

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

AMA WRPA Docket No. 06-0001

In re: JOSE DE JESUS MARQUEZ,  
d/b/a MARQUEZ PRODUCE,

Respondent

**DEFAULT DECISION AND ORDER**

This proceeding was instituted under the Watermelon Research and Promotion Act, 7 U.S.C. § 4901 *et seq.* (the "Act"), alleging that the respondent violated the Watermelon Research and Promotion Plan, 7 C.F.R. § 1210.301-1210.405 (the "Plan"), and the rules and the Regulations issued thereunder, 7 C.F.R. § 1210.500-1210.532 (the "Regulations").

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, was served on the Respondent by the Office of the Hearing Clerk by certified mail on August 8, 2006. The Respondent was informed in the letter of service that an answer should be filed within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint would constitute an admission of the allegations in the complaint and a waiver of a hearing. Respondent never filed an answer to the complaint and the Hearing Clerk's Office mailed him a No Answer Letter on September 20, 2006.

Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Since

the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and Respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, Respondent's failure to answer is likewise deemed a waiver of hearing. Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

### **FINDINGS OF FACT**

1. The Respondent Jose de Jesus Marquez is an individual doing business as Marquez Produce, and has a mailing address of 4906 Greenville Ct., Bakersfield, California 93313.

2. At all times material herein, the Respondent was a handler of watermelons as defined in the Act, 7 U.S.C. § 4902(4), and the Plan, 7 C.F.R. § 1210.308.

3. Respondent violated section 1210.341 of the Plan, 7 C.F.R. § 1210.341, section 1210.350 of the Plan, 7 C.F.R. § 1210.350, and section 1210.518 of the Regulations, 7 C.F.R. § 1210.518, by failing to maintain and file required reports, and by failing to remit assessments owed for the period of crop years 2003 and 2004.

4. On at least four occasions since June 2004, the Respondent has been reminded of his continuing violations and the various penalties that might be incurred.

### **CONCLUSIONS OF LAW**

1. The Secretary has jurisdiction in this matter.

2. By reason of the Findings of Fact set forth above, Respondent violated the Watermelon Research and Promotion Act, 7 U.S.C. § 4901 *et seq.*

### **ORDER**

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act, the Plan and the Regulations issued thereunder, and in particular, shall cease and desist from failing to pay assessments for watermelons handled as required.

2. Respondent shall pay all past due assessments owed for the period of crop years 2003 and 2004 to the National Watermelon Promotion Board.

3. Respondent is assessed a civil penalty of \$10,000 which shall be paid by a certified check or money order made payable to the Treasurer of United States.

4. The provisions of this order shall become effective on the first day after this decision becomes final. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.  
March 8, 2007

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Frank Martin, Jr., Esquire  
Jose de Jesus Marquez

