

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
)  
Evergreen Fresh Farms, Inc., ) PACA-D Docket No. **20-J-0110**  
)  
Respondent. )

**Decision and Order Granting AMS's Motion for  
Decision Without Hearing by Reason of Admissions**

Appearances:

*Buren W. ("Chip") Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington DC 20250-1413, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS"); and*

*Eric Mydland, President and 100% Stockholder of the Respondent Evergreen Fresh Farms, Inc.*

**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 thereunder (7 C.F.R. Part 46) ("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 Complainant, Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service, United States Department of Agriculture (frequently "AMS"), initiated this administrative proceeding against the Respondent Evergreen Fresh Farms, Inc. by filing a Complaint on April 7, 2020.

The Respondent, Evergreen Fresh Farms, Inc., timely filed an Answer on June 29, 2020 that did not deny the allegations in the Complaint but asserted that nothing more was owed

because all debt with the three creditors had been resolved. Eric Mydland, President and 100% Stockholder, represents the Respondent Evergreen Fresh Farms, Inc.

On October 16, 2020, Complainant AMS filed a Motion for Decision Without Hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Respondent Evergreen Fresh Farms, Inc. filed its Response timely on November 3, 2020.

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**

The Complaint, filed April 7, 2020, alleged that, during the period October 2018 through January 2019, on or about the dates and in the transactions set forth in Appendix A attached to the Complaint and incorporated by reference, failed to make full payment promptly to three (3) sellers for thirty-two (32) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$350,629.80. Complainant AMS requested that an Administrative Law Judge find that the Respondent Evergreen Fresh Farms, Inc. has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publish the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Respondent Evergreen Fresh Farms, Inc. was duly served with a copy of the Complaint, by filing May 20, 2020 requested more time to respond; and timely filed an Answer on June 29, 2020 via its President and 100% Stockholder Mr. Eric Mydland. In its Answer, at 1, Respondent does not specifically deny the allegations of the Complaint; and does not specifically deny that it violated the PACA; but requests that the "complaint be dismissed as all debt with the three creditors has been resolved." Respondent included the following attachments to its Answer:

1) a letter from Christian Rodriguez, President, Growers Direct Produce, Inc., Visalia, California, stating that the amount owed has been settled and is no longer owing; 2) a letter from Heather Siddle, Corporate Counsel of Tom Lange Company International, Inc., dba Seven Seas, stating that the debt owed is no longer owing and has been settled; and 3) a printed email from Mary Herrero, Accounting, Sun Coast Produce, Inc., stating there is nothing owed by Evergreen Farms.

On October 16, 2020, Complainant AMS filed a Motion for Decision Without Hearing by Reason of Default (“Motion for Decision”); Declaration of Tracy Jones; and a proposed Decision Without A Hearing (“Proposed Decision”).

On behalf of the Respondent Evergreen Fresh Farms, Inc., Mr. Mydland timely filed on November 3, 2020, the response (“Respondent’s Response”) to AMS’s Motion for Decision.

#### **Authorities**

The Rules of Practice, 7 C.F.R. §§ 1.130 *et seq.*, apply. Pursuant to section 1.136, a respondent is required to file an answer within twenty (20) days after service of a complaint.<sup>1</sup> 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.”<sup>2</sup> 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.”<sup>3</sup>

Sections 2(4) and 8(a) of the PACA (7 U.S.C. §§ 499b(4), 499h(a)), apply. Section 2(4) requires merchants and dealers to make “full payment promptly” for perishable agricultural commodities, usually within ten (10) days of acceptance, unless the parties have agreed to

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<sup>1</sup> 7 C.F.R. § 1.136(a).

<sup>2</sup> 7 C.F.R. § 1.136(b)(l).

<sup>3</sup> 7 C.F.R. § 1.139.

different terms prior to the purchase.<sup>4</sup> Specifically, section 2(4) makes 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.”<sup>5</sup> Section 8(a), 7 U.S.C. § 499h(a) (emphasis added), 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.*

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 P ACA 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 P ACA 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 “slowpay” case.

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

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<sup>4</sup> See 7 C.F.R. §§ 46.2(aa)(5), (11).

<sup>5</sup> 7 U.S.C. § 499b(4).

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.”<sup>6</sup>

### **Discussion**

In its Motion for Decision, Complainant AMS contends that the need for a hearing is obviated because Respondent Evergreen Fresh Farms, Inc. failed to deny, and thus admitted liability in its Answer; and requests that a Decision Without a Hearing by Reason of Admissions be entered, finding that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA, and ordering publishing the facts and circumstances of Respondent’s violations.

In Evergreen Fresh Farms, Inc.’s Response, Mr. Mydland explains a “series of unfortunate events” that led to Evergreen Fresh Farms, Inc.’s financial difficulties and contends that “[n]either Evergreen Fresh Farms nor Eric Mydland ever willfully, intentionally or flagrantly committed violations” but that the circumstances were to blame. Mr. Mydland states that one creditor, SunCoast Produce, was paid in full, and that the other two (2) creditors have signed statements that “they have been satisfied and the debt is no longer owed.” Mr. Mydland states, at 2-3, that “[m]aybe this would have gone smoother and faster if a PACA claim would have been filed and the parties used this branch as a negotiator” but that Respondent has “done everything possible to make creditors whole” and without a PACA license, “it will be impossible for him to make a living in the only industry he has known.”

#### **I. Respondent Failed to Deny, and In Effect Admitted, the Material Allegations of the Complaint That Establish Violations of the PACA.**

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<sup>6</sup> *Id.* at 549.

On March 4, 2019, Respondent Evergreen Fresh Farms, Inc. filed for chapter 7 bankruptcy in the United States Bankruptcy Court, Central District of California, Case No. 18:19-bk-10771-CB. As of the date of the filing by Respondent of the Schedule F in the chapter 7 bankruptcy proceeding, also March 4, 2019, which was over four (4) months after the last produce debt in this case was incurred, undisputed debts were owed to all three (3) produce sellers referenced in Appendix A to the Complaint in the amount of \$350,899.00. In neither its Answer nor the Response to Complainant's Motion for Decision does Respondent deny the statement in the Complaint regarding Respondent's bankruptcy. By failing to deny the bankruptcy allegations, the Respondent is deemed to have admitted those allegations according to the Rules of Practice.<sup>7</sup>

The practice of taking official notice of documents filed in bankruptcy proceedings, such as the "Schedule F," that have a direct relation to matters at issue in PACA disciplinary proceedings is long-standing and well-established.<sup>8</sup> Similarly, use of information contained in bankruptcy filings as a basis for decisions without hearing is also well-established.<sup>9</sup> By the Bankruptcy filing and Schedule F alone, and Respondent's failure to address them in its Answer, Respondent has admitted that it failed to pay promptly, as the Complaint alleges.

Full payment promptly in accordance with the PACA means payment by a buyer within

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<sup>7</sup> 7 C.F.R. § 1.136(c).

<sup>8</sup> *Watford*, 69 Agric. Dec. 1533, 1535 (U.S.D.A. 2010); *KDLO Enterprises, Inc.*, 69 Agric. Dec. 1538 (U.S.D.A. 2010); *Judith's Fine Foods Int'l, Inc.*, 66 Agric. Dec. 758, 764 (U.S.D.A. 2007); *Five Star Distributors, Inc.*, 56 Agric. Dec. 827, 893 (U.S.D.A. 1997); *Samuel S. Napolitano Produce, Inc.*, 52 Agric. Dec. 1607, 1609 (U.S.D.A. 1993); *Caito*, 48 Agric. Dec. 602, 609-610 (U.S.D.A. 1989).

<sup>9</sup> *Watford*, 69 Agric. Dec. at 1535; *Northern Michigan Fruit Co.*, 64 Agric. Dec. 1793, 1796 (U.S.D.A. 2005); *D&C Produce, Inc.*, 62 Agric. Dec. 373, 374-375, 378 (U.S.D.A. 2002); *Scarpaci Bros.*, 60 Agric. Dec. 874, 875-876 (U.S.D.A. 2001); *Five Star Distributors, Inc.*, 56 Agric. Dec. at 893.

ten (10) days after the days on which produce is accepted, provided that parties may elect to use different payment terms, so long as those terms are reduced to writing *prior to entering* into the transaction. The burden of proof of such written agreement is on the party claiming existence of the agreement.<sup>10</sup>

Respondent's Answer reproduced here (emphasis added) reads as follows:

To Whom It May Concern:

In response to the complaint in Docket 20-J-0110, Evergreen Fresh Farms, Inc and Eric Mydland, President request that the complaint be dismissed ***as all debt with the three creditors has been resolved. With diligence, we have been able to satisfy the three creditors.*** Along with this response, a signed letter from two of the creditors has been included stating the resolution of debt and that nothing more is owed at this time. And an email from the Accounting Manager from SunCoast Produce has also been included showing that nothing is owed. If you have any other questions, feel free to contact me by email or phone. Thank you for your time.

Eric Mydland, President  
Evergreen Fresh Farms, Inc.

The attachments to the Answer confirm what the Answer states is included; that is, statements from the three sellers named in Appendix A to the Complaint, stating that the debt is no longer owed.

Respondent Evergreen Fresh Farms, Inc. does not deny that the debt listed in the Complaint was owed or that Respondent failed to pay timely for the produce debt listed in the Complaint.

Respondent's claims that "all debt with the three creditors has been resolved," and that "we have been able to satisfy the three creditors," both acknowledges that the debt listed in the Complaint was owed, and fails to state with any specificity how or when (or in what amount) that debt was resolved or satisfied. Respondent's failure to specifically deny the material allegations of the

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<sup>10</sup> 7 C.F.R. § 46.2 (aa)(5), 7 C.F.R. § 46.2 (aa)(11).

Complaint in its Answer is an admission of the allegations.<sup>11</sup> Likewise, in its Response to Complainant's Motion for Decision, Respondent acknowledges that it filed for bankruptcy and, again, states that "[c]reditors have been satisfied and the debts paid" but does not state with specificity how or when (or in what amount) that debt was resolved or satisfied.

Respondent's explanations in its Answer and Response to Complainant's Motion for Decision are not a defense to allegations of violations of section 2(4) of the PACA due to the failure to make full payment promptly. As the Secretary stated in *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (U.S.D.A 1998) (emphasis added):

PACA requires *full payment promptly*, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times. . . . In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved or will achieve 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 "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 the PACA, will be revoked. *Id.* The Secretary further stated in *Scamcorp* that "full compliance" requires "not only that a respondent have paid all produce sellers in accordance with the PACA, but also that a respondent have no credit agreements with produce sellers for more than 30 days." *Id.* at 549.

Further, Respondent's statement in its Response, at 1-2, that "this would have gone smoother and faster if a PACA claim would have been filed and the parties used this branch as a negotiator," is a misunderstanding of the current proceeding. A "PACA claim" such as the one to which Respondent refers in its Response, also referred to as a reparations complaint, is a

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<sup>11</sup> 7 C.F.R. § 1.136(c)).

complaint filed by a creditor/seller through the PACA division against a buyer and is under separate authority and is conducted via a separate proceeding pursuant to 7 U.S.C. § 499f and 7 C.F.R. § 46.49.<sup>12</sup> The current matter is a disciplinary proceeding pursuant to 7 U.S.C. § 499h(a) and would not be affected by a reparations proceeding.<sup>13</sup>

Here, Respondent Evergreen Fresh Farms, Inc. does not deny the allegations and statements contained in the Complaint. Although Respondent claims in both its Answer and Response that debts with all creditors have been resolved, neither Respondent's Answer nor Response disproves that Respondent failed to pay timely for the produce debt listed in the Complaint.

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

On July 13 through 23 and October 6, 2020, after Respondent filed its Answer in the current matter, PACA Division investigator Tracy Jones conducted a compliance investigation to determine the amount of unpaid debt currently owed to the sellers listed in Appendix A of the Complaint.<sup>14</sup> Ms. Jones attested that she contacted all three creditors and only one creditor,

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<sup>12</sup> See "PACA Reparations Process" available at <https://stokeslawoffice.com/paca/the-paca-branch-of-the-usda-or-federal-courts-where-should-a-produce-merchant-make-a-claim/#:~:text=PACA%20Reparations%20Process%20The%20PACA%20reparations%20process%20has,its%20records%20of%20your%20transactions%20with%20that%20party%21> (last visited Dec. 11, 2020).

<sup>13</sup> See *Ruma Fruit & Produce Co., Inc.*, 55 Agric. Dec. 642, 643 (U.S.D.A. 1996) (finding that settlement through a reparations proceeding does not give a reparations complainant any authority to waive the penalties of an enforcement proceeding); *Lloyd Myers Co., Inc.* 51 Agric. Dec. 782, 782 (U.S.D.A. 1992) (finding that "settlement between the parties does not deprive the Department of jurisdiction in a disciplinary case, notwithstanding the effect of such settlement in a reparations case."); *Finer Foods Sales Co., Inc.*, 42 Agric. Dec. 897, 903 (U.S.D.A. 1983) (finding that there is no constitutional defect in the USDA Judicial Officer deciding a disciplinary proceeding following the signing of a reparations order).

<sup>14</sup> See Declaration of Tracy Jones, attached to Complainant's Motion for Decision.

Suncoast Produce, Inc., indicated that the amount listed on Appendix A to the Complaint of \$20,611.80 had been paid in full, but was unable to determine when that debt had been paid.

Ms. Jones attested that Christian Rodriguez, President of Growers Direct Produce, Inc., stated that, as of the dates of the compliance check, Respondent paid \$5,000.00 to settle the \$14,580.00 debt owed as listed in Appendix A to the Complaint. This “settlement” does not constitute full payment in accordance with the PACA and leaves a balance of \$9,580.00 outstanding.<sup>15</sup> Further, Ms. Jones attested that Heather Siddle, Corporate Counsel for Tom Lange Company International, Inc., stated that as of October 6, 2020, their attorney was still working on a settlement agreement with Respondent and no payment had been received, thus leaving a balance of \$325,438.00 owed.

Thus, to date, Respondent has at least an unpaid balance to the creditors/sellers listed on Appendix A to the Complaint in the amount of \$325,018.00, more than a *de minimis* amount for debt that was acquired between October 2018 and January 2019.<sup>16</sup>

A hearing is not necessary in this case.<sup>17</sup>

## **2. Respondent’s PACA Violations Were Flagrant, Repeated, and Willful.**

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<sup>15</sup> See *Scamcorp*, 57 Agric. Dec. at 547-549; *Caito*, 48 Agric. Dec. at 609-610.

<sup>16</sup> See *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984) (ruling on certified question) (no hearing required unless “the amount presently due and unpaid would be *de minimis*, e.g., less than \$5,000”), final decision, 44 Agric. Dec. 870 (U.S.D.A. 1985).

<sup>17</sup> *H.M. Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1989) (“there 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 Mktg. Int’l, Inc.*, 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 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”); *Veg-Mix, Inc.*, 44 Agric. Dec. 1583, 1590, order denying reconsideration, 44 Agric. Dec. 2060 (U.S.D.A. 1985), *aff’d and remanded*, 832 F.2d 601 (D.C. Cir. 1987); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (ruling on certified question) (“unless the amount admittedly owed is *de minimis*, there is no basis for a hearing merely to determine the precise amount owed”), final decision, 46 Agric. Dec. 83 (U.S.D.A. 1985).

Respondent's violations in this case were flagrant and repeated.<sup>18</sup> Respondent's violations were also willful.<sup>19</sup> 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.<sup>20</sup>

A more stringent definition of the word "willfulness," as that word is used in 5 U.S.C. § 558(c), has been followed in the Fourth and Tenth Circuits. A willful violation has been defined in these Circuits as an intentional misdeed or such gross neglect of a known duty as to be the equivalent of an intentional misdeed.<sup>21</sup> Even under this more stringent definition, the Department's Judicial Officer has determined that payment violations similar to the violations established by Respondent's admissions would still be willful because of a gross neglect of the express provisions of the PACA, known by Respondent to require prompt payment. In *Five Star*, *supra* note 8, at 897, the USDA Judicial Officer explained:

Respondent knew or should have known that it could not make prompt payment for the large amount of perishable agricultural commodities it ordered. Nonetheless, Respondent continued over an 11 month period to make purchases knowing it could not pay for the produce as the bills came due. Respondent should have made sure that it had sufficient capitalization with which to operate. It did not, and consequently could not pay its suppliers of perishable agricultural

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<sup>18</sup> *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A 1994)(a finding of repeated violations is appropriate whenever there is more than one violation of the Act, and a finding of flagrant violations of the Act is appropriate whenever the total amount due and owing exceeds \$5,000.00).

<sup>19</sup> *Id.* at 1678 (a violation is willful if, irrespective of evil motive or erroneous advice, a person intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute).

<sup>20</sup> See *Cox v. USDA*, 925 F.2d 1102, 1105 (8<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 860 (1991); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, at 777-78 (D.C. Cir. 1983); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5<sup>th</sup> Cir. 1980) (per curiam), *cert. denied*, 450 U.S. 997 (1981); *George Steinberg & Son, Inc. v. Butz*, 491 F.2d 988, 994 (2<sup>nd</sup> Cir. 1974), *cert. denied*, 419 U.S. 830 (1974); *Goodman v. Benson*, 286 F.2d 896, 900 (7<sup>th</sup> Cir. 1961); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3<sup>rd</sup> Cir. 1960); *Five Star Food Distributors, Inc.*, *supra* fn.8, at 896.

<sup>21</sup> See *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 (4<sup>th</sup> Cir. 1991); *Hutto Stockyard, Inc. v. USDA*, 903 F.2d 299, 304 (4<sup>th</sup> Cir. 1990); and *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10<sup>th</sup> Cir. 1965).

commodities. Respondent deliberately shifted the risk of nonpayment to sellers of the perishable agricultural commodities. Under these circumstances, Respondent has both intentionally violated the PACA and operated in careless disregard of the payment requirements in section 2(4) of the PACA (7 U.S.C. § 499b(4)), and Respondent's violations are, therefore, willful. (Citations omitted).

Here, Respondent knew or should have known that it could not make prompt payment for the large amount of perishables they ordered, yet they continued to make purchases over a lengthy period of time, and could not pay produce suppliers.<sup>22</sup> Therefore, Respondent's actions in this case constitute violations that were willful, flagrant and repeated.<sup>23</sup>

For the foregoing reasons, this Decision Without Hearing against Respondent Evergreen Fresh Farms, Inc. is issued.

#### **Findings of Fact**

1. Respondent Evergreen Fresh Farms, Inc. is or was a corporation organized and existing under the law of the state of California with a mailing address of 601 Mountain View Ave, Oxnard, California 93030.
2. At all times material herein, Respondent Evergreen Fresh Farms, Inc. was licensed and/or operating subject to the provisions of the PACA. License number 20170829 was issued to Respondent on June 15, 2017. The license terminated on June 15, 2019, 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 Evergreen Fresh Farms, Inc., during the period October 2018 through January 2019, on or about the dates and in the transactions set forth in Appendix A attached to the Complaint and incorporated by reference, failed to make full payment promptly to three

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<sup>22</sup> See Appendices A and B to Complaint; see also *Five Star Distributors, Inc.*, *supra* fn. 8, at 897.

<sup>23</sup> See *D.W. Produce*, 53 Agric. Dec. at 1678.

sellers for 32 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$350,629.80.

4. On March 4, 2019, Respondent Evergreen Fresh Farms, Inc. filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 701 *et seq.*) in the United States Bankruptcy Court, Central District of California. This petition was designated Case No. 18:19-bk- 10771-CB. Respondent admits in bankruptcy Schedule F that it owes 3 out of 3 sellers/creditors listed in Appendix A to the Complaint unsecured undisputed produce debt in the amount of \$350,899.00. (See Appendix B attached to the Complaint).

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
2. Respondent Evergreen Fresh Farms, Inc.'s failure to make full payment promptly of the agreed purchase prices, or balances thereof, for the perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce as referenced in the Findings of Fact above and set forth in Appendix A attached 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.<sup>24</sup>

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<sup>24</sup> 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).

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 PACA violations.<sup>25</sup>

### **Order**

1. AMS's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondent Evergreen Fresh Farms, Inc. 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 Respondent Evergreen Fresh Farms, Inc.'s PACA violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

### **Finality**

This Decision and Order shall be final and effective without further proceedings 35 (thirty-five) days after service, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within 30 (thirty) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this "Decision and Order Granting AMS's Motion for Decision Without Hearing by Reason of Admissions" shall be sent by the Hearing Clerk to each of the parties.

Issued this 18th day of December 2020 at Washington, D.C.



Jill S. Clifton  
Administrative Law Judge

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<sup>25</sup> 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).

see Appendix A

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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

.....  
SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...  
§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145