

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0322

In re: Desert Star Produce, LLC,

Respondent

**Default 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.)(the Act or PACA), instituted by a Complaint filed on July 19, 2011, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period June 7, 2009 through October 5, 2009, failed to make full payment promptly to 4 sellers of the agreed purchase prices in the total amount of \$349,850.02 for 54 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce and requested that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), 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 that the facts and circumstances of the violations be published.

Respondent was duly served with the Complaint as of November 1, 2011 and failed to file an Answer to the Complaint within the 20 day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). Since Respondent failed to answer within the 20 day time

period prescribed by the Rules of Practice, the following Finding of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings Of Fact**

1. Desert Star Produce, LLC, (Respondent) is or was a corporation organized and existing under the laws of the state of California.
2. At all times material herein, Respondent was licensed under and operating subject to the provisions of the PACA. License number 20090410 was issued to Respondent on February 19, 2009. This license was suspended on March 3, 2010, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)) for failure to pay a reparation award. Subsequently, the license terminated on April 2, 2010, 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 June 7, 2009 through October 5, 2009, failed to make full payment promptly to four (4) sellers of the agreed purchase prices in the total amount of \$349,850.02 for 54 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for perishable agricultural commodities that it 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**

1. The facts and circumstances of the violations found herein shall be published.
2. This order shall take effect on the day that this Decision becomes final.
3. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served upon parties.

March 27, 2012

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Peter M. Davenport  
Chief Administrative Law Judge