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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-07-0195  
David W. Theodore, d/b/a )  
Consolidated Farms, )  
Respondent ) Consent Decision

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*; hereinafter referred to as the "PACA"), instituted by a Complaint filed on September 14, 2007, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period of October 10, 2005 through June 12, 2006, Respondent violated Section 2(5) of the PACA (7 U.S.C. § 499b((5))) by asserting that certain sweet potatoes that he grew, packed and sold in the course of interstate commerce were certified "organic" prior to having completed the organic certification process. Respondent filed an Answer on October 12, 2007, denying many of the Complaint allegations. Respondent also asserted a number of affirmative defenses.

Complainant and Respondent have now agreed to entry of this Decision Without Hearing by Reason of Consent, without hearing or further procedure, pursuant to Section 1.138 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in paragraph II of the Complaint and specifically admits that the Secretary has jurisdiction in this matter. Respondent also admits to having violated Section 2(5) of the PACA (7 U.S.C. § 499b((5)), while maintaining that the violations were unintentional,<sup>1</sup> and admits that the prerequisites for license suspension under the Administrative Procedure Act (5 U.S.C. § 558(c)) have been met. Respondent consents and agrees to a thirty-day suspension of his PACA license. Respondent neither admits nor denies any of the remaining Complaint allegations; waives oral hearing and further procedure; and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to entry of this Decision.

#### Findings of Fact

1. Respondent David W. Theodore, doing business as Consolidated Farms, is a grower, packer, and shipper of sweet potatoes. Respondent's business address is 14510 Collier Road, Delhi, California 95315. Respondent's mailing address is P.O. Box 451, Livingston, California 95334.

2. Respondent is licensed as a dealer under the provisions of the PACA. License number 19960120 was issued to Respondent on October 18, 1995. This license has been renewed annually.

#### Conclusion

The parties having agreed to the entry of this Decision, such Decision will be entered.

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<sup>1</sup> Violations of Section 2(5) of the PACA can be accidental or unintentional. See, e.g., *In re: Sunland Packing House Co.*, 58 Agric. Dec. 543, 589 (1999).


Order

Respondent's PACA license is suspended for a period of thirty (30) days.


This Order shall become effective 15 days after its issuance. Copies hereof shall be served upon the parties.

Done at Washington, D.C.


this 8<sup>th</sup> day of July, 2008


  
ADMINISTRATIVE LAW JUDGE  
PETER M. DAVENPORT


FOR RESPONDENT:

  
David W. Theodore, d/b/a  
Consolidated Farms

FOR COMPLAINANT:

  
Robert C. Keeney  
Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

  
Patricia J. Rym  
Rym & Janowsky, LLP  
Attorneys for Respondent

  
Charles E. Spicknall  
Office of the General Counsel  
Attorney for Complainant