Lion (Alfred Lion, Jr.'s brother and former partner), was Lion's second largest shareholder and according to one set of minutes, a director of Lion. Tr. 1085-86, CX 1 at CX 127.

8. During 1998, 1999 and 2000, Larry Lion was a shareholder and director of Lion, and according to documents filed with the California Secretary of State's Office and one set of minutes, was Lion's Secretary. CX 1 at 3, 4, 10-14, CX 127, Tr. 1085-86.

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<sup>22</sup> The question of whether he was a director of Lion was answered "A. I'm a vice president." Tr. 1350 at line 17.

9. Lion failed to observe corporate formalities in numerous ways, including the filing of inconsistent documents with the California Secretary of State's Office and the Raisin Advisory Committee, naming different individuals as officers and directors of Lion with the two entities, failing to file required annual reports (which resulted in Lion losing its original corporate name of Lion Enterprises, Inc.), naming of officers of the corporation with a variety of different titles, using titles other than those contained on filings with the Secretary of State's Office, designating individuals as Vice Presidents of the corporation without apparent approval or action by the Board of Directors,<sup>23</sup> failing to either hold annual meetings of either the shareholders or Board of Directors or to maintain accurate and appropriate minutes of those meetings.<sup>24</sup> CX 1 at 3,4, CX 127, Tr. 1100-06, 1113-17, 1121-22.

10. During the period between November 11, 1998, and May 11, 2000, as is indicated in the AMS Inspection and Grading Manual (RX 3-0189, LR 0748-1025), AMS inspectors recorded the results of their inspection sampling on line check sheets. *Id.* at LR 0955. AMS provided copies of their line check sheets to Lion Raisins, Inc. *Id.* at LR 0957. AMS retained the original line check sheets, along with the pack-out report provided by the packer. *Id.* at LR 0957.

11. During the period between November 11, 1998, and May 11, 2000, AMS's Processed Products Branch used Form FV-146 Certificate of Quality and Condition (Processed Foods), a packet form that comprised multiple pages, with the top page on white paper, identified as "original" in red in the lower right hand corner, followed by seven blue tissue pages

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<sup>23</sup> This was explained as "being management titles" rather than a corporate officer. Tr. 1044, 1046.

<sup>24</sup> One must initially wonder why more than one set of minutes might exist. Alfred Lion testified that Susan Keller, one of Lion's employees prepared the minutes, but did not attend the meetings, if in fact there were such meetings. Tr. 1109-10. In one set of minutes appearing in the record, Larry Lion was indicated as being present for the meeting of the Board of Directors for 1999, 2000 and 2001; however, the testimony indicated that he did not attend corporate meetings or otherwise perform the duties of corporate secretary. Tr. 1102-05, 1109-10. None of the minutes appearing of record contain mention of the any litigation Lion in which was involved, the retention of outside counsel, or mention personnel appointments, such as that of Kalem Baserian as General Manager. Given the informal fashion in which decisions were made, the alter ego standard discussed in *In re Anthony Thomas*, 59 Agric. Dec. 367 at 391 (2000) appears to be met.

(separated by carbon paper) each identified by the word “copy” (also in red) in the lower right hand corner. Tr. 39-40, CX 47 at 15, 16. Each FV-146 form was identifiable by a singular serial number at the top right side. Id. On the top page only, the number was printed in red. For example, see CX 47 at 15RX (LR 0972-77).

12. During the period between November 11, 1998, and May 11, 2000, if requested by the packer, AMS inspectors prepared a certificate worksheet, using the inspection information from their line check sheets, and product labeling and buyer information supplied by the packer. RX 3- 0189 (LR 0998). The worksheet was essentially a “draft” of the inspection certificate. Tr. 40-41.

13. Packers could and did request USDA Certificates of Quality and Condition (FV-146) after the product had been shipped. In that event, the inspector would prepare the form using the inspection documents and the order information. RX 3-0189 (LR 0980).

14. Once the FV-146 was prepared and signed, the original and up to four of the blue tissue copies were provided to the packer (or designee). RX 3-0189 (LR 0981). USDA retained a blue tissue copy in its files, along with any order information that had been provided by the packer when the certificate was requested, and the certificate worksheet, if it had been returned to the inspector. Tr. 40-42; RX 3-0189 (LR 0981). The certificates were recorded in a ledger maintained by the Inspection Service, with voided certificates being so noted. CX 14; Tr. 41-2, 52-3, RX 3-0189 (LR 0976-77). The voided original certificate was retained in the USDA files, and all blue tissue copies were destroyed. Id. If the inspector could not recover the original and all of the blue tissue copies, he or she would issue a superseded certificate, according to the procedures set forth in the inspection manual. Tr. 43; RX 3-0189 (LR 0977)

15. AMS filed the blue tissue copies, in the case of valid certificates, and the original, in the case of void certificates, together in numerical order. Tr. 40-42; RX 3-0189 (LR 0977, 0981).

16. During the period between November 11, 1998, and May 11, 2000, AMS inspectors performed on-line in-plant inspections of product at Lion Raisins, Inc. Although AMS personnel were provided with office space, the inspectors lacked the capability of print official inspection certificates and instead provided Lion Raisins, Inc.'s shipping clerks with blank FV-146 forms. CX 4. When Lion requested a certificate, it would generally give the inspector a copy of Lion's "outside" order form, which contained information regarding the buyer, codes, labels, and product specifications. Tr. 84.

17. Lion's shipping files in evidence typically contain a customer order form, prepared by the sales department, and an "inside" invoice and "invoice trial," prepared by the shipping department. The customer order form prepared by the sale department, contains the customer's order specifications. The "inside" invoice is an internal shipping department document that precedes the "invoice trial." The "invoice trial" is the last document prepared, and denotes the customer's specifications, the contract price, the manner and date of shipment, and, usually, the date when the order documentation was mailed to the customer, generally by United Parcel Service.

18. Under a program operated by the Raisin Administrative Committee (hereinafter the "RAC"), packers who sold raisins for export could apply for, and receive, "cash back" for such sales, by filing an RAC Form 100C. See e.g., CX 47 at 12. The amount of "cash back" was

based on the weight of the raisins. Id. Lion applied for “cash back” from virtually all of the sales that are the subject of this case.<sup>25</sup>

19. Once Lion developed a “Lion” certificate, Lion implemented the practice of charging its customers for USDA certificates, thereby creating a disincentive to request the official certificate FV-146. CX 7. Customers were advised a “Lion” certificate would be provided without charge and that Lion certificates contained the same information as a USDA certificate. See CX 73 at 44 (“Please note that the Lion certificate and the USDA certificate for each order is the same.”).

20. Lion certificates were prepared not by Lion’s quality control personnel, but rather by those in the shipping department. CX 7. Lion certificates were prepared on Lion letterhead but follow the same format used on the FV-146 in the body of the document, providing the same information categories found on the USDA’s worksheet and/or certificate.

21. Order Number 43387. On October 26, 1998, Western Commodities, Ltd., in Devon, England, contracted for 1,660 cases of oil-dressed, 12.5 kilo, select raisins that were certified U.S. Grade B, and requested a USDA certificate.<sup>26</sup> CX 47 at 1-2. On November 11, 1998, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 46 at 8.<sup>27</sup> Lion requested an inspection certificate,<sup>28</sup> USDA inspectors prepared a worksheet, provided it to Lion’s shipping department, Certificate Y-869392 was prepared, and the inspector signed it. CX 46 at 1. Lion retained the original

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<sup>25</sup> See generally Findings of Fact 21 through 52; CX 126A does not reflect “cash back” from all transactions.

<sup>26</sup> The salesman was Steven Vlaminck, who was identified as a witness on respondents’ witness list, but was not called by respondents to testify. CX 47 at 7.

<sup>27</sup> According to the line check sheet, one pallet (which inspectors had found failed because of mold) was set aside, and Lion Raisins, Inc., elected to dump it back into the processing line. On a subsequent sampling the raisins were certified as meeting U.S. Grade C, which was accepted by Lion Raisins, Inc.’s processing personnel. CX 46 at 8 (see entries for mold and remark “C grade OK by Graham”).

<sup>28</sup> CX 46 at 3(document given to USDA inspectors shows raisins for Lion order 43387 loaded by “Joe” in container MAEU 6734307, with seal No. 0016729); CX 47 at 2 (same container and seal identified on inside invoice).

inspection certificate Y-869392 and one copy in its shipping file. CX 47 at 15-6. Lion's shipping file contains a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information concerning the raisins as the USDA certificate — except that "U.S. Grade B" was substituted for the Grade C that was found by USDA inspectors. CX 47 at 14. Lion mailed the order documents to the buyer on December 2, 1998 and requested and received \$13,661.76 "cash back" from the RAC. CX 47 at 1, 12.

22. Order Number 43588. On November 5, 1998, Central Import, Emsdetter, Germany, contracted for 2,880 cases of oil-dressed, 12.5 kilo, midget raisins, not more than 18% moisture, and requested a USDA certificate. CX 99 at 1. On November 28, 1998, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, obtaining moisture results of 17.8 to 18.0% from the officially drawn samples. CX 98 at 1. Lion requested an inspection certificate,<sup>29</sup> USDA inspectors prepared a worksheet, provided it to Lion's shipping department, Certificate B-033610 was prepared, and the inspector signed it. CX 98 at 1-2. Lion retained the original certificate B-033610 and one copy in its shipping file. CX 99 at 18-19. Lion's shipping file contains a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was stated to be "17.8 Percent" rather than 17.8 to 18.0% as was found by the USDA inspectors. CX 99 at 17. Lion mailed the order documents to the buyer on December 10, 1998 and requested and received \$23,702.00 "cash back" from the RAC. CX 99 at 1, 13.

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<sup>29</sup> CX 98 at 3 (document given to USDA inspectors shows raisins for Lion order 43588 in containers GSTU 3464037 and MAEU 7857055 with seals 0016817 and 0016818).

23. Order Number 43598. On November 5, 1998, Central Import placed an order for 1,440 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B, and requested a USDA certificate. CX 49 at 1. On January 6, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 114 at 7. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 49 at 11. Lion failed to return the worksheet or a typed certificate; however, the worksheet was found in Lion's shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information as the USDA worksheet — except that "U.S. Grade B" was substituted for the Grade C found by the USDA inspectors." CX 49 at 6, 11. Lion mailed the order documents to the buyer on January 20, 1999 and requested and received \$10,572.50 "cash back" from the RAC. CX 49 at 2, 9.

24. Order Number 43601. On November 5, 1998, Central Import placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B and requested a USDA certificate. CX 51 at 1. On February 3, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, graded the officially drawn samples as mixed raisins, and as U.S. Grade C. CX 50 at 6, CX 51 at 14.<sup>30</sup> The raisins were shipped that day. CX 51 at 1. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 50 at 6. Lion failed to return the worksheet or a typed certificate; however, the worksheet was found in Lion's shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA

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<sup>30</sup>According to the line check sheet, the samples exceeded the maximum allowable number of substandard and underdeveloped raisins. CX 50 at 6. The raisins were certified as meeting U.S. Grade C, which was accepted by Lion Raisins, Inc.'s processing personnel. CX 50 at 6 (see remark "C grade sub OK'd by Robert").



certificate worksheet — except that the “U.S. Grade B” was substituted for the Grade C found by the USDA inspectors. CX 51 at 13, 14.<sup>31</sup> Lion mailed the order documents to the buyer on February 11, 1999 and requested and received \$12,187.75 “cash back” from the RAC. CX 51 at 1, 11.

25. Order Number 43603. On November 5, 1998, Central Import placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B and requested a USDA certificate. CX 101 at 1. On February 3, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant and graded the officially drawn samples as mixed size, U.S. Grade C. CX 50 at 6.<sup>32</sup> Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 50 at 6, CX 101 at 12, 21. Lion failed to return the worksheet or a typed certificate; however, the worksheet was found in respondents’ shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information as the USDA certificate worksheet — except that the “U.S. Grade B” was substituted for the Grade C found by the USDA inspectors.” CX 101 at 12, 21-22. Lion mailed the order documents to the buyer on March 3, 2000 and requested and received \$12,187.75 “cash back” from the RAC. CX 101 at 1, 9.

26. Order Number 43612. On November 5, 1998, Shoei Foods, Marysville, California, placed an order for 1,250 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B and requested a USDA certificate. CX 103 at 1. On November 21, 1998, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant and graded the officially drawn samples as U.S.

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<sup>31</sup>The USDA certificate worksheet contains both the range and average berry count; the “Lion” certificate gives only the average. This difference is present in a number of transactions.

<sup>32</sup> The line check sheet reflects that the samples exceeded the maximum allowable number of substandard and underdeveloped raisins and were graded as U.S. Grade C. CX 50 at 6. This grade was accepted by Lion (see remark: “C grade sub OK’d by Robert”) Id.

Grade C. CX 102 at 1. Lion requested an inspection certificate after the raisins were loaded in a container and sealed.<sup>33</sup> USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 102 at 2. Lion returned the worksheet and a typed Certificate Y-869393 which the inspector signed. CX 102 at 1, CX 103 at 12. The original certificate Y-869393 and a blue tissue copy were found in Lion's shipping file for this order. CX 103 at 12, 13. The blue tissue copy was annotated with the words "don't send" written on its face in pencil. CX 103 at 13. Lion's shipping file also contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "GRADE" is typed as "U.S. Grade B" instead of the Grade C found by the USDA inspectors. CX 103 at 11, 12. Lion mailed the order documents to the buyer on November 23, 1998 and requested and received \$8,199.39 "cash back" from the RAC. CX 103 at 1, 10. On the "inside" order sheet located in Lion's shipping file, there was a Post-it note from "Yvonne" to "Bruce," stating:

Bruce—  
USDA shows Grade C -  
Do you want to send Lion  
Cert of Quality instead  
of USDA for both orders.  
Tx, Yvonne

In pencil, the word "yes" was written in response. CX 103 at 2.

27. Order Number 43694. On November 12, 1998, Central Import placed an order for 1,440 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B, and requested a USDA certificate. CX 105 at 1. On November 24, 1998, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 104 at

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<sup>33</sup> CX 102 at 3 (document given to USDA inspectors shows raisins for Lion order 43612 loaded by "A/sert" in container POCU 0125740 with seal No. 0016796).

6. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 104 at 2-3. Lion returned the worksheet and a typed Certificate Y-869397. CX 104 at 1, CX 105 at 24, 25. The original certificate Y-869397 (and one official copy) were found in Lion's shipping file for this order. CX 105 at 24, 25. Lion's shipping file also contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "U.S. Grade B" is substituted for the Grade C found by the USDA inspectors. CX 105 at 23. Lion mailed the order documents to the buyer on December 8, 1998 and requested and received \$15,025.38 "cash back" from the RAC. CX 105 at 1, 13.

28. Order Number 43922. On December 1, 1998, Farm Gold placed an order for 3,200 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B, and requested a USDA certificate. CX 107 at 1. On November 29, and December 6, 1998, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 105 at 5, 8. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 106 at 2. Lion returned the worksheet and a typed Certificate B-033629. CX 106 at 1, CX 107 at 33, 34. The original certificate B-033629 (and one of the official copies) were found in Lion's shipping file for this order. CX 107 at 33, 34. In addition, the shipping file contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "U.S. Grade B" is substituted for the Grade C found by the USDA inspectors. CX 107 at 32. Lion mailed the order

documents to the buyer on December 24, 1998 and requested and received \$33,361.84 “cash back” from the RAC. CX 107 at 3, 22.

29. Order Number 43956. On December 3, 1998, Farm Gold placed an order for 1,660 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B, and requested a USDA certificate. CX 109 at 1. On January 20, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 108 at 5, CX 109 at 21. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 109 at 21. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that the “U.S. Grade B” was substituted for the Grade C found by the USDA inspectors. CX 109 at 20, 21. Lion mailed the order documents to the buyer and requested and received \$15,844.08 “cash back” from the RAC. CX 109 at 1, 12.

30. Order Number 43957. On December 3, 1998, Farm Gold placed an order for 1,660 cases of 12.5 kilo, oil-treated midget raisins, U.S. Grade B, and requested a USDA certificate. CX 111 at 1. On January 20, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 108 at 5, CX 111 at 25. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 111 at 25. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the

raisins as the USDA certificate — except that the “U.S. Grade B” was substituted for the Grade C found by the USDA inspectors.” CX 111 at 21, 25. Lion mailed the order documents to the buyer and requested and received \$15,844.08 “cash back” from the RAC. CX 111 at 1, 13.

31. Order Number 43975. On December 4, 1998, Central Import Muenster placed an order for 2,880 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B and requested a USDA certificate. CX 53 at 2. On December 16, 1998, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, grading the officially drawn samples as U.S. Grade C. CX 52 at 17, CX 53 at 13-14. Lion requested an inspection certificate after the raisins were loaded in a container and sealed.<sup>34</sup> USDA inspectors prepared a worksheet and provided it to Lion’s shipping department. CX 52 at 2. Lion returned the worksheet and a typed Certificate B-033631. CX 53 at 13-14. Lion’s shipping file contained the original certificate and a photocopy as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that the “U.S. Grade B” was substituted for the Grade C found by the USDA inspectors. CX 53 at 12-14. Lion mailed the order documents to the buyer on January 20, 1999 and requested and received \$23,682.12 “cash back” from the RAC. CX 53 at 1, 10.

32. Order Number 44120. On December 14, 1998, Navimpex, S.A., Charenton, France placed an order for 1,660 cases of oil-treated, 12.5 kilo select raisins, U.S. Grade B, with no more than 15% moisture and requested a USDA certificate and copies of the USDA’s line check sheets. CX 55 at 1. On January 21, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, obtaining moisture levels of 16.4 to 16.5% from the officially drawn

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<sup>34</sup> CX 52 at 3 The document provided to the USDA inspectors reflects this order was loaded by “BH” in containers APMU 2751550 and TRIU 3706610 with seals Nos. 0017053 and 0017054.

samples. CX 54 at 5, CX 55 at 7. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 55 at 7. Lion failed to return the worksheet or a typed certificate; however, Lion's shipping file for this order contained the certificate worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn,.". CX 55 at 6-7. The Lion certificate contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "15.0 Percent" instead of the 16.4 to 16.5% found by the USDA inspectors. CX 55 at 6-7. On the Invoice, next to "LINE CHECK SHEETS," there appeared a handwritten notation "Do not send (per Bruce)." CX 55 at 1. Lion's shipping file also contained a copy (redacted) of the USDA's line check sheet for the inspection of these raisins. The copy bore a Post-it note, in red ink:

Bruce—  
Please note USDA  
Line check sheets  
show higher moisture  
than spec.  
Tx, Yvonne

The response, in pencil, said: "don't send or reduce them" The "don't send" was circled. CX 55 at 5. Lion mailed the order documents to the buyer on February 3, 1999 and requested and received \$12,187.75 "cash back" from the RAC. CX 55 at 1, 15.

33. Order Number 44122. On December 14, 1998, Navimpex placed an order for 1,660 cases of oil-treated, 12.5 kilo select raisins, U.S. Grade B, with no more than 15% moisture, and requested a USDA certificate. CX 113 at 1. On March 1, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, obtaining moisture levels of 15.0 to 17.0% from

the officially drawn samples. CX 112 at 4.<sup>35</sup> Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. Lion failed to return the worksheet or a typed certificate; however, Lion's shipping file for this order contained the certificate worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "15.0 Percent" rather than the 15.0 to 17.0% found by USDA inspectors. CX 113 at 14. Lion mailed the order documents to the buyer on January 20, 1999 and requested and received \$15,844.08 "cash back" from the RAC. CX 57 at 1, 12.

34. Order Number 44184. On December 16, 1998, Heinrich Bruning, Hamburg, Germany, placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 57 at 1. On January 12, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, obtaining moisture levels of 16.7 to 17.0% from the officially drawn samples and grading the raisins as U.S. Grade C. CX 56 at 4. Lion requested an inspection certificate, USDA inspectors prepared a certificate worksheet, and provided it to Lion's shipping department. CX 57 at 22. Lion failed to return the worksheet or a typed certificate; however, Lion's shipping file for this order contained the certificate worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "16.0 Percent" and the "GRADE" is typed as "U.S. Grade B" rather than the moisture of 16.7 to 17.0% and Grade C found by the USDA inspectors. CX 57 at 17, 22. Lion mailed the order

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<sup>35</sup> The inspector noted that she "notified Joe on moisture." CX 112 at 4.

documents to the buyer on March 11, 1999 and requested and received \$12,187.75 “cash back” from the RAC. CX 113 at 1, 7.

35. Order Number 44185. On December 16, 1998, Heinrich Bruning, Hamburg, Germany, placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 59 at 1. On January 12, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant, obtaining moisture levels of 16.7 to 17.0% and grading the raisins as U.S. Grade C. CX 56 at 4. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 59 at 19. Lion failed to return the worksheet or a typed certificate; however, Lion’s shipping file for this order contained the certificate worksheet as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that the “Moisture” was typed as “16.0 Percent” and the “GRADE” is typed as “U.S. Grade B” instead of the moisture level of 16.7 to 17.0% and Grade C found by the USDA inspectors. CX 59 at 18-19. Lion mailed the order documents to the buyer on January 20, 1999 and requested and received \$15,844.08 “cash back” from the RAC. CX 59 at 1, 11.

36. Order Number 44351. On January 4, 1999, Central Import placed an order for 290 cases of 12.5 kilo, oil-treated midget raisins, with no more than 15.5% moisture, and requested a USDA certificate. CX 115 at 1. On January 6, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, obtaining moisture levels of 17% from the officially drawn samples. CX 114 at 7. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 115 at 21. Lion returned a typed Certificate B-033650 which stated that the raisins sampled were “officially drawn,” and certified



at 17% moisture. CX 114 at 1. Lion's shipping files contained the original certificate B-033650 and the certificate worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "15.5%" rather than the 17% found by the USDA inspectors. CX 115 at 18, 19, 21. Lion's shipping file also contains a Post-it note from "RW" to "Bruce, as follows:

3/9

Bruce,  
(See order attached)  
The Berry count met the specs,  
however the moisture did not.  
According to USDA moisture  
was 17%.

Tx,  
RW

CX 115 at 15. Lion mailed the order documents to the buyer on January 20, 1999 and requested and received \$2,768.03 "cash back" from the RAC. CX 115 at 1, 13.

37. Order Number 44488. On January 11, 1999, Heinrich Bruning placed an order for 4,980 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 61 at 1. On January 22, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, obtaining moisture levels of 16.6 to 17.0% from the officially drawn samples. CX 60 at 5. Lion requested an inspection certificate,. USDA inspectors prepared a worksheet, and provided it to the shipping clerks. CX 61 at 16. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in respondents' shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the

“Moisture” was typed as “16.0 Percent” instead of the 16.6 to 17.0% found by the USDA inspectors. CX 61 at 15-16. Lion mailed the order documents to the buyer on February 3, 1999 and requested \$47,531.90 “cash back” from the RAC. CX 61 at 1, 24.

38. Order Number 44865. On February 4, 1999, Primex International placed an order for 440 cases of oil-treated, 30 pound select raisins, with no more than 15% moisture, and requested a USDA certificate. CX 117 at 1. On February 8, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Fresno plant, and obtained moisture levels of 17.2% from the officially drawn samples. CX 116 at 2. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 117 at 14. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that the “Moisture” was typed as “15.0 Percent” instead of the 17.2% found by the USDA inspectors. CX 117 at 13. There was a Post-it note on the “Lion” certificate from “RW” to “Bruce”:

Bruce,  
Moisture did not  
meet spec of 15%  
Actual moisture  
is 17.2%.

RW

CX 117 at 13. Lion mailed the order documents to the buyer on February 12, 1999 and requested and received \$3, 235.41 “cash back” from the RAC. CX 117 at 1, 11.

39. Order Number 45199. On March 5, 1999, Sunbeam Australian Dried Fruits Sales, Victoria, Australia, placed an order for 3,320 cases of oil-treated, 12.5 kilo zante currant raisins, U.S. Grade B, with no more than 17.5% moisture and requested a USDA certificate. CX 63 at 1.

On April 15, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, and obtained moisture levels of 17.6 to 18.9% from the officially drawn samples. CX 62 at 8.<sup>36</sup> Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping clerks. CX 63 at 25. Lion failed to return the worksheet or a typed certificate to USDA; however, the certificate worksheet was located in Lion's shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "17.5 Percent" instead of the 17.6 to 18.9% found by the USDA inspectors. CX 63 at 25, 46. Lion requested and received "cash back" from the RAC. CX 63 at 42 (the amount is obscured).

40. Order Number 46171. On May 21, 1999, Sunbeam Australian Dried Fruits Sales, Victoria, Australia, placed an order for 3,320 cases of oil-treated, 12.5 kilo zante currant raisins, U.S. Grade B, with no more than 16.5% moisture and requested a USDA certificate. CX 65 at 1. On April 15, 1999, USDA inspectors sampled processed raisins on-line at Lion's Fresno plant, obtaining moisture levels of 17.6 to 18.9% from the officially drawn samples. CX 64 at 5. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 65 at 41. Lion failed to return the worksheet or a typed certificate to USDA; however, the certificate worksheet was found in Lion's shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "16.9 to 17.0 Percent" rather

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<sup>36</sup> The inspector notified the processing staff that the moisture was high. CX 62 at 8 ("notified Robert on moist"). The maximum allowable moisture percentage for zante currant raisins is 20%. 7 C.F.R. § 52.1857.

than the 17.6 to 18.9% found by the USDA inspectors. CX 65 at 31, 41.<sup>37</sup> Lion's shipping file also contained a letter, dated July 21, 1999, sent to Sunbeam, which stated:

“Your P O 8863 has already been processed. Enclosed please find a copy of the signed USDA certificate showing the moisture content of 17 percent which is below the maximum requirement of 18 percent. Per your PO 9003 we have adjusted the maximum moisture specification to 17 percent to ensure the moisture level is reduced as per your request. We will try testing under 17 percent but our production thinks it might be difficult to obtain the moisture any lower than the 17 percent.”<sup>38</sup>

Lion mailed the order documents to the buyer on August 9, 1999 and requested and received \$36,032.50 “cash back” from the RAC. CX 65 at 45.

41. Order Number 46371. On May 14, 1999, Farm Gold, in Neudorf, Austria, placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, with no more than 16% moisture and requested a USDA certificate. CX 67 at 1. On September 1, 1999, USDA inspectors sampled processed raisins on-line at Lion's Selma plant, obtaining moisture levels of 15.5 to 17.0% from the officially drawn samples.<sup>39</sup> CX 66 at 5. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 67 at 23. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion's shipping file for this order as well as two “Lion” certificates, signed by Barbara Baldwin, both of which used the legend “SOURCE OF SAMPLES: Officially Drawn.” CX 67 at 21, 22. One of the “Lion” certificates contained – in typewriting – the identical information about the raisins as the USDA certificate — including the non-conforming “15.5 to 17.0” percent moisture. CX 67 at 22. The entire page, however, was struck through with a red line, and, in pencil, the “17.0 Percent” was obliterated, and corrected

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<sup>37</sup> USDA stated that the certificate covered 91,489.24 pounds of product, while the “Lion” certificate referred to 91,489 pounds.

<sup>38</sup> CX 65 at 12-13; see also CX 65 at 14 (noting “USDA readout 17.0%”). “PO” appears to refer to Sunbeam's purchase orders. See CX 65 at 6 (reference to PO9003); 10, 14.

<sup>39</sup> According to the line check sheets, the maximum moisture for the order was 17%. CX 66 at 5.

with a handwritten “16.” Id. On the other “Lion” certificate, presumably the final version, the “Moisture” was typed as “15.5 to 16.0 Percent” instead of the 15.5 to 17.0% found by the USDA inspectors. CX 67 at 21, 23. Lion mailed the order documents to the buyer on September 19, 1999 and requested and received \$10,725.22 “cash back” from the RAC. CX 67 at 1, 16.

42. Order Number 46811. On July 19, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B and requested a USDA certificate. CX 69 at 1. On September 19, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, grading the officially drawn samples as U.S. Grade C.<sup>40</sup> CX 68 at 3. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 69 at 18. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as two “Lion” certificates, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that on one, the “GRADE” was typed as it is on the USDA worksheet, as “U.S. Grade C.” CX 69 at 17-18. The “C” was circled in pencil, and a “B” placed next to it, also in pencil. Id. The other “Lion” certificate was corrected to read “GRADE: U.S. GRADE: B.” CX 69 at 16. Lion mailed the order documents to the buyer on October 5, 1999 and requested and received \$10,725.22 “cash back” from the RAC. CX 69 at 1, 25.

43. Order Number 47456. On September 8, 1999, Farm Gold placed an order for 3,320 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, and requested a USDA certificate. CX 119 at 1. On September 23, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, grading the officially drawn samples as U.S. Grade C. CX 118 at 4. Lion

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<sup>40</sup> The samples were graded U.S. Grade C as the maximum allowable number of substandard and underdeveloped raisins was exceeded for U.S. Grade B. The remarks reflect “C grade sub OK. Robert” CX 68 at 3.

requested an inspection certificate, USDA inspectors prepared a worksheet and provided it to Lion's shipping clerks. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion's shipping file for this order as well a "Lion" certificate, signed by Barbara Baldwin, which used the legend "SOURCE OF SAMPLES: Officially Drawn," and stated that the "GRADE" was "U.S. GRADE: B" rather than the Grade C found by the USDA inspectors. CX 119 at 26. The "Lion" certificate also included an additional case code that does not appear on the USDA worksheet. CX 119 at 26. Lion mailed the order documents to the buyer on October 14, 1999 and requested and received \$28,762.80 "cash back" from the RAC. CX 119 at 1, 12.

44. Order Number 48052. On October 20, 1999, Demos Ciclitira, London, England, placed an order for 1,660 cases of oil-treated, 12.5 kilo Medos zante currant raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 71 at 1, 6, 26. On October 27, 1999, USDA inspectors sampled processed raisins on-line at Lion's Selma plant, obtaining moisture levels of 17.0 to 18.0% from the officially drawn samples. CX 70 at 8. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 71 at 25. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion's shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the same information about the raisins as the USDA certificate — except the that the moisture read "[blank] To 17.0 Percent" and the principal label marks contained additional information not found on the certificate worksheet.

CX 71 at 24, 25.<sup>41</sup> Lion mailed the order documents to the buyer on November 18, 1999 and requested “cash back” from the RAC. CX 71 at 1, 14.

45. Order Number 48137.

a. On October 25, 1999<sup>42</sup>, Borges, S.A., Reus, Spain, contracted to buy 665 cases of 30-pound oil-treated Lion Select raisins, at no more than 16% moisture, and requested a USDA certificate. CX 121 at 1. On November 4, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, obtaining moisture levels of 16.8 to 17.0% from the officially drawn samples<sup>43</sup>. CX 120 at 14. After the raisins were loaded in a container, Lion requested an inspection certificate, the inspector gave a worksheet to Lion’s shipping department, and received the worksheet and typed Certificate B-034321 back. CX 120 at 3-5. Lion’s shipping file contained the original certificate as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and represented the moisture as 16.0% instead of the 16.86 to 17.0% found by the USDA inspectors. CX 121 at 36, 38.

b. On October 25, 1999, Borges contracted to buy 735 cases of 30-pound oil-treated golden raisins, at no more than 18% moisture, and requested a USDA certificate. CX 121 at 1. On October 15, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, obtaining moisture levels of 16.5 to 17.3% from the officially drawn samples<sup>44</sup>. CX 120 at 12. After the raisins were loaded in a container, Lion requested an inspection certificate, the inspector gave a worksheet to Lion’s shipping department, and received the worksheet and typed

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<sup>41</sup> The Lion shipping file contains an outside order form with the same label information that appears on the “Lion” certificate, but not on the USDA certificate worksheet. CX 71 at 22

<sup>42</sup> This order date appears to be incorrect as it predates the inspection of the raisins, but is what is reflected by the exhibits.

<sup>43</sup> The USDA line check sheet reflects only 16.8 to 17.0% moisture levels; however, the FV 146 reflects the 16.86 to 17.0% figures. CX 120 at 1, 14; CX 121 at 42.

<sup>44</sup> The USDA line check sheet reflects moisture of 16.5 to 17.3; however, the worksheet and the certificate reflected moisture levels of 16.0 to 17.9%. CX 120 at 1,2, 12.

Certificate B-034317 back. CX 120 at 1, 2. Lion's shipping files contained the original certificate as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and represented the moisture as 16.0% rather than the 16.0 to 17.9% found by the USDA inspectors. CX 121 at 35, 37.

c. Lion mailed the documents for order 48137 (both parts) to the buyer on January 6, 1999 and requested and received \$6,109.95 "cash back" from the RAC. CX 121 at 1, 10.

46. Order Number 48397. On November 10, 1999, N.A.F. International, Copenhagen, Denmark, placed an order for 650 cases of bagged, oil-treated, raisins, U.S. Grade B, with no more than 15% moisture, and 800 cases of 12.5 kilo, oil-treated select raisins, U.S. Grade B, with no more than 16% moisture and requested a USDA certificate. CX 73 at 1. On December 6, 1999, USDA inspectors sampled processed raisins on-line at Lion's Selma plant, obtaining moisture levels of 15.1 to 15.3% from the officially drawn samples. CX 72 at 12. Lion requested an inspection certificate after the raisins were loaded in a container and sealed, USDA inspectors prepared a worksheet, and provided it to Lion's shipping department. CX 72 at 8. Lion returned the worksheet and a typed Certificate B-034343. CX 72 at 4<sup>45</sup>. Lion's shipping file contained the original certificate B-034343 (and several photocopies thereof) for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "15.3 TO 16.0 Percent" rather than the 15.3 to 15.4% recorded on the USDA Certificate found in the USDA file. CX 72 at 4, CX 73 at 34 (original), 39, 40-43. The original USDA certificate was altered to read "Moisture - 15.3 TO 16.0 Percent," and a copy of the altered original was in the shipping file as well. CX 73 at 34,

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<sup>45</sup> Although the certificate worksheet records the moisture as being 15.1 to 15.3% consistent with the line check sheet, Certificate 03343 contains a moisture level of 15.3 to 15.4%.



39. Lion mailed the order documents to the buyer on January 5, 2000 and requested and received \$6,751.94 “cash back” from the RAC. CX 73 at 1, 16.

47. Order Number 48416. November 11, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, no more than 17% moisture, and requested a USDA certificate. CX 123 at 1. On December 13, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, obtaining moisture levels of 17.9 to 18.0% from the officially drawn samples. CX 122 at 3. Lion requested an inspection certificate, USDA inspectors prepared a worksheet and provided it to Lion’s shipping department. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and stated that the “Moisture” was “17.0% rather than the 17.9 to 18.0% found by the USDA inspectors.” CX 123 at 30, 31. Lion mailed the order documents to the buyer on January 12, 2000 and requested and received \$17,664.63 “cash back” from the RAC. CX 123 at 1, 10.

48. Order Number 48487. On November 16, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, 12.5 kilo select raisins, no more than 16% moisture, and requested a USDA certificate. CX 125 at 1. On November 30, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant, and obtained moisture levels of 15.1 to 15.8% from the officially drawn samples. CX 124 at 4. Lion requested an inspection certificate, USDA inspectors prepared a worksheet and provided it to Lion’s shipping department. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and stated that the “Moisture”

was “15.1 to 15.5% rather than the 15.1 to 15.8% found by the USDA inspectors.” CX 125 at 29, 30. Lion mailed the order documents to the buyer on December 23, 1999 and requested and received \$17,664.63 “cash back” from the RAC. CX 125 at 3, 14.

49. Order Number 48523. On November 18, 1999, Heinrich Bruning placed an order for 1,660 cases of oil-treated, 12.5 kilo midget raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 75 at 1. On December 2, 1999, USDA inspectors sampled processed raisins on-line at Lion’s Selma plant, obtaining moisture levels of 16.6 to 17.0% moisture. CX 74 at 3. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping department. CX 75 at 22. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion’s shipping file for this order as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn,” and contained the identical information about the raisins as the USDA certificate — except that the “Moisture” was typed as “16.0 Percent rather than the 16.6 to 17.0% found by the USDA inspectors.” CX 75 at 18, 22. The “Lion” certificate bore a Post-it note, in pen:

“USDA certificate shows a moisture of 16.6-17.0.”

Lion mailed the order documents to the buyer on December 30, 1999 and requested and received \$17,664.63 “cash back” from the RAC. CX 75 at 1, 9.

50. Order Number 49334. On January 20, 2000, EKO Produktor AB, Gothenburg, Sweden, placed an order for 1,660 cases of oil-treated, 12.5 kilo select raisins, U.S. Grade B, with no more than 17% moisture and requested a USDA certificate. CX 77 at 1. On December 21 and 22, 1999, USDA inspectors had sampled processed raisins on-line at Lion’s Selma plant, obtaining moisture levels of 16.6 to 17.8% from the officially drawn samples. CX 76 at 4, 13.

Lion requested an inspection certificate, USDA inspectors prepared a worksheet which bore Order Number 49334, and provided it to Lion's shipping department<sup>46</sup>. CX 77 at 22. Lion failed to return the worksheet or a typed certificate; however, the certificate worksheet was found in Lion's shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn," and which stated that the pack dates were January 21 and 22, 2000, and bore the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "16.6 To 17.0 Percent" rather than the 16.6 to 17.8% found by the USDA inspectors. CX 77 at 21. The "Lion" certificate bore a Post-it note, in pen:

"USDA shows no packing on the 21 & 22 of January.  
The moisture for the Dec. Pack date shows 16.6 - 17.8%."

Lion mailed the order documents to the buyer on February 7, 2000 and requested and received \$11,573.38 "cash back" from the RAC. CX 77 at 1, 12.

51. Order Number 50431. On April 14, 2000, N.A.F. International placed an order for 1,440 cases of 12.5 kilo, oil-treated select raisins, U.S. Grade B, with 16 to 18% moisture and requested a USDA certificate. CX 79 at 1. On April 17, 2000, USDA inspectors sampled processed raisins on-line at Lion's Selma plant, obtaining moisture levels of 17.2 to 17.5% from the officially drawn samples. CX 78 at 3. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion's shipping clerks. CX 79 at 25. Lion failed to return the worksheet or a typed certificate; however, Lion's shipping file contains two "Lion" certificates signed by Barbara Baldwin that used the legend "SOURCE OF SAMPLES: Officially Drawn." CX 79 at 23, 24. One certificate contained the USDA's moisture results, and bore a handwritten (in pencil) notation "16-17 adjacent to the moisture entry." CX 79 at 23. The

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<sup>46</sup> It is not entirely clear what occurred here as the Order date is well after the inspection date.

second “Lion” certificate contained the typewritten “corrected” moisture of 16 to 17%. CX 79 at 24. Lion mailed the order documents to the buyer on April 20, 2000 and requested and received \$13,421.36 “cash back” from the RAC. CX 79 at 1, 4.

52. Order Number 50750. On May 8, 2000, J.L. Priestly, Lincolnshire, England, placed an order for 1,660 cases of 12.5 kilo, oil-treated midget raisins. CX 81 at 1. On April 14 and May 11, 2000, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant, and graded the officially drawn samples as mixed size raisins. CX 80 at 6, 11. Lion requested an inspection certificate, USDA inspectors prepared a worksheet, and provided it to Lion’s shipping clerks. CX 81 at 21. Lion failed to return the worksheet or a typed certificate; however, Lion’s shipping file for the order contained the worksheet as well as two “Lion” certificates (one signed by Barbara Baldwin), that used the legend “SOURCE OF SAMPLES: Officially Drawn.” CX 81 at 23, 24, 26. One certificate contained USDA’s size result and the other recorded the size as “midget.” Id. There is also a Post-it which stated:

“Bruce,  
The USDA certificate  
shows a size of Mixed.”

The handwritten response, in pencil indicated:

“Change to Midget,” circled. CX 81 at 25.

Lion mailed the order documents to the buyer on May 25, 2000 and requested and received \$15,471.78 “cash back” from the RAC. CX 81 at 1, 3.

### **CONCLUSIONS OF LAW**

1. The Secretary of Agriculture has the authority under the Agricultural Marketing Act of 1946 to: (a) prescribe regulations for the inspection, certification, and identification of the class, quality, and condition of agricultural products, and (b) to issue regulations and orders to

carry out the purposes of the Act, including the right to issue debarment regulations and to debar persons and entities from benefits under the Act.

2. The term “officially drawn sample” as defined in 7 C.F.R. § 52.2 is limited to those samples selected by USDA inspectors, other licensed samplers or by other persons authorized by the Administrator. The use of such language on Lion certificates indicating that the source of samples was “officially drawn” impermissibly attempts to extend that term to sampling results performed by an entity’s quality control personnel if such sampling was in fact performed. While no regulation prohibits the use of a non-USDA certificate or guarantee by a processor, packer or seller of raisins, the use of the term “officially drawn” allows no leeway or deviation from the sampling results found by USDA inspectors.

3. U.S. Grades, as applied to raisins, are based upon a variety of components, only one of which is the maturity of the raisin. Lion’s false representation that certain orders (which had been graded by USDA inspectors as U.S. Grade C) were in fact U.S. Grade B based only upon maturity was an impermissible use of the U.S. Grade designation given to the raisins in question.

4. Lion impermissibly attempted to use its own standards to define the term “midget” when that term is defined and used by USDA as part of the identification of the size of a raisin.

5. By reason of Lion’s failure to observe corporate formalities, as enumerated above, Lion is not an entity separate and apart from the individual respondents named in the Second Amended Complaint.

6. On 33 occasions between November 11, 1998 and May 11, 2000, in connection with 32 orders, respondents Lion Raisins, Inc., Lion Raisin Company, Lion Packing Company, Alfred Lion, Jr., Daniel Lion, Jeffrey Lion, Bruce Lion, Larry Lion, and Isabel Lion, willfully violated section 203(h) of the Act (7 U.S.C. § 1622(h)), and section 52.54(a) of the Regulations (7 C.F.R.

§ 52.54(a)), by engaging in misrepresentation or deceptive or fraudulent practices or acts, as follows:

a. Order Number 43387 (November 11, 1998). Respondents used an official inspection certificate (Y-869392), as a basis to misrepresent the U.S. Grade of 45,744.62 pounds of raisins sold by respondents to Western Commodities, Ltd., as U.S. Grade B, when in fact, the official U.S. Grade of those raisins was U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iii). Respondents also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when USDA had in fact certified them as U.S. Grade C, as shown on the official certificate. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents used a facsimile form that simulated in part the official inspection certificate issued for these raisins (Y-869392) for the purpose of purporting to evidence the U.S. grade of the raisins. 7 C.F.R. § 52.54(a)(1)(v).

b. Order Number 43588 (January 6, 1999). Respondents used an official inspection certificate (B-033610), as a basis to misrepresent the moisture content of 79,364 pounds of raisins sold by respondents to Central Import Meunster. 7 C.F.R. § 52.54(a)(1)(iii). Respondents also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins to be 17.8% moisture, when the USDA’s officially drawn sample of those raisins was certified as 17.8 to 18.0% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents used a facsimile form that simulated in part the official inspection certificate issued for these raisins, for the purpose of purporting to evidence the officially drawn moisture level of the raisins. 7 C.F.R. § 52.54(a)(1)(v).

c. Order Number 43598 (January 6, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified

39,682.08 pounds of raisins sold by respondents to Central Import Meunster as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate, for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

d. Order Number 43601 (February 3, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”), falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Central Import Meunster as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

e. Order Number 43603 (February 3, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Central Import Meunster as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

f. Order Number 43612 (November 21, 1998). Respondents used an official inspection certificate (Y-869393), as a basis to misrepresent the U.S. Grade of 37,500 pounds of raisins sold by respondents to Shoei Foods (U.S.A.) Inc., as U.S. Grade B, when in fact, the official U.S. Grade of those raisins was U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iii). Respondents

also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B when the official inspection certificate (Y-869393) for the raisins certified them as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

g. Order Number 43694 (November 24, 1998). Respondents used an official inspection certificate (Y-869397), as a basis to misrepresent the U.S. Grade of 39,682.08 pounds of raisins sold by respondents to Central Import Meunster, as U.S. Grade B, when in fact, the official U.S. Grade of those raisins was U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iii). Respondents also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B when the official inspection certificate (Y-869397) for the raisins certified them as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

h. Order Number 43922 (December 6, 1998). Respondents used an official inspection certificate (B-033629) to misrepresent the U.S. Grade of 88,182.40 pounds of raisins sold by respondents to Farm Gold as U.S. Grade B, when in fact, the official U.S. Grade of those raisins was U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iii). Respondents also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B when the official inspection certificate certified them as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).



i. Order Number 43956 (January 20, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold as U.S. Grade B when the officially drawn sample for that product was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

j. Order Number 43957 (January 20, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold as U.S. Grade B when the officially drawn sample for those raisins was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

k. Order Number 43975 (December 6, 1998). Respondents used an official inspection certificate (B-033631), as a basis to misrepresent the U.S. Grade of 79,364.16 pounds of raisins sold by respondents to Central Import Meunster as U.S. Grade B, when in fact, the official U.S. Grade of those raisins was U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iii). Respondents also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B when the official inspection certificate certified them as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Finally, respondents used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

l. Order Number 44120 (January 21, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Navimpex, at 15.0% moisture, when the officially drawn sample for that product was certified at 16.4 to 16.5% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

m. Order Number 44122 (March 1, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Navimpex at 15.0% moisture, when the officially drawn sample for that product was not certified at such moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

n. Order Number 44184 (January 12, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Heinrich Bruning, at 16.0% moisture and U.S. Grade B when the officially drawn sample for those raisins was certified at 16.7 to 17.0% moisture, and as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

o. Order Number 44185 (January 12, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified

45,744.62 pounds of raisins sold by respondents to Heinrich Bruning at 16.0% moisture and U.S. Grade B, when the officially drawn sample for that product was certified at 16.7 to 17.0% moisture, and as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

p. Order Number 44351 (January 6, 1999). Respondents used an official inspection certificate (B-033650), as a basis to misrepresent the moisture of 7,991.53 pounds of raisins sold by respondents to Central Import Meunster as 15.5%. 7 C.F.R. § 52.54(a)(1)(iii). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as having 15.5% moisture when the officially drawn sample was certified at 17% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

q. Order Number 44488 (January 22, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 137,233.86 pounds of raisins sold by respondents to Heinrich Bruning at 16.0% moisture, when the officially drawn sample for that product was not certified at such moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

r. Order Number 44865 (February 8, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified

13,200 pounds of raisins sold by respondents to Primex International, with final destination of Manila, Philippines, at 15.0% moisture, when the officially drawn sample for those raisins was certified as 17.2% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

s. Order Number 45199 (April 15, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 91,489.24 pounds of raisins sold by respondents to Sunbeam Australian Dried Fruits Sales, at 17.5% moisture, when the officially drawn sample for those raisins was certified at 17.6 to 18.9% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v)..

t. Order Number 46171 (July 26, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 91,489 pounds of raisins sold by respondents to Sunbeam Australian Dried Fruits Sales, at 16.9 to 17.0% moisture, when the officially drawn sample for that product was certified at 16.9 to 17.5% moisture, and the officially drawn sample for that product also had identified 91,489.24 pounds of product. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

u. Order Number 46371 (September 1, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold at 15.5 to 16.0% moisture, when

the officially drawn sample for those raisins was certified at 15.5 to 17.0% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

v. Order Number 46811 (September 19, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold to be U.S. Grade B, when the officially drawn sample for that product was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

w. Order Number 47456 (September 19, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified that 92,489.24 pounds of raisins sold by respondents to Farm Gold were inspected on September 19, 1999, code marked “PKD 19 SEP99L,” and determined to be to be U.S. Grade B. The officially drawn sample for that product was drawn and inspected on September 23, 1999, was code marked “PKD 23SEP99L,” and the sample was certified as U.S. Grade C. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

x. Order Number 48052 (October 27, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified, 45,744.62 pounds of raisins sold by respondents to Demos Ciclitira, Ltd., at 17.0% moisture. The

officially drawn sample for that product was certified at 17.0 to 18.0% moisture and the product was to have been packed under a different label. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

y. Order Number 48137 (November 4, 1999). Respondents used an official inspection certificate (B-034321) as a basis to misrepresent the moisture and size of 19,950 pounds of raisins sold by respondents to Borges, S.A. 7 C.F.R. § 52.54(a)(1)(iii). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins as “midget” raisins containing 16% moisture, when the officially drawn sample for that product was not certified at such moisture, and the raisins were not certified as midget raisins. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade and officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

z. Order Number 48137 (October 15, 1999). Respondents used an official inspection certificate (B-034317) as a basis to misrepresent the moisture of 22,050 pounds of raisins sold by respondents to Borges, S.A.. 7 C.F.R. § 52.54(a)(1)(iii). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins at 16% moisture, when the officially drawn sample for that product was not certified at such moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

aa. Order Number 48397 (December 9, 1999). Respondents altered an official inspection certificate (Y-034343) to misrepresent the moisture of 22,045.6 pounds of raisins sold by respondents to N.A.F. International, by falsifying the moisture of the officially drawn sample (and obliterating a portion of the remarks section of the certificate). 7 C.F.R. § 52.54(a)(1)(iii). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins at 15.3 to 16.0% moisture, when the officially drawn sample for that product was not certified at such moisture, and the product from which the official sample was drawn was to be packed under a different label. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

bb. Order Number 48416 (December 13, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold at 17% moisture, when the officially drawn sample for that product was not certified at such moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

cc. Order Number 48487 (November 30, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Farm Gold at 15.1 to 15.5% moisture, when the officially drawn sample for that product was not certified at such moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official

inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

dd. Order Number 48523 (December 2, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to Heinrich Bruning at 16.0% moisture, when the officially drawn sample for that product was certified at 16.6 to 17.0% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

ee. Order Number 49334 (December 22, 1999). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to EKO Produktor AB, at 16.6 to 17.0% moisture, when the officially drawn sample for that product was certified at 16.6 to 17.8% moisture, and the product from which the official sample was drawn was to be packed in containers bearing different code marks. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

ff. Order Number 50431 (April 17, 2000). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 39,682.08 pounds of raisins sold by respondents to N.A.F. International at 16.0 to 17.0% moisture, when the officially drawn sample for that product was certified at 17.2 to 17.5% moisture. 7 C.F.R. § 52.54(a)(1)(iv). Respondents also used a facsimile form that simulated in



part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

gg. Order Number 50750 (May 11, 2000). Respondents used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by respondents to J.L. Priestly & Company, Ltd., as “midget” size raisins, when the officially drawn sample for that product certified it as “mixed” size raisins and the product was to have been packed under a different label. Respondents also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. 7 C.F.R. § 52.54(a)(1)(v).

7. Each of the acts and practices outlined above was willful, in violation of section 203(h) of the Act (7 U.S.C. § 1622(h)), and section 52.54(a)(2) of the Regulations (7 C.F.R. § 52.54(a)(2)).

8. The acts and practices set forth herein in connection with inspection documents for respondents’ raisins and raisin products, constitute sufficient cause for the debarment of each of the named Respondents.

## **ORDER**

On the basis of the foregoing, it is **ORDERED** as follows:

1. The Respondents, Lion Raisin, Inc., a California corporation; Lion Raisin Company, a partnership or unincorporated association; Lion Packing Company, a partnership or unincorporated association; and their agents, employees, successors and assigns are debarred for a period of five years from receiving inspection services under the Agricultural Marketing Act and the Regulations and Standards.

2. The Respondents Alfred Lion, Jr., Bruce Lion, Daniel Lion, Isabel Lion, Jeffrey Lion, and Larry Lion are each debarred for a period of five years from receiving inspection services under the Agricultural Marketing Act and the Regulations and Standards.

3. After a period of one year, upon a showing of good faith and adequate assurances of future compliance, the Respondents, or any of them, may petition the Secretary or his designee to suspend the balance of the period of debarment; however, with such suspension conditioned upon no violations being found during the remaining period of suspension. In the event additional violations were to be found, the full suspended balance of the period of debarment would then be reinstated.

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.  
June 9, 2006

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire  
Wesley Green, Esquire  
James A. Moody, Esquire

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