

AGRICULTURE DECISIONS

Volume 79

Book Two

Part Three (PACA Decisions)

Pages 581 – 640



THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

LIST OF DECISIONS REPORTED

JULY – DECEMBER 2020

PERISHABLE AGRICULTURAL COMMODITIES ACT

DEPARTMENTAL DECISIONS

In re: MIBO FRESH FOODS, LLC.
Docket No. 20-J-0022.
Final Decision and Order 581

In re: BENNY F. HALL & SONS, LLC.
Docket No. 18-0027.
Initial Decision and Order 596

In re: NATIONAL PRODUCE SALES, INC.
Docket No. 20-J-0007.
Initial Decision and Order 611

In re: RRD PRODUCE CO.
Docket No. 20-J-0046.
Initial Decision and Order 615

In re: EVERGREEN FRESH FARMS, INC.
Docket No. 20-J-0110.
Initial Decision and Order 620

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MISCELLANEOUS ORDERS & DISMISSALS

In re: MIBO FRESH FOODS, LLC.
Docket No. 20-J-0022.
Order to File Status Reports 635

In re: WAYNE BAILEY PRODUCE CO., LLC.
Docket No. 19-J-0100.
Dismissal 636

--

DEFAULT DECISIONS

In re: HUNTER BROS, INC.
Docket No. 20-J-0115.
Default Decision and Order 637

In re: PK PRODUCE, INC.
Docket No. 20-J-0113.
Default Decision and Order 637

In re: LONESTAR PRODUCE EXPRESS, LLC.
Docket No. 20-J-0134.
Default Decision and Order 637

In re: JLD, INC., d/b/a NORTH COUNTRY WHOLESALE.
Docket No. 20-J-0123.
Default Decision and Order 637

In re: BELLA FRESH HOUSTON LLC.
Docket No. 20-J-0072.
Default Decision and Order 637

In re: OLD WEST EXPORT, INC.
Docket No. 20-J-0114.
Default Decision and Order 637

In re: ORION PACIFIC TRADERS, INC.
Docket No. 20-J-0120.
Default Decision and Order 638

In re: POBLANO FRESH PRODUCE CORP.
Docket No. 20-J-0158.
Default Decision and Order 638

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CONSENT DECISIONS

Consent Decisions 639

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Mibo Fresh Foods, LLC
79 Agric. Dec. 581

PERISHABLE AGRICULTURAL COMMODITIES ACT

DEPARTMENTAL DECISIONS

**In re: MIBO FRESH FOODS, LLC.
Docket No, 20-J-0022.
Decision and Order of Judicial Officer
Filed October 15, 2020.**

PACA-D – Act, Department interpretation and policy of – Business, continuance of operations – *De minimis* amount – License, revocation of – License, suspension of – Violation, flagrant – Violation, repeated – Violation, willful.

Rules of Practice – Answer – Complaint, service of – Complaint allegations, admission of – Oral hearing, waiver of.

Shelton S. Smallwood, Esq. for AMS.
Bruce W. Akerly, Esq. for Respondent.
Initial Decision and Order by Channing D. Strother, Chief Administrative Law Judge.
Final Decision and Order by Judge Bobbie J. McCartney, Judicial Officer.

**DECISION AND ORDER DENYING RESPONDENT’S APPEAL
PETITION AND AFFIRMING THE CHIEF JUDGE’S
FEBRUARY 11, 2020 INITIAL DECISION AND ORDER**

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. §§ 46.1 through 46.5) (“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”).

On February 11, 2020, Chief Administrative Law Judge Channing D. Strother (“Chief ALJ”) issued a Decision and Order Without Hearing by Reason of Default against the Respondent, Mibo Fresh Foods, LLC. On February 21, 2020, Respondent filed a petition for rehearing with respect to the Decision and Order. On May 14, 2020, the Chief ALJ issued an

PERISHABLE AGRICULTURAL COMMODITIES ACT

Order denying Respondent's Petition for Rehearing. On June 12, 2020, Respondent filed a timely Appeal Petition to the undersigned Judicial Officer. For the reasons discussed herein below, Respondent's Appeal Petition is **DENIED**.

Procedural History

The Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding by filing a complaint against Mibo Fresh Foods, LLC ("Respondent") on December 9, 2019. The Complaint alleged that Respondent violated PACA section 2 (7 U.S.C. § 499b(4)) by failing to make full payment promptly to fourteen sellers, in the total amount of \$1,861,502.93, for 165 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce during the period May 2018 through June 2019.¹ Further, the Complaint requested:

That the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order the publication of the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 4.

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).²

¹ See Complaint at 2-3.

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on December 12, 2019. 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 January 2, 2020. Respondent did not file a response

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

On January 9, 2020, Complainant 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 did not file objections to the Motion for Default or Proposed Decision.³ However, on January 27, 2020, XXXXX, on behalf of Respondent, filed an untitled document (“Response”) stating in relevant part:

This is a response to Docket 20-J-0022.

Mibo Fresh Foods (“mibo”) and I disagree with the premises and conclusion presented in this case for the following reasons:

- mibo does not owe fourteen (14) vendors the amount of \$1,861,502.93 for their invoices, load and lots presented in the exhibit;
- there is approximately \$504,461.70 due vendors on this list which are on an agreed schedule to be paid off before the end of July;
- mibo has established payment agreements with its vendors for commodities purchased;
- these payments vary in the number of days and is specific to each individual vendor; and
- any outstanding payments from this lot of products will be on an existing and agreed to payment plans with the individual vendors.

until January 27, 2020.

³ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on January 16, 2020. 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 by January 6, 2020. Respondent has not filed any objections.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Response at 1. Although Respondent did not specify whether it intended the filing to respond to the Complaint or to the Motion for Default, Respondent's reference to "the exhibit" suggested that Respondent was answering the Complaint.⁴ The Response, therefore, was twenty-five days late.
Late.⁵

On February 11, 2020, the Chief Administrative Law Judge ("Chief ALJ") filed a decision and order granting Complainant's Motion for Default on the basis that Respondent failed to file a timely answer to the Complaint ("Default Decision").⁶ The Default Decision also concluded, *inter alia*, that "[t]he total unpaid balance due to sellers represents more than a *de minimis* mount, thereby obviating the need for a hearing in this matter."⁷

On February 21, 2020, Mr. Bruce W. Akerly, Esq.⁸ filed on Respondent's behalf a Verified Petition for Rehearing with Respect to Decision and Order Without Hearing by Reason of Default ("Petition for Rehearing").⁹ On March 16, 2020, Complainant filed a response thereto.

⁴ Attached to the Complaint was an "Appendix A," which lists the details of transactions wherein Respondent failed to make full payment promptly to produce sellers. Neither the Motion for Default nor the Proposed Decision included any attachments.

⁵ *See supra* note 2.

⁶ The Default Decision found that Respondent committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)) and ordered that the facts and circumstances of Respondent's PACA violations be published. See Default Decision at 4-5.

⁷ Default Decision at 5 (footnote omitted)

⁸ Mr. Akerly has not filed a notice of appearance.

⁹ *See* Petition for Rehearing at 5 ("Respondent seeks: (a) if necessary, reopening of the proceedings to allow Respondent's answer to the Complaint to be recognized as filed out of time; (b) a rehearing on the issues raised by the Complaint, including an opportunity for hearing and presentation of evidence regarding Respondent's position; and (c) reconsideration of the Decision.").

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

On May 14, 2020, the Chief ALJ issued an Order denying Respondent's Petition for Rehearing affirming his conclusions that service of the Complaint was sufficient, that Respondent's "Answer" was filed 25 days after the filing date required under the Rules of Practice, and, most importantly, that even if service of the Complaint was deemed ineffective and Respondent's Answer was considered timely filed, a hearing would not be necessary because the "Answer" admits the material allegations of the Complaint.

Pertinent Statutory, Regulatory, and Adjudicatory Analytical Framework

The Department's interpretation of PACA and policy in cases arising under the Act were set out in the Judicial Officer's decision in *Baltimore Tomato Company, Inc.*,¹⁰ reaffirmed by the Judicial Officer in *The Caito Produce Co.* ("*Caito Produce*").¹¹ And, even more recently in *In re Nicholas Allen*,¹² the current, undersigned Judicial Officer has discussed and adopted the prior findings in *Balt. Tomato* and *Caito*.

The reasons underlying the Department's policy are set forth at length in *Caito Produce* as well as *Allen*. Together, the jurisprudence of these and prior cases has created a substantial body of settled law. As noted by the Judicial Officer, the conclusions in *Caito Produce* are largely taken verbatim from prior decisions (including *In re Melvin Beene Produce Co.*, 41 Agric. Dec. 2422 (U.S.D.A. 1982), *aff'd*, 728 F.2d 347 (6th Cir. 1984)), issued for many years in similar cases (many affirmed on judicial review), each of which merely updates the citations previously used.¹³ Likewise, this Decision and Order quotes extensively from *Caito Produce*¹⁴ and prior decisions to provide

¹⁰ See *Balt. Tomato Co.*, 39 Agric. Dec. 412, 415-16 (U.S.D.A. 1980).

¹¹ 48 Agric. Dec. 602 (U.S.D.A. 1989).

¹² PACA-APP Docket No. 15-J-0169, 78 Agric. Dec. (U.S.D.A. 2019); 2019 WL 392884.

¹³ See *The Caito Produce Co.*, 48 Agric. Dec. 602, 604 (U.S.D.A. 1989).

¹⁴ Due to the length of the *Caito Produce* decision, only pertinent parts will be reproduced here to provide context to the analysis under PACA in this proceeding,

PERISHABLE AGRICULTURAL COMMODITIES ACT

context to the analysis under PACA applicable to this proceeding.

As discussed in pertinent part in *Caito Produce*:

The “goal of the [Perishable Agricultural] Commodities Act [is] that only financially responsible persons should be engaged in the businesses subject to the Act.” *Marvin Tragash Co. v. United States Dept. of Agr.* [524] F.2d [1255] (C.A. 5), No. 75-1481, decided December 24, 1975. The purpose of the Act was stated in *Zwick v. Freeman*, 373 F.2d 110, 116 (C.A. 2), certiorari denied, 389 U.S. 835, as follows:

The Perishable Agricultural Commodities Act is designed to protect the producers of perishable agricultural products who in many instances must send their products to a buyer or commission merchant who is thousands of miles away. It was enacted to provide a measure of control over a branch of industry which is almost exclusively in interstate commerce, is highly competitive, and presents many opportunities for sharp practice and irresponsible business conduct.” H. Rept. No. 1196, 84th Cong. 1st Sess. 2 (1955).

* * *

If a licensee is going to extend credit to its purchasers in this regulated industry, it must be adequately capitalized to be able to sustain any losses that result. If losses occur which jeopardize a licensee’s ability to meet

but the full decision is hereby adopted and incorporated herein by reference for all purposes.

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

its obligations, it must immediately obtain more capital, or suffer the consequences if violations occur. In this regulated industry, the risk of loss should be taken by the banking community, whose business it is to supply risk capital, or by stockholders or other risk takers. Other licensees engaged in business in this vital agricultural marketing system should not be subjected to the risk resulting from respondent's undercapitalization or bad debt experience.

The Caito Produce Co., 48 Agric. Dec. 602, 619-20 (U.S.D.A. 1989).

The peculiar vulnerability of producers of perishable agricultural commodities and livestock and the importance of the Department's regulatory programs to assure payment for these commodities were also recognized by Congress in specifically excluding PACA disciplinary enforcement actions from section 525 of the 1978 Bankruptcy law (11 U.S.C. § 525). As referenced in *Caito Produce*:

Congressman Foley, Chairman of the House Agriculture Committee, explained the need for the . . . special provisions applicable to the Perishable Agricultural Commodities Act (as well as the Packers and Stockyards Act) as follows (Proceedings and Debates of the 95th Cong., 1st Sess., Vol. 19, pp. H 11761-H 11762 (October 28, 1977) [now 123 Cong. Rec. 35,671-72 (1977)]):

Under the Perishable Agricultural Commodities Act, commission merchants, dealers, and brokers are required to be licensed and to account and pay promptly for all commodities purchased. Failure to pay can result in suspension of a license, and flagrant and repeated failure may result in revocation of a license. Licensees may in certain circumstances be required by the Secretary to

PERISHABLE AGRICULTURAL COMMODITIES ACT

post a bond as evidence of financial responsibility. And the Secretary may refuse to issue licenses to persons who have violated the act or have been convicted of a felony.

The Committee on Agriculture has no quarrel with the “fresh-start” philosophy underlying this bill. However, that philosophy is not new and has heretofore been one of the principal purposes of the bankruptcy laws. Because of the peculiar vulnerability of producers of perishable agricultural commodities and livestock, Congress has seen fit, notwithstanding this philosophy, to enact and from time to time amend the Perishable Agricultural Commodities Act, the Packers and Stockyards Act, and the Act of July 12, 1943.

The Caito Produce Co., 48 Agric. Dec. 602, 621 (U.S.D.A. 1989) (footnotes omitted).¹⁵

As further explained in *Caito*:

Revocation of respondent’s license, in view of his repeated and flagrant violations of the Act, is not only

¹⁵ As shown above and in the lengthy quotation from the *Esposito* case cited in *Caito Produce (Esposito)*, 38 Agric. Dec. 613, 632-40 (U.S.D.A. 1979)), in the 1978 Bankruptcy law, Congress specifically exempted two regulatory programs – the Perishable Agricultural Commodities Act and the Packers and Stockyards Act – from the provisions of section 525 of the Bankruptcy law (11 U.S.C. § 525) that otherwise would have prevented the revocation of a license because of bankruptcy or the failure to pay a debt dischargeable under the Bankruptcy law. Congress also enacted Public Law 94-410, which made extensive amendments to the Packers and Stockyards Act and the Act of July 12, 1943 to assist the Secretary to prevent recurrence of the catastrophic losses to livestock producers which attended the bankruptcies of several large packers in prior years. As the Judicial Officer has cautioned, “[b]oth of these programs must be continued if this Nation is to continue to have a ready source of nutritious food at prices which are reasonable to both the producer and the consumer.” *The Caito Produce Co.*, 48 Agric. Dec. 602, 622 (U.S.D.A. 1989).

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

authorized by the Act (7 U.S.C. § 499h(a)) [footnote omitted], but is also consistent with other provisions of the Act, which are not applicable here. ***Similarly, if a licensee fails to pay a reparation order under the Act, his license is automatically suspended until the reparation order is paid,irrespective of whether he is unable to pay because of circumstances beyond his control (7 U.S.C. § 499g(d)).***

.....

Although the Department's approach to enforcing the Perishable Commodities Act appears harsh, in many cases it is not as harsh as it would seem. For example, many persons who suffer a financial loss or otherwise become in a precarious financial position continue to operate for many months and even increase their business substantially, without obtaining new capital, thereby subjecting many persons whose produce to them to the risk of financial loss. Such conduct has repeatedly been characterized as "flagrant." See *In re John H. Norman & Sons Distributing Co.*, 37 Agr Dec 705, 713 (1978); *In re Atlantic Produce Co.*, 35 Agr Dec 1631, 1640-1641 (1976), [aff'd per curiam, 568 F.2d 772 (4th Cir.) (unpublished), cert. denied, 439 U.S. 819 (1978)]; *Catanzaro*, 35 Agr Dec 26, 31 (1976), *affirmed sub nom. Catanzaro v. United States and Butz*, [556 F.2d 586 (9th Cir. 1977) (unpublished), printed in 36 Agr Dec 467 (1977)]; *M. & H. Produce Co.*, 34 Agr Dec 700, 747 (1975), [aff'd, 549 F.2d 830 (D.C. Cir.) (unpublished), cert. denied, 434 U.S. 920 (1977)]; *George Steinberg & Son*, 32 Agric. Dec. 236, 243-244 (1973), *affirmed sub nom. George Steinberg & Son, Inc v. Butz*, 491 F.2d 988 (C.A. 2), certiorari denied, 419 U.S. 830.

The Caito Produce Co., 48 Agric. Dec. 602, 619-22 (U.S.D.A. 1989) (emphasis added).

The undersigned Judicial Officer has consistently held that the provisions of the PACA which are intended to protect sellers of perishable

PERISHABLE AGRICULTURAL COMMODITIES ACT

goods are taken seriously and enforced strictly, for good reason. Here, Respondent has failed to bring its accumulated debt under a *de minimis* amount, and continues to disregard the rules regulations, and statutes governing its behavior. Agency precedent in this regard is clear.

A. The Complaint Was Properly Served on December 12, 2019.

In its Petition for Rehearing, Respondent argued that service of the Complaint was ineffective or insufficient because Respondent's owner was on vacation when the Complaint was sent to his home address.¹⁶ However, under the Rules of Practice, the Chief ALJ correctly found that service was properly made. Respondent asserts that since its owner, XXXX, was on vacation until January 6, 2020, service of the Complaint cannot be assumed until that time.¹⁷

Similarly, Respondent argued that the copy of the Complaint that was served at Respondent's business address cannot be deemed to have been served on December 12, 2019 because "no one at Respondent advised XXXXX [of the Complaint and he (and consequently Respondent) did not become aware of the Complaint prior to January 6, 2020."¹⁸ However, as noted by the Chief ALJ, Respondent's argument, which turns on its interpretation of the word "receipt," contradicts the service requirements set forth in the Rules of Practice, which state in pertinent part:

Any complaint or other document initially served on a person to make that person a party respondent in a proceeding . . . **shall be deemed to be received** by any party to a proceeding . . . on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual[.]

¹⁶ See Petition for Rehearing at 2.

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 2.

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

7 C.F.R. § 1.147(c)(1) (emphasis added).

According to United States Postal Service records, the Complaint in this matter was delivered to Respondent's last known principal place of business on December 12, 2019, and is therefore deemed to have been received on that date.¹⁹ Since Respondent was served with a copy of the Complaint at its last known principal place of business, Respondent was put on notice that a response was due within twenty days. For these reasons, I affirm the Chief ALJ's findings that under the applicable Rules of Practice service of the Complaint was effectuated on December 12, 2019, and therefore Respondent's answer was required to be filed within twenty days thereafter.²⁰

B. The Material Allegations of the Complaint Were Admitted, Thereby Obviating the Need for a Hearing.

In his May 14, 2020 Order denying Respondent's Petition for Rehearing, the Chief ALJ's further explained that even if he were to accept Respondent's argument that the Complaint was not properly served until January 6, 2020 and Respondent's answer was therefore timely, a rehearing would still not be warranted under the circumstances because, although Respondent strongly objected to the amounts actually owed, Respondent nevertheless repeatedly admitted to owing far more than a *de minimis* amount to sellers.

On January 27, 2020, Respondent filed an "Answer" to the Complaint wherein it admitted to owing "approximately \$504,461.70" to PACA creditors listed in Appendix A to the Complaint. However, as clearly explained in the Default Decision and noted again in the Chief ALJ's May 14, 2020 Order denying Respondent's Petition for Rehearing:

Assuming, *arguendo*, the Response had been timely filed, Respondent admits to owing \$504,461.70 to sellers—far more than a *de minimis* amount. *See H.M. Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1998) (“[T]here is no need for complainant to prevail as to each of the transactions,

¹⁹ *See supra* note 2.

²⁰ *See* 7 C.F.R. § 1.139.

PERISHABLE AGRICULTURAL COMMODITIES ACT

since the same order would be entered in any event so long as the violations are not *de minimis*.”); *Moore Mktg. Int’l, Inc.*, 47 Agric. Dec. 1472, 1482 (U.S.D.A. 1998); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question). A hearing, still, would not be necessary. See *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83.

Default Decision at 3 n.5.

In its Petition for Rehearing, Respondent once again admitted to owing more than a *de minimis* amount to the PACA creditors listed in Appendix A to the Complaint.²¹ In that filing, Respondent admitted to owing \$474,476.15 to those creditors—an outstanding balance that far exceeds \$5,000.00 and axiomatically represents more than a *de minimis* amount.²² The Chief ALJ correctly determined that this admission supports his finding that an oral hearing was not necessary in this matter.²³

On June 12, 2020, Respondent filed the instant Appeal Petition. In its Appeal Petition, Respondent makes the same arguments previously rejected by the Chief ALJ. While continuing to raise strong objections to the accuracy of the amounts alleged to be due based on the Audit of Respondent’s accounting books and records conducted between February and March 2019, the USDA/PACA Division – Fort Worth, Texas, (“First Audit”) which concluded in May 2019 and upon which the Complaint

²¹ See Petition for Rehearing at 5.

²² 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, so long as the violations are not *de minimis*.”); *Moore Mktg. Int’l*, 47 Agric. Dec. 1472, 1482 (U.S.D.A. 1988); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984).

²³ As the amount owed is not *de minimis*, I need not determine the exact amount Respondent failed to pay. See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 1998) (“[N]o hearing is required if the sum of all undisputed debts is enough to make the total owed more than *de minimis*.”).

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

allegations were based,²⁴ Respondent once again admitted to owing an outstanding balance to those creditors that far exceeds \$5,000.00 and axiomatically represents more than a *de minimis* amount.²⁵

Moreover, an additional audit was conducted on September 10, 2020 (“Second Audit”), in which of the PACA Division, Agricultural Marketing Service, performed a compliance check with the PACA creditors listed in Appendix A to the Complaint to determine the amount of debt that remained unpaid. This audit revealed that as of September 10, 2020, Respondent still owed nine of the fourteen vendors listed in Appendix A to the Complaint approximately \$510,624.79 for purchases of various perishable agricultural commodities. In its response to the Judicial Officer’s order to submit a Status report, Respondent argued it had made some payments to some vendors, but, notably, the total amount it now claims as still owing, \$474,476.15, is quite close to the \$504,461.70 it has previously admitted, and, in any event, is still far more than a *de minimis* amount.

C. Violations Are Ongoing, Repeated, Flagrant, and 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 a careless disregard of statutory requirements. *In re: Ocean View Produce, Inc.*, 2009 WL 218027. That is, a violation is considered to be willful if a prohibited act is done intentionally, regardless of the violator’s intent in committing those acts. *In re: Hogan Distributing, Inc.*,

²⁴ See Respondent’s September 17, 2020 Status Report - “Between February and March 2019, the USDA/PACA Division – Fort Worth, Texas, initiated an audit (the “**Audit**”) of Respondent’s accounting books and records; the Audit concluded in May 2019. See Nwoko Record, pgs. 13-14. Based on the Audit, the USDA/PACA Division incorrectly concluded that Respondent owed \$1,861,502.93 to various agricultural vendors. See Nwoko Record, pgs. 2-11.”

²⁵ 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, so long as the violations are not *de minimis*.”); *Moore Mktg. In’tl*, 47 Agric Dec. 1472, 1482 (U.S.D.A. 1988); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984).

PERISHABLE AGRICULTURAL COMMODITIES ACT

55 Agric. Dec. 622, 630 (1996).

Here, Respondent has shown willfulness by its admission that it was continuing in business, despite expiration of its USDA license. “License number 2013 0054 was issued to Respondent on October 15, 2012. The license terminated on October 15, 2019, pursuant to section 4(a) of the PACA (7 U.S.C. § 499(a)), when Respondent failed to pay the required annual renewal fee.” (Complaint at 2). However, in its Status Report, Respondent stated, “Because **Respondent’s business continues** monthly and because Respondent **continually processes invoices** and payments from many of the same companies, Respondent’s payables change on a daily, weekly, and monthly basis.” (Respondent’s Status Report at 2; emphasis added).

As in *Caito* at 619-22, Respondent here has “continue[d] to operate for many months and even increase their business substantially, without obtaining new capital, thereby subjecting many persons who sell produce to them at the risk of financial loss. Such conduct has repeatedly been characterized as ‘flagrant.’ See in re *John H. Norman & Sons Distributing Co.*, 37 Agric. Dec. 705, 713 (U.S.D.A. 1979); *In re Atlantic Produce Co.*, 35 Agric. Dec. 1631, 1640-41 (U.S.D.A. 1976), [aff’d per curiam, 568 F.2d 772 (4th Cir.) (unpublished), cert. denied, 439 U.S. 819 (1978)]; *Catanzaro*, 35 Agric. Dec. 26, 31, (U.S.D.A. 1976), *affirmed sub nom. Catanzaro v. United States and Butz*, [556 F.2d 586 (9th Cir. 1977) (unpublished), printed in 36 Agric. Dec. 467 (U.S.D.A. 1977)]; *M & H Produce Co.*, 34 Agric. Dec. 700, 747 (U.S.D.A. 1975), [aff’d, 548 F.2d 830 (D.C. Cir.) (unpublished), cert. denied, 434 U.S. 920 (1977)]; *George Steinberg & Son*, 32 Agric. Dec. 236, 243-44 (U.S.D.A. 1973), *affirmed sub nom. Goerge Steinberg & Son, Inc. v. Butz*, 491 F.2d 988 (C.A. 2), certiorari denied, 419 U.S. 830.”

That Respondent continues to do business, incurring further debt, despite an expired license, does not show good faith and supports the flagrant and willful nature of its violations. Notably, Respondent did not object to or deny the fact that its license was expired; in its Appeal Petition, it merely stated that “this finding appears to be premised on AMS’s statement instead of an analysis of the USDA licensing authorities.” (Appeal Petition and Supporting Brief at 4-5).

Mibo Fresh Foods, LLC
79 Agric. Dec. 581

ORDER

As prior Agency precedent reflects, the Judicial Officer has consistently held that, “[u]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing to determine the precise amount owed.”²⁶ A decision and order without hearing was, therefore, properly issued in this case. Accordingly, the Chief ALJ’s Orders are hereby AFFIRMED in their entirety and Respondent’s June 12, 2020 Appeal Petition is DENIED. The following findings are adopted:

1. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.²⁷
2. As Respondent’s license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent’s violations.²⁸
3. Respondent Mibo Fresh Foods, LLC has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
4. The facts and circumstances of Respondent’s PACA violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Right to Seek Judicial Review

Petitioner has the right to seek judicial review of the Order in this

²⁶ *Tri-State Fruit & Vegetable, Inc.*, 46 Agric Dec. at 82-83.

²⁷ 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).

²⁸ 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).

PERISHABLE AGRICULTURAL COMMODITIES ACT

Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Judicial review must be sought within sixty (60) days after the date of entry of the Order in this Decision and Order, as indicated below.²⁹

Copies of this Decision and Order shall be served by the Hearing Clerk upon each party. The Hearing Clerk will use both certified mail and regular mail for Respondent, and as a courtesy will in addition email Respondent at the email address he used to reach the Hearing Clerk.

In re: BENNY F. HALL & SONS, LLC.
Docket No. 18-0027.
Decision and Order.
Filed August 11, 2020.

PACA-D.

Christopher Young, Esq., for AMS.
Benny F. Hall, Sr., *pro se* representative of Respondent.
Decision and Order by Tierney Carlos, Administrative Law Judge.

DECISION AND ORDER WITHOUT HEARING BY REASON OF ADMISSIONS

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 by the Secretary of Agriculture (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

²⁹ 28 U.S.C. § 2344.

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

(“AMS” or “Complainant”), initiated this proceeding by filing a complaint alleging that Benny F. Hall & Sons LLC (“Respondent”) willfully violated the PACA. On June 18, 2020, 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) and in accordance with the policy set forth by the Judicial Officer in *Scamcorp, Inc.*, 57 Agric. Dec. 527 (U.S.D.A. 1998).

1

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

On April 10, 2018, AMS filed a disciplinary complaint against Respondent. The Complaint alleged that, during the period July 2016 through August 2017, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to thirteen sellers for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$797,113.98.² Moreover, the Complaint requested:

1. That unless Respondent fails to file an answer within the time allowed, *or admits all the material allegations of this Complaint*, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA; and
2. That the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. §499b(4)), and order the revocation of Respondent’s PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

¹ See Motion at 1-2.

² See Complaint at 2-3.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Complaint at 3-4 (emphasis added).³

On May 1, 2018, Respondent filed a timely response (“Answer”) to the Complaint,⁴ which included several attachments.⁵ Although it purportedly did “not admit or deny” the material allegations of the Complaint, the Answer stated: “Due to circumstances that were out of our control during 2016 we did fail to make timely payments to our suppliers.”⁶ Respondent set forth “a few exceptions” as to why certain payments were not made promptly and concluded:

The remaining sellers we owe most of the amounts on the report, but we are currently paying them down. . . . We have not been able to obtain an operating loan as of yet. Our intention is to get everyone paid with our potato crop this year.

Answer at 2.

On June 18, 2020, AMS filed a Motion for Decision Without Hearing and proposed Decision Without Hearing by Reason of Default (“Proposed

³ Although the Complaint requested revocation of Respondent’s PACA license, that license terminated on June 18, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499h(a)), when Respondent failed to pay the required renewal fee.

⁴ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on April 17, 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 by May 7, 2018.

⁵ Attached to Respondent’s Answer were copies of the following documents: July 25, 2017 letter from Respondent’s owner addressed “To Whom It May Concern,” which discusses the history of Respondent’s business and its efforts to pay for produce; June 30, 2017 Statement to South Florida Potato Growers; June 30, 2017 Statement to Wayne T. Heath Farms, Inc.; and June 30, 2017 Statement to Classic Produce.

⁶ Answer at 1.

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

Decision”)⁷ on the basis that “Respondent has admittedly not paid promptly and in full the past-due produce debt identified in the Complaint.”⁸ Respondent has not filed any objections thereto.⁹

On August 5, 2020, AMS filed “Complainant’s Filing Of Respondent’s Payment Updates Submitted by Respondent Following Conference Calls with the ALJ.”¹⁰ The filing includes two attachments, or “payment updates [that] are . . . extensions of and updates to amounts of debt admitted by Respondent in its Answer to the Complaint.”¹¹ AMS’s Motion for Decision Without Hearing was based, in part, on admissions made in these updates.¹²

Authorities

⁷ See Motion at 1-2 (“Complainant hereby moves, pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary [Under] Various Statutes (7 C.F.R. § 1.139) (Rules of Practice), for a Decision Without Hearing by Reason of Admissions. Complainant also moves for a Decision Without Hearing under the policy set forth by the Judicial Officer in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998)(and in other case precedent relating to the subject of failure to pay promptly under the PACA . . .).”).

⁸ Motion at 2.

⁹ 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 June 26, 2020. 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 by July 16, 2020. Respondent has not filed any objections.

¹⁰ This case was previously assigned to Administrative Law Judge Jill S. Clifton, who presided over the aforementioned conference calls. The case was reassigned to my docket on July 14, 2020.

¹¹ Complainant’s Filing Of Respondent’s Payment Updates Submitted by Respondent Following Conference Calls with the ALJ at 1. Respondent sent these updates to AMS on November 27, 2018 and August 22, 2019.

¹² See *id.*

PERISHABLE AGRICULTURAL COMMODITIES ACT

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (“Rules of Practice” or “Rules”), set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136 (7 C.F.R. § 1.136), a respondent is required to file an answer within twenty days after service of a complaint.¹³ The Rules 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.”¹⁴ Moreover, “failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation.”¹⁵ With regard to such admission, section 1.139 (7 C.F.R. § 1.139) provides:

The failure to file an answer, or the admission by the answer of the all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant’s Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

7 C.F.R. § 1.139.

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

¹³ 7 C.F.R. § 1.136(a).

¹⁴ 7 C.F.R. § 1.136(b)(1).

¹⁵ 7 C.F.R. § 1.136(c).

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

have agreed to different terms prior to the purchase.¹⁶ Specifically, section 2(4) makes it unlawful “[f]or any commission merchant, dealer, or broker 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.”¹⁷ 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.

7 U.S.C. § 499h(a).

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 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.

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

¹⁶ See 7 C.F.R. §§ 46.2(aa)(5), (11).

¹⁷ 7 U.S.C. § 499b(4).

PERISHABLE AGRICULTURAL COMMODITIES ACT

provisions of PACA, will be revoked.”¹⁸

Discussion

I. Respondent Has Admitted to Failing to Make Full Payment in Accordance with the PACA and Controlling Case Law.

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 parties may elect to use different payment terms so long as the terms are reduced to writing prior to the transaction.¹⁹ 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.”²⁰ “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.”²¹

In Appendix A to the Complaint (attached hereto and incorporated herein by reference), AMS identified thirteen sellers to whom Respondent failed to make full payment promptly, in the total amount of \$797,113.98, for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce during the period July 2016 through August 2017.²² Respondent was served with the Complaint on April 17, 2018.²³ Therefore, in accordance

¹⁸ *Scamcorp, Inc.*, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998).

¹⁹ 7 C.F.R. § 46.2(aa)(5), (11).

²⁰ *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

²¹ *Id.* at 549.

²² See Appendix A.

²³ See *supra* note 4; 7 C.F.R. § 1.147(c)(1) (“Any complaint . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party [or] last known principal place of business of the attorney or representative of record of such party[.]”).

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

with *Scamcorp*, Respondent had until August 15, 2018 to attain full compliance with the PACA.²⁴

In its Answer, Respondent did not deny that it failed to timely pay sellers for perishable agricultural commodities; instead, Respondent suggested there were “a few exceptions” regarding the balances alleged to be owed to several sellers. Specifically, Respondent submitted that: (1) Classic Produce owes Respondent \$4,124; (2) Respondent settled certain payables with Wayne Heath Farms and “currently owe[s] him \$5,497.00”; (3) “Martins [sic] Fresh has been paid in full”; (4) Respondent settled certain payables with South Florida and “currently owe[s] them approximately \$19,000 for bags” but “[t]he produce portion has been taken care of”; (5) “H & S Produce has been paid in full”; (6) Respondent has been paying Fresh on Board and “currently owe[s] them \$24,180.00”; (7) “Wilson Family Farm has ben paid”; and (8) Respondent is disputing the amount owed to Real Potatoes “with PACA because they are billing [Respondent] for a load [it] didn’t receive.”²⁵ With regard to the “remaining sellers,” Respondent stated it “owe[s] most of the amounts on the report[] but [is] currently paying them down.”²⁶

The explanations provided in Respondent’s Answer are not an acceptable defense to liability in a case such as this, where a complaint has been filed alleging violations of section 2(4) of the PACA due to the failure to make full payment promptly.²⁷ As the Judicial Officer stated in *Scamcorp*: “PACA requires *full payment promptly*, and commission

²⁴ See *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

²⁵ Answer at 1-2.

²⁶ *Id.* at 2.

²⁷ See, e.g., *The Caito Produce Co.*, 48 Agric. Dec. 602, 614 (U.S.D.A. 1989) (“Even though a respondent has good excuses for payment violations, perhaps beyond its control, such excuses are never regarded as sufficiently mitigating . . .”); *Finer Food Sales Co.*, 41 Agric. Dec. 1154, 1171 (U.S.D.A. 1982), *aff’d sub nom. Finer Food Sales Co. v. Block*, 708 F.2d 774 (D.C. Cir. 1983) (“[E]ven if it were determined that respondent had a good excuse for the failures to pay involved here, it has been repeatedly held under the Act that all excuses are routinely rejected in determining whether payment violations occurred or whether violations were willful since ‘the Act calls for payment -- not excuses.’”) (quoting *Kafcsak*, 39 Agric. Dec. 683, 686 (U.S.D.A. 1980)).

PERISHABLE AGRICULTURAL COMMODITIES ACT

merchants, dealers, and brokers are required to be in compliance with the payment provisions of the PACA at all times.”²⁸ Here, Respondent has admitted that, even after the August 15, 2018 *Scamcorp* compliance deadline, it still owed a total of at least \$519,416.69 to eight sellers.²⁹ Respondent’s November 2018 updated summary³⁰ shows it still owed the sellers listed in Appendix A to the Complaint as follows:³¹

	SELLER	AMOUNT OWED
1	Wayne E. Bailey Produce Company	\$100,800.00 (same amount as alleged in Appendix A)
2	Broad Acres, Inc.	\$193,921.53 (“adjusted” lesser amount than that alleged in Appendix A, following adjustments made for shrinkage and quality issues)
3	ShadyBrook Farms, LLC	\$110,327.22 (same amount as alleged in Appendix A)
4	Fresh on Board, Inc.	\$24,180.00 (“adjusted” lesser amount than that alleged in Appendix A, following payments made)

²⁸ *Scamcorp, Inc.*, 57 Agric. Dec. at 548.

²⁹ See *supra* note 24 and accompanying text; Complainant’s Filing Of Respondent’s Payment Updates Submitted by Respondent Following Conference Calls with the ALJ, Attachment 1.

³⁰ Respondent’s August 2019 updated summary shows the total amount owed as \$503,774.50. See Complainant’s Filing Of Respondent’s Payment Updates Submitted by Respondent Following Conference Calls with the ALJ, Attachment 2. As previously discussed, however, the *Scamcorp* deadline had already passed on August 15, 2018.

³¹ See *id.*, Attachment 1; Proposed Decision at 3.

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

5	Martens Fresh, LLC	Paid in full (email provided by seller)
6	Marks Produce	\$6,480.00 (same amount as alleged in Appendix A)
7	South Florida Potato Growers	Paid in full (no evidence to support)
8	Real Potatoes, Ltd.	\$67,391.94 (same amount as alleged in Appendix A)
9	H&S Produce and Packing, Inc.	Paid in full (email provided by seller)
10	Classic Produce, Inc.	\$11,036.00 (same amount as alleged in Appendix A)
11	Wilson Family Farm, Ltd.	Paid in full (email provided by seller)
12	Floyd Wilcox & Sons, Inc.	\$5,280.00 (same amount as alleged in Appendix A)
13	Wayne T. Heath Farms, Inc.	Paid in full (no evidence to support)

Even assuming *arguendo* that Respondent had paid the amounts claimed, Respondent has nonetheless admitted to owing more than a *de minimis* amount to produce sellers.³²

Moreover, Respondent has made no assertion—in its Answer or in any other filing—that full payment has been made or that full compliance will be achieved pursuant to the parameters set forth by *Scamcorp*. To the

³² See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016).

PERISHABLE AGRICULTURAL COMMODITIES ACT

contrary, the Answer states that Respondent “did fail to make timely payments to [its] suppliers”³³ and still “owe[s] most of the amounts on the report.”³⁴ Accordingly, I find that Respondent has not achieved full compliance with the PACA within 120 days after service of the Complaint.

II. Respondent’s PACA Violations Were 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.³⁵ Where a dealer has committed repeated, flagrant, and willful violations of the PACA but has no license to revoke, the appropriate sanction is publication of the facts and circumstances of the violations.³⁶

First, Respondent’s violations in this case were repeated. Violations are “repeated” under the PACA when they are committed multiple times, non-simultaneously.³⁷ As Respondent failed to pay thirteen sellers promptly and in full for 136 lots of perishable agricultural commodities over a year-long period, its violations were clearly repeated.³⁸

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.³⁹ As previously discussed,

³³ Answer at 1.

³⁴ *Id.* at 2.

³⁵ 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).

³⁶ 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. at 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

³⁷ See *H.C. MacClaren, Inc. v. U.S. Dep’t of Agric.*, 342 F.3d 584, 592 (6th Cir. 2003); *Zwicky. Freeman*, 373 F.2d 110, 115 (2d Cir. 1967); *Five Star Food Distribs., Inc.*, 56 Agric. Dec. 880, 895 (U.S.D.A. 1997).

³⁸ See Appendix A; Answer at 1-2.

³⁹ *Five Star Food Distribs., Inc.*, 56 Agric. Dec. at 895; *Havana Potatoes of N.Y.*

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

Respondent itself admitted to owing a total of at least \$519,416.69 to eight of the sellers named in Appendix A to the Complaint as of November 2018.⁴⁰ By failing to pay that money—far more than a *de minimis* amount—to multiple sellers and still owing that money more than a year later, Respondent has committed flagrant PACA violations.⁴¹ 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.

Scamcorp, Inc., 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998). Given the many transactions, substantial amount of debt, and continuation of violations over a year-long 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.⁴²

III. A Decision Without Hearing Is Appropriate.

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

Corp., 55 Agric. Dec. 1234, 1270 (U.S.D.A. 1996); *see Reese Sales Co. v. Hardin*, 458 F.2d 183, 185, 187 (9th Cir. 1972).

⁴⁰ *See supra* notes 24, 29, and accompanying text.

⁴¹ 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 to each seller. *See Baiardi Chain Food Corp.*, 64 Agric. Dec. at 1835-37; *see also Hunts Point Tomato Co.*, 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

⁴² *The Square Group, LLC*, 75 Agric. Dec. at 695.

PERISHABLE AGRICULTURAL COMMODITIES ACT

on which a meaningful hearing can be held.”⁴³ Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) allows for a decision 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.”⁴⁴

I find no genuine issues of fact that would require a hearing in this case. Respondent has admitted material allegations of the Complaint and filed no objections to AMS’s Motion for Decision Without Hearing.⁴⁵ As the amount admittedly owed is not *de minimis*, I need not determine the exact amount Respondent has failed to pay.⁴⁶

Where, as in the present case, a complainant moves for default and the respondent files no meritorious objections,⁴⁷ the Rules of Practice provide that decision and order shall be entered without further procedure:

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. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed,

⁴³ *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); *Kirby Produce Co.*, 58 Agric. Dec. 1011, 1027 (U.S.D.A. 1999).

⁴⁴ 7 C.F.R. § 1.139 (emphasis added).

⁴⁵ *See id.*

⁴⁶ *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 debt 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.”).

⁴⁷ *See supra* note 9 and accompanying text.

Benny F. Hall & Sons, LLC
79 Agric. Dec. 596

complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139 (emphasis added).

Based on Respondent's admissions, and upon Complainant's motion for the issuance of a decision without hearing, 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 Benny F. Hall & Sons LLC is or was a limited liability company organized and existing under the laws of the Commonwealth of Virginia. Respondent's business address and current service address is 29350 Horsey Road, Oak Hall, Virginia 23416.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20130984 was issued to Respondent on June 18, 2013. Respondent's PACA license terminated on June 18, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.
3. Respondent, during the period July 2016 through August 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 thirteen sellers for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$797,113.98.
4. On August 22, 2019, Respondent provided information that, as of that date, eight sellers were owed a total of \$503,744.50 for perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Benny F. Hall & Sons LLC's failure to make full payment promptly to thirteen sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact No. 4, above, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁴⁸
4. As Respondent's license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's PACA violations.⁴⁹

ORDER

1. AMS's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondent Benny F. Hall & Sons LLC has engaged in willful, flagrant, and repeated violations of the PACA.
3. The facts and circumstances of Respondent's PACA violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).
4. Any employment sanctions attendant to this Order will take effect upon issuance of this Decision and Order.⁷⁹

⁴⁸ See *The Square Group, LLC*, 75 Agric. Dec. at 695; *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

⁴⁹ 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).

⁷⁹ Section 1(b)(6) of the PACA states that the "term 'dealer' means any person

National Produce Sales, Inc.
79 Agric. Dec. 611

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after the date of service upon Respondents, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

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

In re: NATIONAL PRODUCE SALES, INC.
Docket No. 20-J-0007.
Decision and Order.
Filed September 16, 2020.

PACA-D.

Christopher P. Young, Esq for AMS.
Ariel Weissberg, Esq. for Respondent.
Decision and Order by Tierney Carlos, Administrative Law Judge.

**DECISION AND ORDER WITHOUT HEARING
BY REASON OF ADMISSIONS**

This is a disciplinary proceeding brought pursuant to the provisions of 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), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Complaint alleges that during the period January 2016 through

engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered a ‘dealer’ in respect to sales of any such commodity of his own raising” 7 U.S.C. § 499a(b)(6). Producers who are not dealers under the PACA definition are not subject to the Act as dealers.

PERISHABLE AGRICULTURAL COMMODITIES ACT

February 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to seven (7) sellers for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$820,456.93. In its Answer, paras. I and III-V, Respondent does not deny that it violated the PACA by failing to pay produce sellers fully and promptly but denies that “it or its agents *willfully* violated” the PACA (emphasis added). Further, Respondent admitted in its Answer, at para. IV, that it filed for bankruptcy and therein admits in its Schedule F (Appendix B to the Complaint) that the creditors/sellers listed in Appendix A to the Complaint were owed undisputed, unsecured produce debt in the total amount \$874,820.43. The amount determined is more than a *de minimis* amount. *See Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984) (filing on Certified question) (no hearing required unless “the amount presently due and unpaid Would be *de minimus*, e.g., less than \$5,000”), final decision, 44 Agric. Dec. 870 (U.S.D.A. 1985).

Respondent’s violations in this case were flagrant and repeated. *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (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). Respondent’s violations were also willful. A violation is willful under the Administrative Procedure Act (5 U.S.C. §558(c)) if a prohibited act is done with a careless disregard of statutory requirements, or is done intentionally, regardless of the violator’s intent in committing those acts and irrespective of evil intent. *See Ocean View Produce, Inc.*, 2009 WL 218027 (U.S.D.A. 2009); *Hogan Distributing, Inc.*, 55 Agric. Dec. 622, 630 (U.S.D.A. 1996). Here, Respondent knew or should have known that they could not make prompt payment for the large amounts of perishables they ordered, yet they continued to make purchases over a lengthy period of time and did not pay produce suppliers promptly. *See* Complaint, para. III. Respondent’s actions were willful because Respondent intentionally withheld full and prompt payment from seven (7) sellers listed in Appendix A to the Complaint for produce they purchased, received and accepted in the course of or in contemplation of interstate and foreign commerce.

Complainant need only demonstrate that Respondent failed to make

National Produce Sales, Inc.
79 Agric. Dec. 611

full payment promptly to sellers for produce they purchased, received, and accepted in more than a *de minimis* amount. *See* 7 U.S.C. § 499b(4); *Fava & Co., supra*, 46 Agric. Dec. at 81. Complainant has met that burden. By Respondent's own admissions provided in its Answer filed on October 28, 2019, as well as Schedule F of Respondent's bankruptcy filings (*see* Appendices A and B to Complaint), Respondent has violated the prompt payment provisions of the PACA.

Based on the admission of all material allegations of the Complaint in Respondent's Answer, no hearing is warranted in this matter.

Procedural History

Complainant initiated this proceeding against Respondent, National Produce Sales, Inc., by filing a disciplinary Complaint on October 2, 2019, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to seven (7) sellers for produce they purchased, received, and accepted. The Complaint seeks a finding of flagrant, repeated, and willful violations of the PACA and publication of the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Respondent filed a timely Answer to the Complaint on October 28, 2019 that did not deny the allegations in the Complaint.

In response to Respondent's Answer, on May 7, 2020 Complainant moved for a decision without hearing ("Complainant's Motion") pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant made its motion based on admissions of fact that Respondent have made in their Answer to the Complaint.

Respondent did not submit a response to Complainant's Motion.¹

¹ United States Postal Service records reflect that the Motion for Decision Without Hearing by Reason of Admissions was sent to Respondent via certified mail on May 7, 2020 and was returned to the USDA Hearing Clerk's Office due to "insufficient address." The United States Postal Service records reflect that the Motion for Decision Without Hearing was mailed again by certified mail on June

PERISHABLE AGRICULTURAL COMMODITIES ACT

Findings of Fact

1. Respondent is or was a company incorporated and existing under the laws of the state of Illinois. Respondent's business address is or was 90 Old Mill Grove Road, Lake Zurich, Illinois 60047. The Complaint was served on Respondent's officer and majority owner of record, and on Respondent's attorney of record.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20121269 was issued to Respondent on July 24, 2012. The license terminated on July 24, 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.
3. Respondent, during the period January 2016 through February 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to seven (7) sellers for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$820,456.93.

Legal Conclusion

The failure of Respondent to make full payment promptly of the agreed

29, 2020 and on August 18, 2020, but the status for each certified mailing has indefinitely remained "Awaiting Delivery Scan." Once served, Respondent has twenty (20) days from the date of service to file responses 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 workday. 7 C.F.R. § 1.147(h). Due to the ongoing pandemic and office closures, USPS mail services are experiencing indefinite delays. Thus, courtesy copies of the filings were sent to the parties via email by the Hearing Clerk's Office.

On September 15, 2020, I had a telephone conference with counsel for each party. During the call, counsel for Respondent confirmed receipt of Complainant's Motion and proposed Decision and Order via email from the USDA Hearing Clerk. Respondent accepted service of such via email and also stated that Respondent would not be filing a response to Complainant's Motion.

RRD Produce Co.
79 Agric. Dec. 615

purchase prices for the perishable agricultural commodities that they purchased, received, and accepted in interstate and foreign commerce constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

A finding is made that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the facts and circumstances of these violations shall be published.

Pursuant to the Rules of Practice governing procedures under the PACA, this Decision will become final without further proceeding thirty-five (35) days after service hereof unless appealed to the Secretary by a party to the proceeding 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 Without Hearing by Reason of Admissions shall be served by the Hearing Clerk on each of the parties.

**In re: RRD PRODUCE CO.
Docket No. 20-J-0046.
Decision and Order,
Filed October 23, 2020.**

PACA-D.

Shelton S. Smallwood, Esq. for AMS.
Ricardo Villalobos, representative of Respondent.
Decision and Order by Tierney Carlos, Administrative Law Judge.

DECISION AND ORDER WITHOUT HEARING

This is a disciplinary proceeding brought pursuant to the provisions of 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. Part 46) (“Regulations”), and the Rules of Practice

PERISHABLE AGRICULTURAL COMMODITIES ACT

Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Complaint, filed February 25, 2020, alleges that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to seventeen (17) sellers for purchases of seventy (70) lots of perishable agricultural commodities in the course of interstate and foreign commerce in the amount of \$174,464.75 during the period from May 2018 through December 2018. Complainant requests the issuance of an order finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publication of the facts and circumstances surrounding the violations.

In an email response to the Complaint filed by Mr. Ricardo Villalobos on behalf of Respondent (“First Answer”), Respondent does not deny that it violated the PACA by failing to pay produce sellers fully and promptly. Further, Respondent states in its First Answer, at 1, that it filed for bankruptcy, that the company is closed, and that the company does not have any assets. Thereafter, on April 10, 2020, Maricruz Villalobos and Baudelio Villalobos, former principals of Respondent, by and through counsel filed an Answer to the Complaint (“Second Answer”), admitting, at 1, to part of the jurisdictional allegations in paragraph II of the Complaint, and denying all other allegations and raising, at 2-3 several affirmative defenses.

On August 25, 2020, Complainant filed a Motion for An Order Requiring Respondent To Show Cause Why A Decision Without Hearing Should Not Be Issued (“Complainant’s First Motion”), arguing at 2, that neither Respondent’s First nor Second Answer would require a hearing to be held, that Respondent’s First Answer arguably admits the material allegations of the Complaint, and that the Second Answer “is not an acceptable defense to liability in a case in which a Complaint a Complaint has been filed alleging the violation of section 2(4) of the PACA due to the failure to make full payment promptly.”¹

On September 14, 2020, Baudelio Villalobos and Maricruz Villalobos

¹ Citing 7 C.F.R. § 1.136(b).

RRD Produce Co.
79 Agric. Dec. 615

(hereafter referred to as “Mr. and Ms. Villalobos”), former principals of Respondent, filed a Response to Complainant’s First Motion. In their response, Mr. and Ms. Villalobos stated, at 1, that on February 26, 2020, they were sent a letter from USDA, along with proof of service of the Complaint, in which they were identified as “Respondents.” Mr. and Ms. Villalobos explained, *id.*, that “in order to avoid having any action taking against them in relation to this matter, they filed an Answer to the Complaint on April 10, 2020, which set forth their denials and defenses.” Mr. and Ms. Villalobos state that: “On or about May 1, 2019, RRD Produce, Co. filed for bankruptcy” which was “successfully completed on July 9, 2019, and RRD was declared to be ‘no asset’ by the Trustee and the case was closed by the court.” Mr. and Ms. Villalobos go on to state that, because the Complainant states that RRD Produce, Co. is the only Respondent in this matter,² and the Complaint has not been amended to add any other parties, Mr. and Ms. Villalobos do not have liability in this matter.

On September 22, 2020, Complainant filed a Motion for A Decision Without Hearing (“Complainant’s Second Motion”), which included the Declaration of Steve Sao as Attachment 1 and a propose Decision and Order as Attachment 2, asking that a decision and order without hearing be issued against Respondent due to its failure to make a full and prompt payment for produce purchases made in willful, flagrant, and repeated violation of PACA (7 U.S.C. § 499b(4)). In its Second Motion, Complainant argues, at 2, that “Respondent’s Answer arguably admits the material allegations of the Complainant” and the “former principals’ Response merely offers general denials of the allegations made in the Complaint pertaining to RRD Produce Co.’s failure to make full payment promptly.” Respondent did not file an objection to Complainant’s Second Motion.³

² Mr. and Ms. Villalobos state, Response at 2, “Since Complainant states that RRD Produce, Co. is the only *Complainant*” (emphasis added) which can be taken as a typo that meant to state *Respondent*.

³ United States Postal Service records reflect that Complainant’s Second Motion was sent to Respondent via certified mail and delivered on September 26, 2020. Respondent had twenty(20) 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

PERISHABLE AGRICULTURAL COMMODITIES ACT

Respondent was served with the Complaint on March 2, 2020. According to the USDA Judicial Officer's policy set forth in *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 548- 549 (1998), which states that when a complaint is filed alleging the failure to make full payment promptly under the PACA, if the Respondent is not in full compliance with the PACA within 120 days after the complaint is served upon the Respondent or the date of the hearing, whichever occurs first, (July 2, 2020, in this matter) the case will be treated as a "no pay" case for which the sanction is license revocation.⁴ Complainant moves that a Decision Without Hearing be issued, finding that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that the facts and circumstances of Respondent's violations be published.

Pursuant to the Department's policy set forth in the *Scamcorp* decision, upon the Complainant's motion for the issuance of a decision and order without hearing, and due to Respondent's failure to object to Complainant's motion for a decision and order without hearing, the following decision and order is issued without further procedure or hearing pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Respondent was incorporated and existed under the laws of the state of California. Respondent's business address was 746 South Central Avenue, A3 100/101, Los Angeles, California 90021. The Complaint in this case was served on Respondent's business address and its principals' home addresses, which were provided to the Hearing Clerk's Office for service purposes; they were withheld from this Complaint to protect 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by October 16, 2020.

⁴ In its Motion for a Decision Without Hearing at 1, fn. 1, Complainant notes that it seeks publication of the facts and circumstances surrounding Respondent's PACA violations, rather than revocation of Respondent's PACA license, as Respondent's PACA license terminated on May 13, 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.

RRD Produce Co.
79 Agric. Dec. 615

principals' personal information and privacy.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20171122 was issued to Respondent on September 18, 2017. This license was suspended on May 13, 2019, for failure to pay a reparation award pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license was terminated on September 18, 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, during the period May 2018 through December 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to seventeen (17) sellers for seventy (70) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$174,464.75.

4. On May 1, 2019, Respondent 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, Los Angeles Division. The petition was designated Case No. 19-bk-15104-BB. Respondent lists in its Schedule E/F that fifteen (15) of the seventeen (17) PACA creditors listed in Appendix A to this Complaint hold unsecured produce debt claims against Respondent in the amount of \$177,387.55.

Legal Conclusion

Respondent's failure to make full payment promptly with respect to the seventy (70) transactions 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)).

ORDER

A finding is made that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the facts and circumstances of these violations shall be published.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Pursuant to the Rules of Practice governing procedures under the PACA, this Decision will become final without further proceeding thirty-five (35) days after service hereof unless appealed to the Secretary by a party to the proceeding 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 Without Hearing by Reason of Admissions shall be served by the Hearing Clerk on each of the parties.

In re: EVERGREEN FRESH FARMS, INC.
Docket No. 20-J-0110.
Decision and Order.
Filed December 18, 2020.

PACA-D.

Buren W. (“Chipp”) Kidd, Esq. for AMS.
Eric Mydland, President and 100% stockholder of Respondent.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER GRANTING AMS’S MOTION FOR DECISION WITHOUT HEARING BY REASON OF ADMISSIONS

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,

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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:

PERISHABLE AGRICULTURAL COMMODITIES ACT

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.¹ 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.”² 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.”³

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 different terms prior to the purchase.⁴ Specifically, section 2(4) makes it unlawful “[f]or any

¹ 7 C.F.R. § 1.136(a).

² 7 C.F.R. § 1.136(b)(1).

³ 7 C.F.R. § 1.139.

⁴ See 7 C.F.R. §§ 46.2(aa)(5), (11).

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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.”⁵ 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

⁵ 7 U.S.C. § 499b(4).

PERISHABLE AGRICULTURAL COMMODITIES ACT

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).

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.”⁶

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

⁶ *Id.* at 549.

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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.

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 the Rules of Practice.⁷

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.⁸ Similarly, use of information contained in bankruptcy filings as a basis for decisions without hearing is also well-established.⁹ 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.

⁷ 7 C.F.R. § 1.136(c).

⁸ *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).

⁹ *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.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Full payment promptly in accordance with the PACA means payment by a buyer within 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.¹⁰

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

¹⁰ 7 C.F.R. § 46.2 (aa)(5), 7 C.F.R. § 46.2 (aa)(11).

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

when (or in what amount) that debt was resolved or satisfied. Respondent's failure to specifically deny the material allegations of the Complaint in its Answer is an admission of the allegations.¹¹ 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.

¹¹ 7 C.F.R. § 1.136(c).

PERISHABLE AGRICULTURAL COMMODITIES ACT

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 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. § 46.49.¹² The current matter is a disciplinary proceeding pursuant to 7 U.S.C. § 499h(a) and would not be affected by a reparations proceeding.¹³

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

¹² 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).

¹³ 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).

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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.¹⁴ Ms. Jones attested that she contacted all three creditors and only one creditor, 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.¹⁵ 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 2019.¹⁶

A hearing is not necessary in this case.¹⁷

¹⁴ See Declaration of Tracy Jones, attached to Complainant’s Motion for Decision.

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

¹⁶ 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).

¹⁷ *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

PERISHABLE AGRICULTURAL COMMODITIES ACT

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

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

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.²¹ Even under this more stringent

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).

¹⁸ *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).

¹⁹ *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).

²⁰ See *Cox v. USDA*, 925 F.2d 1102, 1105 (8th 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 (5th Cir. 1980) (per curiam), *cert. denied*, 450 U.S. 997 (1981); *George Steinberg & Son, Inc. v. Butz*, 491 F.2d 988, 994 (2nd Cir. 1974), *cert. denied*, 419 U.S. 830 (1974); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir. 1961); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3rd Cir. 1960); *Five Star Food Distributors, Inc.*, *supra* fn.8, at 896.

²¹ See *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 (4th Cir. 1991); *Hutto Stockyard, Inc. v. USDA*, 903 F.2d 299, 304 (4th Cir. 1990); and *Capitol*

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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 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.²² Therefore, Respondent's actions in this case constitute violations that were willful, flagrant and repeated.²³

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

Findings of Fact

Packing Co. v. United States, 350 F.2d 67, 78-79 (10th Cir. 1965).

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

²³ See *D.W. Produce*, 53 Agric. Dec. at 1678.

PERISHABLE AGRICULTURAL COMMODITIES ACT

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 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

Evergreen Fresh Farms, Inc.
79 Agric. Dec. 620

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.²⁴
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.²⁵

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

²⁴ *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).

²⁵ *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).

PERISHABLE AGRICULTURAL COMMODITIES ACT

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.

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Miscellaneous Orders & Dismissals
79 Agric. Dec. 635 – 636

MISCELLANEOUS ORDERS & DISMISSALS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Substantive Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at <https://www.usda.gov/oha/services/decisions-and-determinations>.

PERISHABLE AGRICULTURAL COMMODITIES ACT

**In re: MIBO FRESH FOODS, LLC.
Docket No. 20-J-0022.
Miscellaneous Order of the Judicial Officer.
Filed August 18, 2020.**

PACA-D – Status reports.

Shelton S. Smallwood, Esq., for AMS.
Bruce W. Akerly, Esq., and Carrie R. McNair, Esq., for Respondent.
Initial Decision by Channing D. Strother, Chief Administrative Law Judge.
Order entered by Judge Bobbie J. McCartney, Judicial Officer.

ORDER TO FILE STATU REPORT(S)

1. By 4:30 p.m. (Eastern) on Thursday, September 17, 2020, if a proposed Consent Decision has not been filed with the Hearing Clerk, the parties shall file with the Hearing Clerk either a Joint Status Report or separate Status Reports, detailing any and all payments which have been made in mitigation of Respondent's PACA obligations to date, as detailed in the Default Decision and Order of February 11, 2020.
2. The parties shall deliver filings directly to the Hearing Clerk. The Hearing Clerk's information at the bottom of this Order includes the physical address, as well as the FAX number and email address. Filings must *arrive* in the Hearing Clerk's Office earlier than 4:30 p.m. (Eastern) to be tamped "Received" on the date due.

MISCELLANEOUS ORDERS & DISMISSALS

Copies of this Decision and Order shall be served by the Hearing Clerk via certified mail and regular mail, as well as by courtesy email copies, upon the parties and counsel.

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In re: WAYNE BAILEY PRODUCE CO., LLC.
Docket No. 19-J-0100.
Order of Dismissal.
Filed December 31, 2020.

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Default Decisions
79 Agric. Dec. 637 – 638

DEFAULT DECISIONS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. Default Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: <https://www.usda.gov/oha/services/decisions-and-determinations>.

PERISHABLE AGRICULTURAL COMMODITIES ACT

In re: HUNTER BROS., INC.
Docket No. 20-J-0115.
Default Decision and Order.
Filed July 10, 2020.

In re: PK PRODUCE, INC.
Docket No. 20-J-0113.
Default Decision and Order.
Filed July 21, 2020.

In re: LONESTAR PRODUCE EXPRESS, LLC.
Docket No. 20-J-0134.
Default Decision and Order.
Filed September 1, 2020.

In re: JLD INC., d/b/a NORTH COUNTRY WHOLESALE.
Docket No. 20-J-0123.
Default Decision and Order.
Filed November 9, 2020.

In re: BELLA FRESH HOUSTON LLC.
Docket No. 20-J-0072.
Default Decision and Order.
Filed November 17, 2020.

In re: OLD WEST EXPORT, INC.
Docket No. 20-J-0114.
Default Decision and Order.
Filed November 24, 2020.

DEFAULT DECISIONS

**In re: ORION PACIFIC TRADERS, INC.
Docket No. 20-J-0120.
Default Decision and Order.
Filed July 10, 2020.**

**In re: POBLANO FRESH PRODUCE CORP.
Docket No. 20-J-0158.
Default Decision and Order.
Filed November 24, 2020.**

CONSENT DECISIONS

PERISHABLE AGRICULTURAL COMMODITIES ACT

In re: JONES POTATO CHIP CO.

Docket No. 20-J-0117.
Consent Decision and Order.
Filed August 18, 2020.

In re: JONES POTATO CHIP CO.

Docket No. 20-J-0117.
Amended Consent Decision and Order.
Filed September 11, 2020.

In re: SUNRISE INTERNATIONAL, LLC.

Docket No. 18-0080.
Consent Decision and Order.
Filed September 23, 2020.

**In re: FIRST FRUITS HOLDINGS, LLC, d/b/a FOUR RIVERS
ONION PACKING.**

Docket No. 20-J-0148.
Consent Decision and Order.
Filed October 27, 2020.

In re: SOUTHERN SUN, LLC.

Docket No. 20-J-0048.
Consent Decision and Order.
Filed December 8, 2020.

In re: ENSON GROUP, LLC, d/b/a ETERNAL FOOD SERVICES.

Docket No. 20-J-0105.
Consent Decision and Order.
Filed December 21, 2020.

CONSENT DECISIONS

**In re: WAYNE BAILEY, INC.; and WAYNE BAILEY PRODUCE
CO., LLC.**

Docket Nos. 19-J-0099; 19-J-0100.

Consent Decision and Order.

Filed December 31, 2020.

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