

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2018 OCT 18 PM 12:35

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In re:)
)
Moza, LLC, a/k/a/ Moza LLC,) PACA-D Docket No. 18-0051
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF ADMISSIONS

Appearances:

Shelton S. Smallwood, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service ("AMS"); and

David M. Martin, non-attorney representative for the Respondent, Moza, LLC.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated pursuant thereunder (7 C.F.R. §§ 46.1 through 46.45) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Associate Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding by filing a complaint on June 20, 2018 alleging that Moza, LLC ("Respondent") willfully violated the PACA. On September 21, 2018, AMS moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

For the reasons discussed herein, I find that no hearing is warranted in this matter and a decision on the written record is appropriate.

Procedural History

AMS initiated this proceeding against by filing a disciplinary complaint on June 20, 2018. The Complaint alleged that, during the period of July 2016 through June 2017, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to ten sellers, in the total amount of \$357,144.67, for thirty lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce. AMS requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of Respondent's PACA violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

On August 22, 2018, Respondent, David M. Martin on behalf of Moza, LLC, filed an email communication with the Hearing Clerk's Office stating:

Hello,

I'm responding to a letter that was mailed to me in regards to Moza, LLC. The company has been dissolved and I've been out of the produce industry for quite some time but am aware there is still a balance due and owing please feel free to contact me.

Thank you,
David M. Martin

Based on the context of this email, I infer that the "letter" was a copy of the Complaint sent by the Hearing Clerk's Office.¹ Given that Respondent's email was submitted in response to that "letter," I will treat the filing as Respondent's Answer to the Complaint.²

¹ The Hearing Clerk's records reflect that the Complaint, Rules of Practice, and Hearing Clerk's service letter were sent to Respondent via certified mail on June 21, 2018. United States Postal Service records reflect that the documents were delivered on July 31, 2018.

² See 7 C.F.R. §§ 1.136(a),(b).

On September 21, 2018, AMS filed a Motion for Decision Without Hearing by Reason of Admissions (“Motion for Decision Without Hearing”) and proposed Decision Without Hearing Based on Admissions (“Proposed Decision”). Respondent has not filed any objections thereto.³

Authorities

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (“Rules of Practice”), set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136, a respondent is required to file an answer within twenty days after service of a complaint.⁴ The Rules of Practice provide that an answer shall “[c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent.”⁵ Moreover, “[t]he failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing.”⁶

Also applicable to the instant proceeding are sections 2(4) and 8(a) of the PACA (7 U.S.C. §§ 499b(4), 499h(a)). Section 2(4) requires merchants and dealers to make “full payment promptly” for perishable agricultural commodities, usually within ten days of acceptance, unless the parties have agreed to different terms prior to the purchase.⁷ Specifically, section 2(4) makes

³ United States Postal Service records reflect that the Motion for Decision Without Hearing and Proposed Decision were sent to Respondent via certified mail and delivered on September 25, 2018. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by October 15, 2018. No objections have been filed as of this date.

⁴ 7 C.F.R. § 1.136(a).

⁵ 7 C.F.R. § 1.136(b)(1).

⁶ 7 C.F.R. § 1.139.

⁷ See 7 C.F.R. §§ 46.2(aa)(5), (11).

it unlawful “[f]or any commission merchant, dealer, or booker to . . . fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had.”⁸ Section 8(a) provides:

Whenever . . . the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title . . . *the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.*⁹

In cases where a PACA licensee has failed to make full or prompt payment of perishable agricultural commodities, the Department’s policy is straightforward:

In any PACA disciplinary proceeding in which it is shown that a respondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a “no-pay” case. In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and that respondent fails to file a timely answer to the complaint, the PACA case will be treated as a “no-pay” case. *In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and the respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of hearing, whichever occurs first, the PACA case will be treated as a “no-pay” case. . . . In any PACA disciplinary proceeding in which it is shown that a respondent has failed to pay in accordance with the PACA, but is in full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a “slow-pay” case.*¹⁰

⁸ 7 U.S.C. § 499b(4).

⁹ 7 U.S.C. § 499h(a) (emphasis added).

¹⁰ *Scamcorp, Inc.*, 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998).

Further, “[i]n any ‘no-pay’ case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of PACA, will be revoked.”¹¹

Discussion

I. Respondent Has Admitted the Material Allegations of the Complaint That Establish Violations of the PACA.

The PACA requires licensed produce dealers to make full payment promptly for fruit and vegetable purchases within ten days after the produce is accepted, provided that the parties may elect to use different payment terms so long as the terms are reduced to writing prior to the transaction.¹² In cases where a respondent fails to make full payment promptly and “is not in full compliance within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a ‘no-pay’ case.”¹³

In its Answer, Respondent did not deny that it had failed to timely pay sellers for perishable agricultural commodities;¹⁴ to the contrary, Respondent acknowledged being “aware there is still a balance due and owing.”¹⁵ Accordingly, Respondent is deemed to have

¹¹ *Id.* at 549.

¹² 7 C.F.R. § 46.2(aa)(5), (11).

¹³ *Scamcorp, Inc.*, 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998). “Full compliance” requires a respondent to have paid all its produce sellers and “have no credit agreements with produce sellers for more than 30 days.” *Id.* at 549.

¹⁴ See *Van Buren Cty. Fruit Exch., Inc.*, 51 Agric. Dec. 733, 740 (U.S.D.A. 1992) (holding that the failure to deny an allegation of the complaint is deemed admitted by virtue of the respondent’s failure to deny the allegation); *Kaplinsky*, 47 Agric. Dec. 613, 617 (U.S.D.A. 1988).

¹⁵ Answer at 1.

admitted the material allegations of the Complaint – those that charge Respondent committed willful violations of the PACA.¹⁶

Furthermore, Respondent has made no assertion that full payment would be made or that full compliance would be achieved pursuant to the policy established in *Scamcorp*. To achieve “full compliance” with the PACA, Respondent would need to pay all its produce sellers and “have no credit agreements with produce sellers for more than 30 days.”¹⁷ As Respondent failed to address whether or when it expects to pay its vendors fully, this is a “no-pay” case.¹⁸

By the statements provided in Respondent’s own Answer – which not only fail to deny the material allegations of the Complaint but explicitly admit to a balance owed – Respondent violated the prompt payment provisions of the PACA.¹⁹ The Judicial Officer has long held that default is appropriate where a respondent has failed to deny the material allegations of the complaint.²⁰ Therefore, a hearing is not necessary in this case, and Respondent shall be found to have willfully, flagrantly, and repeatedly violated the PACA.²¹

¹⁶ See 7 C.F.R. § 1.139(c) (“[F]ailure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation[.]”).

¹⁷ *Scamcorp, Inc.*, 57 Agric. Dec. at 549.

¹⁸ See *Kirby Produce, Inc. v. U.S. Dep’t of Agric.*, 256 F.3d 830, 831 (D.C. Cir. 2001); *Kanowitz Fruit & Produce Co.*, 56 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005); *Scamcorp, Inc.*, 57 Agric. Dec. at 549.

¹⁹ See Answer at 1 (“The company has been dissolved and I’ve been out of the produce industry for quite some time *but am aware there is still a balance due and owing[.]*”) (emphasis added).

²⁰ See, e.g., *Van Buren Cty. Fruit Exch.*, 51 Agric. Dec. at 740 (holding that the failure to deny an allegation of the complaint is deemed admitted by virtue of the respondent’s failure to deny the allegation); *Kaplinsky*, 47 Agric. Dec. at 617.

²¹ See *H.M. Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1989) (“[T]here is no need for complainant to prevail as to each of the transactions, since the same order would be entered in any event, as long as the violations are not *de minimis*.”); *Moore Mkt’g Int’l*, 47 Agric. Dec. 1472, 1482 (U.S.D.A. 1988) (Order Dismissing Appeal) (“It is well-settled under the Department’s sanction policy that the license of a produce

II. Follow-Up Investigation Shows Respondent Owes More than a *De Minimis* Amount to Sellers.

A compliance investigation conducted between September 5, 2018 and September 6, 2018 revealed that nearly all the produce sellers listed in Appendix A to the Complaint²² were still owed substantial balances. The total outstanding balance far exceeds \$5,000.00 and axiomatically represents more than a *de minimis* amount.²³

During the investigation, Sharlene Evans, Senior Marketing Specialist of the PACA Division, attempted to communicate with representatives for each of the creditors listed in Appendix A to determine the current balances of unpaid and past-due produce debt.²⁴ Ms. Evans was unsuccessful in contacting one creditor.²⁵ Of the remaining creditors, one indicated it had been paid in full while the other eight indicated that, as of the date of the compliance check, all debt listed in Appendix A remained unpaid.²⁶ Collectively, the past-due balance totaled \$333,328.00.²⁷ Respondent has not denied these facts.

Under the policy set forth in *Scamcorp*, this is a “no-pay” case for which revocation of

dealer who fails to pay more than a *de minimis* amount of produce is revoked, absent a legitimate dispute between the parties as to the amount due.”); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question) (“[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing merely to determine the precise amount owed.”).

²² Hereinafter “Appendix A,” attached hereto and incorporated by reference.

²³ *Fava & Co.*, 46 Agric. Dec. 79, 81 (Ruling on Certified Question) (U.S.D.A. 1984).

²⁴ Mot. for Decision Without Hr’g Attach. A (“Declaration of Sharlene Evans”) at 1.

²⁵ *Id.* (Lider Fresh Company).

²⁶ *Id.* (Pro Pac Sales, LLC).

²⁷ See *id.* at 1-2 (\$24,165.00 owed to Ivan Big Tree, LLC; \$95,552.72 owed to Stephen Becker, d/b/a First Fruit; \$33,324.00 owed to Fruvermex, LLC GM Brokerage; \$24,516.00 owed to Sandhu Brothers Grower; \$35,591.30 owed to Fillmore-Pirus; \$9,180.00 owed to OBST & Gemuse, LLC; \$14,861.26 owed to Jones & Co., Inc; and \$96,137.72 owed to AMC Direct, Inc.).

Respondent's license is warranted.²⁸ Respondent failed to pay promptly for more than a *de minimis* amount of produce, and a hearing is not necessary in this case.²⁹

III. Respondent's PACA Violations Repeated, Flagrant, and Willful.

The Secretary of Agriculture may revoke the license of a dealer who is found to have committed repeated, flagrant, and willful violations of the PACA.³⁰ Where a dealer has committed repeated, flagrant, and willful PACA violations but has no license to revoke, the appropriate sanction is publication of the facts and circumstances of the violations.³¹

First, Respondent's violations in this case were repeated. Violations are "repeated" under the PACA when they are committed multiple times, non-simultaneously.³² As Respondent failed to pay at least eight sellers promptly and in full for at least twenty-eight lots of perishable agricultural commodities over an eleventh-month period, its violations were clearly repeated.³³

Respondent's violations were also flagrant. Flagrancy is determined by evaluating the number of violations, total money involved, and length of time in which the violations occurred.³⁴

²⁸ See *Scamcorp, Inc.*, 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998). Revocation is no longer possible as Respondent's PACA license has terminated; therefore, publication is the appropriate sanction. See *infra* note 31 and accompanying text.

²⁹ *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49; *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83 ("[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing merely to determine the amount owed.").

³⁰ See 7 U.S.C. § 499h(a); 5 U.S.C. § 588(c); *Norinsberg v. U.S. Dep't of Agric.*, 47 F.3d 1224, 1225 (D.C. Cir. 1995).

³¹ *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2007); *Post & Taback, Inc.*, 62 Agric. Dec. 802, 831 (U.S.D.A. 2003).

³² See *H.C. MacClaren, Inc. v. U.S. Dep't of Agric.*, 342 F.3d 584, 592 (6th Cir. 2003); *Zwick v. Freeman*, 373 F.2d 110, 115 (2d Cir. 1967); *Five Star Food Distribs., Inc.*, 56 Agric. Dec. 880, 895 (U.S.D.A. 1997).

³³ See App'x A; Mot. for Decision Without Hr'g Attach. A ("Declaration of Sharlene Evans").

³⁴ *Five Star Food Distribs.*, 56 Agric. Dec. at 895; *Havana Potatoes of N.Y. Corp.*, 55 Agric. Dec. 1234, 1270 (U.S.D.A. 1996); see *Reese Sales Co. v. Hardin*, 458 F.2d 183, 185 (9th Cir. 1972).

The signed declaration by Senior Marketing Specialist Sharlene Evans provides that, at the time of the compliance investigation in September 2018, Respondent owed a total of at least \$333,328.00 to eight of the ten sellers named in Appendix A.³⁵ By failing to pay that money—far more than a *de minimis* amount—to multiple sellers over an eleven-month period, Respondent has committed flagrant PACA violations.³⁶ Respondent submits no evidence to the contrary.

Lastly, Respondent's violations were willful.

A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements. Willfulness is reflected by Respondent's violations of express requirements of the PACA (7 U.S.C. § 499b(4)) and the Regulations (7 C.F.R. § 46.2(aa)) and in the length of time during which the violations occurred and the number and dollar amount of violative transactions involved.³⁷

Given the many transactions, substantial amount of debt, and continuation of violations over an eleven-month period in this case, I find that Respondent's violations were willful in that Respondent knew or should have known it did not have sufficient funds with which to comply with the prompt-payment provisions of the PACA.³⁸

IV. A Decision Without Hearing Is Appropriate.

As previously discussed, section 1.139 of the Rules of Practice allows for a decision

³⁵ See *id.* at 1-2 (\$24,165.00 owed to Ivan Big Tree, LLC; \$95,552.72 owed to Stephen Becker, d/b/a First Fruit; \$33,324.00 owed to Fruvermex, LLC GM Brokerage; \$24,516.00 owed to Sandhu Brothers Grower; \$35,591.30 owed to Fillmore-Pirus; \$9,180.00 owed to OBST & Gemuse, LLC; \$14,861.26 owed to Jones & Co., Inc; and \$96,137.72 owed to AMC Direct, Inc.).

³⁶ AMS is not required to prove—and I am not required to find—the exact number of unpaid produce sellers or the exact amount Respondent owes each seller. See *Baiardi Chain Food Corp.*, 64 Agric. Dec. at 1835-36; see also *Hunts Point Tomato Co.*, 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

³⁷ *Scamcorp, Inc.*, 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998).

³⁸ *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016).

without hearing by reason of admissions: “The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing.”³⁹ It is well settled that “a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held.”⁴⁰

I find no genuine issues of fact that would require a hearing in this case; Respondent has admitted the material allegations of the Complaint and filed no objections to AMS’ Motion for Decision Without Hearing.⁴¹ As the amount admittedly owed is not *de minimis*, I need not determine the exact amount Respondent failed to pay.⁴²

Furthermore, the appropriate sanction in a “no-pay” case is license revocation, or where there is no longer any license to revoke—as is the case here—the appropriate sanction in lieu of revocation is a finding of repeated and flagrant PACA violations and publication of the facts and circumstances of the violations.⁴³ A civil penalty is not appropriate in this case because “limiting participation in the perishable agricultural commodities industry to financially responsible persons is one of the primary goals of the PACA,” and it would not be consistent with congressional intent

³⁹ 7 C.F.R. § 1.139.

⁴⁰ *H. Schnell & Co.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998); see, e.g., *KDLO Enters., Inc.*, 70 Agric. Dec. 1098, 1104 (U.S.D.A. 2011).

⁴¹ See 7 C.F.R. § 1.139.

⁴² See *The Square Group, LLC*, 75 Agric. Dec. at 695 (“[E]ven if certain debts are disputed, no hearing is required if the sum of all undisputed debts is enough to make the total more than *de minimis*.”); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83 (“[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing to determine the precise amount owed.”).

⁴³ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

to require a PACA violator to pay the government while produce sellers remain unpaid.⁴⁴ Because there can be no debate over the appropriate sanction, a decision may be entered in this case based upon the admitted facts.⁴⁵

Having carefully considered pleadings, relevant authorities, and arguments of the parties, the following Findings of Fact, Conclusions, and Order are entered without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Moza, LLC is a limited liability company organized and existing under the laws of the State of Texas. Respondent's business address and mailing address is 922 Apple Tree Road, Moscow, Pennsylvania 18444. The Complaint was served on Respondent's 100% owner of record, (b) (6) whose home address was provided to the Hearing Clerk's Office for service purposes but is withheld from this Decision and Order to protect the owner's personal information and privacy.
2. At all times material herein, Respondent Moza, LLC was licensed and/or operating subject to the provisions of the PACA. License number 20160554 was issued to Respondent on April 6, 2016. On November 4, 2016, the license was suspended pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)) due to an unpaid reparation award. On April 6, 2018, the license was terminated pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual renewal fee.
3. Respondent Mozza, LLC, during the period of July 2016 through June 2017, on or about the dates and in the transactions set forth in Appendix A, failed to make full payment promptly to

⁴⁴ See *Scamcorp, Inc.*, 57 Agric. Dec. at 570-71.

⁴⁵ See 7 C.F.R. § 1.139.

at least eight of the ten sellers, in the total amount of \$333,328.00, for twenty-eight lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Moza, LLC willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. Moza, LLC's failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above and set forth in Appendix A constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), as described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)).
4. The total unpaid balance due to produce sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁴⁶
5. As Moza, LLC's PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Moza, LLC's violations.⁴⁷

Order

1. AMS' Motion for Decision Without Hearing by Reason of Admissions is GRANTED.
2. A finding is made that Moza, LLC has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Moza, LLC's PACA violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

⁴⁶ See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

⁴⁷ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2007); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

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

Done at Washington, D.C.,
this 18th day of October 2018



Jill S. Clifton
Administrative Law Judge

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APPENDIX A

Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1 Ivan Big Tree LLC McAllen, TX	3	MXF	07/07/16 to 07/29/16	07/28/16 to 08/19/16	\$24,165.00
2 Becker Stephen dba FirstFruit Dillsburg, PA Shipped to NY	9	MXF	09/07/16 to 05/07/17	09/22/16 to 05/22/17	\$95,552.72
3 Fruvermex, LLC McAllen, TX	4	Lemon	09/13/16 to 09/16/16	10/04/16 to 10/07/16	\$33,324.00
4 Pro Pac Sales, LLC Federal Way, WA	1	Bell Pepper	10/12/16 to 10/12/16	11/02/16 to 11/02/16	\$8,591.50
5 Sandhu Brothers Growers Crows Landing, CA	1	Yam	10/29/16 to 10/29/16	11/19/16 to 11/19/16	\$24,516.00
6 Fillmore-Piru Citrus Association Piru, CA	5	MXF	11/21/16 to 12/10/16	12/01/16 to 12/20/16	\$35,591.30
7 OBST & Gemuse, LLC McAllen, TX	1	Limes	11/29/16 to 11/29/16	12/20/16 to 12/20/16	\$9,180.00
8 Jones & Co Inc. Belle Glade, FL	1	Corn	12/30/16 to 12/30/16	01/09/17 to 01/09/17	\$14,861.26
9 Lider Fresh Company McAllen, TX	1	MXFV	03/30/17 to 03/30/17	04/14/17 to 04/14/17	\$15,225.17
10 AMC Direct Inc Fresno, CA	4	Grapes	04/25/17 to 05/27/17	05/05/17 to 06/06/17	\$96,137.72
10 Sellers	30	Lots		Total	<u>\$357,144.67</u>