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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
)
 Sarita Ranch Provisison, Inc.,) PACA Docket No. D-18-0073
)
 Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

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").

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 to the PACA (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, Agricultural Marketing Service, United States Department of Agriculture ("AMS"), initiated this proceeding against Sarita Ranch Provisison, Inc. ("Respondent") by filing a disciplinary complaint on August 24, 2018. The Complaint alleged that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period March 2017 through November 2017 by failing to make full payment promptly to sixteen sellers, in the total amount of \$756,913.00, for seventy-nine lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce. The Complaint also requested that an Administrative Law Judge find that Respondent has 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 violations be published.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On October 30, 2018, AMS filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default") and Proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent has not filed any objections to AMS' Motion for Default or Proposed Decision.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.³ Other than a consent decision, the Rules of Practice do not provide exceptions to the regulatory consequences where,

¹ United States Postal Service records reflect that the Complaint was sent to Respondent's business and mailing address via certified mail and delivered on August 31, 2018. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall 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 answer was due on or before September 20, 2018. Respondent has not filed an answer in this matter.

² The Hearing Clerk's records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail on October 31, 2018 but were returned unclaimed. In accordance with section 1.147 of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk's Office re-mailed the documents to the same address via ordinary mail on November 13, 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 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 on or before December 3, 2018. Respondent has not filed any objections.

³ 7 C.F.R. § 1.136(c).

as in the present case, no meritorious objections have been filed.⁴

As Respondent failed to answer the Complaint, and upon AMS' motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued 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 Sarita Ranch Provision, Inc. is a corporation incorporated and existing under the laws of the state of California. Respondent's business address and mailing address is or was 800 McGarry Street, Unit 212, Los Angeles, California 90021. In addition to serving the Complaint at Respondent's business and mailing address, the Hearing Clerk's Office served the Complaint on Respondent's attorney of record, Alfred J. Verdi,⁵ and Respondent's sole principal, [REDACTED].⁶
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20160863 was issued to Respondent on June 30, 2016. The license was suspended on February 16, 2018, for failure to pay two reparation awards pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license was terminated on June 30, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

⁴ See *supra* note 2; 7 C.F.R. § 1.139.

⁵ The Complaint was served upon Alfred J. Verdi, Esq., at Verdi Law Group PC, 22809 Pacific Coast Highway, Malibu, California 90265.

⁶ The principal's home address was provided to the Hearing Clerk's Office for service purposes; however, it was withheld from the Complaint and is withheld from this Decision and Order to protect the principal's personal information and privacy.

3. Respondent, during the period March 2017 through November 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint, attached hereto and incorporated by reference, failed to make full payment promptly to sixteen sellers for seventy-nine lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$756,913.00.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Sarita Ranch Provision, Inc.'s failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above, as set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. 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.⁷
4. As Respondent's PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁸

⁷ 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).

⁸ 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. 2002); *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).

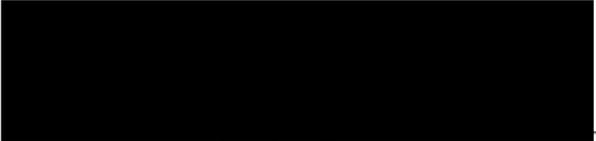
ORDER

1. Respondent Sarita Ranch Provisision, Inc. is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of Respondent's violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

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, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 4th day of December 2018



Channing D Strother
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@USDA.GOV

| | Seller & Location | No. Lots | Commodity | Date Accepted | Date Payment Due | Amount Past Due & Unpaid |
|----|---|-----------------|------------------|----------------------------|----------------------------|-------------------------------------|
| 1 | Southern Exposure Farms LLC Cincinnati, OH | 1 | Watermelons | 03/13/17 | 03/23/17 | \$9,583.00 |
| 2 | H.C. Schmieding Produce Company LLC Tulsa, OK | 10 | MXVG | 04/03/17 to 05/27/17 | 04/13/17 to 06/06/17 | \$82,891.80 |
| 3 | Pacificpro, Inc. Bellevue, WA | 3 | MXFV | 05/19/17 to 06/29/17 | 05/29/17 to 07/09/17 | \$30,213.90 |
| 4 | Freshko Produce Services Fresno, CA Origin: CR | 1 | Pineapples | 05/24/17 | 06/14/17 | \$6,562.50 |
| 5 | Marimba Produce LLC Hidalgo, TX | 4 | MXFV | 06/08/17 to 07/06/17 | 06/29/17 to 07/27/17 | \$39,591.00 |
| 6 | Villita Avocados, Inc. Pharr, TX | 10 | MXFT | 06/10/17 to 07/24/17 | 07/01/17 to 08/14/17 | \$84,393.90 |
| 7 | Harvest Pro, Inc. Modesto, CA Origin: MX | 12 | MXFV | 06/19/17 to 08/17/17 | 07/04/17 to 09/01/17 | \$112,880.50 |
| 8 | Calavo Growers, Inc. Santa Paula, CA Origin: US, MX | 1 | Avocados | 06/27/17 | 07/07/17 | \$15,840.00 |
| 9 | C-Max Produce LLC McAllen, TX | 9 | Limes | 06/24/17 to 07/27/17 | 07/15/17 to 08/17/17 | \$83,491.00 |
| 10 | Floyd Wilcox & Sons, Inc. Rexburg, ID | 6 | Potatoes | 07/08/17 to 09/01/17 | 07/18/17 to 09/11/17 | \$101,327.50 |
| 11 | RCF Distributors LLC Rio Rico, AZ | 1 | Limes | 07/20/17 | 07/30/17 | \$4,849.00 |
| 12 | Fuentes Farms LLC McAllen, TX | 3 | Limes | 07/15/17 to 07/24/17 | 08/02/17 to 08/23/17 | \$22,332.50 |

| Seller & Location | | No. Lots | Commodity | Date Accepted | Date Payment Due | Amount Past Due & Unpaid |
|-------------------|--|-----------|-------------|----------------------------|----------------------------|--------------------------|
| 13 | Art MX LLC Mission, TX | 3 | Limes | 07/18/17 to 07/24/17 | 08/05/17 to 08/11/17 | \$17,857.00 |
| 14 | Sandia Depot Edinburg, TX | 5 | Watermelons | 08/20/17 to 09/11/17 | 09/10/17 to 10/02/17 | \$31,370.40 |
| 15 | Kingston & Associates Marketing LLC d/b/a Kingston Fresh Idaho Falls, ID | 6 | Onions | 09/07/17 to 10/11/17 | 09/17/17 to 10/21/17 | \$66,104.50 |
| 16 | Potandon Produce LLC Palatine, IL | 4 | MXVG | 09/17/17 to 10/16/17 | 10/08/17 to 11/06/17 | \$47,624.50 |
| 16 | Sellers | 79 | Lots | | Total | \$756,913.00 |