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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	[PACA-D]
	)	Docket No. **15-0102**
The Square Group, LLC	)	
	)	**Decision and Order on**
Respondent	)	**the Written Record**

Appearances:

Shelton S. Smallwood, Esq., Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C., for the Complainant (AMS); [1] and

Steven E. Nurenberg, Esq., Meuers Law Firm, Naples, FL, for the Respondent (Square Group). [2]

Decision Summary

1. The Square Group, LLC willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the purchase prices, or balances thereof, during February 22, 2014 through August 19, 2014, totaling more than $767,000.00 for fruits and vegetables from 23 produce sellers, all being perishable

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1. The Complainant is the Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture ("AMS" or "Complainant").

2. The Respondent is The Square Group, LLC, a limited liability corporation formed and existing under the laws of the state of California ("Square Group" or "Respondent").

agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture (herein frequently "AMS" or "Complainant").

3. The Respondent is The Square Group, LLC, a limited liability corporation formed and existing under the laws of the state of California (herein occasionally "Square Group" or "Respondent").

4. AMS alleges in the Complaint filed on April 28, 2015, that the Respondent Square Group violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), [3] by failing to pay 32 produce sellers for $1,190,177.70 in produce purchases during 2013-2014, as more particularly described in Appendix A to the Complaint. The Complaint alleges that those violations by The Square Group, LLC were willful, flagrant, and repeated and asks the judge to revoke The Square Group, LLC's PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

5. The Square Group, LLC operates a full service grocery store (a supermarket), and protests any finding that it has violated the PACA. The Square Group LLC timely filed its Answer and Affirmative Defenses on June 30, 2015.

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3. The PACA is the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. § 499a *et seq.* ("PACA").

6. AMS's "Motion for Decision Without Hearing by Reason of Admissions", filed July 24, 2015, asks me to issue a decision based on the requirements of the PACA in light of The Square Group, LLC's admissions. AMS's Motion asserts that there is no need for a hearing.

7. The Square Group, LLC timely filed its Opposition on September 10, 2015, asserting that there are material issues of fact in dispute, and that The Square Group, LLC wants the oral hearing it requested in its Answer and again in its Opposition.

8. Following careful review of all documents filed, I agree with AMS that there is no need for an oral hearing. I issue this Decision and Order based on the written record, finding that The Square Group, LLC has committed willful, repeated, and flagrant violations of section 2(4) of the PACA, 7 U.S.C. § 499b(4).

Discussion

9. Section 2(4) of the PACA (7 U.S.C. § 499b(4)) requires produce licensees such as The Square Group, LLC to make "full payment promptly" for fruit and vegetable purchases, usually within ten days of acceptance, unless the parties agreed to different terms prior to the purchase. *See* 7 C.F.R. § 46.2(aa)(5) and (11) (defining "full payment promptly").

10. The policy of the U.S. Department of Agriculture in cases where PACA licensees have failed to make full or prompt payment for produce 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 full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of 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.

Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998).

11. The appropriate sanction in a "no-pay" case where the violations are flagrant and repeated is license revocation. A civil penalty is not appropriate because "limiting participation in the perishable agricultural commodities industry to financially responsible persons is one of the primary goals of the PACA", and it would not be consistent with the purposes of the PACA to require a PACA violator to pay a civil penalty rather than pay produce sellers to whom the PACA violator owes money. *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 570-71 (U.S.D.A. 1998).

12. Here, The Square Group, LLC "shifted the risk of nonpayment to sellers of the perishable agricultural commodities", intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA (7 U.S.C. § 499b(4)). *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998). Here, buying perishable agricultural commodities without sufficient funds to comply with the prompt payment provision of the PACA is regarded as an intentional violation of the PACA or, at the least, careless disregard of the statutory requirements.

13. 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 on which a meaningful hearing can be held. *H. Schnell & Company, Inc.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998). *See also*, *Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894 (U.S.D.A. 1997).

Findings of Fact

14. The Square Group, LLC, the Respondent, is a limited liability corporation formed and existing under the laws of the state of California, with an address in Rosemead, California.

15. The Square Group, LLC was licensed under the provisions of the Perishable Agricultural Commodities Act (the PACA) on February 4, 2014, license number 20140406.

16. The Square Group, LLC filed Case No.: 2:14-bk-23806-DS under Chapter 11 in the United States Bankruptcy Court in the Central District of California - Los Angeles Division, including its Schedule F listing of creditors filed August 19, 2014.

17. Schedule F (Attachment A to the Complaint), on the first sheet, shows $73,415.92 claimed by ABC Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to ABC Produce, Inc., during March 24, 2014 through August 9, 2014, for $72,474.92 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **31** in Appendix A to the Complaint.

18. Schedule F (Attachment A to the Complaint), on the first sheet, shows $12,484.75 claimed by Advantage Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Advantage Produce, Inc., during May 14, 2014

through June 17, 2014, for $12,484.75 in fruits, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **9** in Appendix A to the Complaint.

19. Schedule F (Attachment A to the Complaint), on attachment sheet 1 of 28, shows $16,300.00 claimed by Benito Turrubiartes (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Benito Turrubiartes, during May 23, 2014 through July 15, 2014, for $16,300.00 in oranges, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **17** in Appendix A to the Complaint.

20. Schedule F (Attachment A to the Complaint), on attachment sheet 5 of 28, shows $42,623.00 claimed by E&DA Farm (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to E & DA Farm, during February 22, 2014 through July 10, 2014, for $42,623.00 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **15** in Appendix A to the Complaint.

21. Schedule F (Attachment A to the Complaint), on attachment sheet 6 of 28, shows $22,945.20 claimed by ETR Merchandises Co. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to ETR Merchandise Co., during May 24, 2014 through June 23, 2014, for $22,837.20 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **11** in Appendix A to the Complaint.

22. Schedule F (Attachment A to the Complaint), on attachment sheet 8 of 28, shows $645.00 claimed by Green West Farm, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Green West Farm, Inc., by May 29, 2014, for $645.00 in fruits, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **7** in Appendix A to the Complaint.

23. Schedule F (Attachment A to the Complaint), on attachment sheet 9 of 28, shows $15,140.00 claimed by Harmoni International Spice, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Harmoni International Spice, Inc., during March 7, 2014 through July 11, 2014, for $15,115.00 in vegetables, all

being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **16** in Appendix A to the Complaint.

24. Schedule F (Attachment A to the Complaint), on attachment sheet 10 of 28, shows $28,498.50 claimed by House of Produce (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Joscott, Inc. d/b/a House of Produce, during June 17, 2014 through August 2, 2014, for $12,800.50 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **28** in Appendix A to the Complaint.

25. Schedule F (Attachment A to the Complaint), on attachment sheet 12 of 28, shows $15,879.58 claimed by JML Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to JML Produce, Inc., during March 15, 2014 through May 31, 2014, for $15,879.58 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **8** in Appendix A to the Complaint.

26. Schedule F (Attachment A to the Complaint), on attachment sheet 14 of 28, shows $10,263.00 claimed by L&C Distributing, Inc. (described as "Potential PACA Claimant")

and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to L & C Distributing, Inc., during May 8, 2014 through June 25, 2014, for $10,263.00 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **13** in Appendix A to the Complaint.

27. Schedule F (Attachment A to the Complaint), on attachment sheet 15 of 28, shows $48,979.00 claimed by Lucky Hong Farm, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Lucky Hong Farm, Inc., during February 24, 2014 through July 28, 2014, for $48,979.00 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **19** in Appendix A to the Complaint.

28. Schedule F (Attachment A to the Complaint), on attachment sheet 15 of 28, shows $18,564.35 claimed by Lucky Taro (described as "Trade Debt") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Lucky Taro, Inc., during July 14, 2014 through August 6, 2014, for $18,124.35 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of

interstate or foreign commerce, as shown in the Complaint and identified by number **29** in Appendix A to the Complaint.

29. Schedule F (Attachment A to the Complaint), on attachment sheet 16 of 28, shows $83,001.40 claimed by Maui Fresh International (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Maui Fresh International, during July 8, 2014 through August 8, 2014, for $82,886.40 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **30** in Appendix A to the Complaint.

30. Schedule F (Attachment A to the Complaint), on attachment sheet 19 of 28, shows $43,980.00 claimed by QSI (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to QSI, during June 7, 2014 through July 29, 2014, for $43,788.00 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **24** in Appendix A to the Complaint.

31. Schedule F (Attachment A to the Complaint), on attachment sheet 19 of 28, shows $99,990.40 claimed by Quality 1st Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment

promptly of the purchase prices, or balances thereof, to Quality 1st Produce, Inc., during April 1, 2014 through July 28, 2014, for $95,179.40 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **20** in Appendix A to the Complaint.

32. Schedule F (Attachment A to the Complaint), on attachment sheet 23 of 28, shows $84,196.30 claimed by T Fresh Company (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to T Fresh Company d/b/a Yes Produce, during April 10, 2014 through June 21, 2014, for $81,161.30 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **10** in Appendix A to the Complaint.

33. Schedule F (Attachment A to the Complaint), on attachment sheet 23 of 28, shows $7,204.00 claimed by T&C Company (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to T & C Company, during August 4, 2014 through August 19, 2014, for $7,204.00 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **32** in Appendix A to the Complaint.

34. Schedule F (Attachment A to the Complaint), on attachment sheet 23 of 28, shows $53,420.50 claimed by TAC Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to TAC Produce, Inc., during April 12, 2014 through July 29, 2014, for $53,262.50 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **24** in Appendix A to the Complaint.

35. Schedule F (Attachment A to the Complaint), on attachment sheet 24 of 28, shows $24,739.30 claimed by The Choice Produce (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to The Choice Produce, during June 14, 2014 through July 29, 2014, for $17,893.50 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **26** in Appendix A to the Complaint.

36. Schedule F (Attachment A to the Complaint), on attachment sheet 24 of 28, shows $23,906.50 claimed by Times Produce, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Times Produce, Inc., during June 12, 2014 through June 28, 2014, for $23,906.50 in fruits and vegetables, all being perishable

agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **14** in Appendix A to the Complaint.

37. Schedule F (Attachment A to the Complaint), on attachment sheet 24 of 28, shows $17,287.10 claimed by Two HK, Inc. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Two HK, Inc., during June 28, 2014 through July 28, 2014, for $17,251.10 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **22** in Appendix A to the Complaint.

38. Schedule F (Attachment A to the Complaint), on attachment sheet 25 of 28, shows $47,857.75 claimed by Valley Fruit & Produce Co. (described as "Potential PACA Claimant") and NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to Valley Fruit and Produce, Inc., during April 5, 2014 through May 6, 2014, for $47,857.75 in fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **6** in Appendix A to the Complaint.

39. Schedule F (Attachment A to the Complaint), on attachment sheet 26 of 28, shows $8,892.00 claimed by WF Produce Trading (described as "Potential PACA Claimant") and

NOT disputed, confirming that The Square Group, LLC failed to make full payment promptly of the purchase prices, or balances thereof, to WF Produce Trading, during February 14, 2014 through June 25, 2014, for $8,892.00 in vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce, as shown in the Complaint and identified by number **12** in Appendix A to the Complaint.

Conclusions

40. The Secretary of Agriculture has jurisdiction over The Square Group, LLC and the subject matter involved herein.

41. The Square Group, LLC made admissions in its Schedule F listing of creditors filed August 19, 2014 (Case No.: 2:14-bk-23806-DS) that certain produce sellers had not been paid by The Square Group, LLC.

42. The Square Group, LLC showed that it knew how to use the "DISPUTED" column of Schedule F, which it did regarding Moo Gung International, Inc. $358,927.15 [attachment sheet 16 Schedule F]. The "DISPUTED" column was NOT used for the other produce sellers listed in Schedule F.

43. The Square Group, LLC failed to comply with 7 C.F.R. § 46.2(aa) regarding making full payment promptly.

44. Even if The Square Group, LLC were eventually to complete payment in full, that would not negate the requirement to pay promptly under the PACA. *See* 7 C.F.R. § 46.2(aa) regarding making full payment promptly, especially 7 C.F.R. § 46.2(aa)(5) and (11).

45. The Square Group, LLC was served with the Complaint on May 6, 2015. September 3, 2015 was the 120th day after the Complaint was served. More than 120 days after the Complaint was served, when The Square Group, LLC's Opposition was filed (September 10, 2015), The Square Group LLC could not show full payment to any of the 23 produce sellers enumerated in paragraphs 17 - 39.

46. The grounds for revocation of a PACA license are found in 7 U.S.C. § 499h and include flagrant or repeated failures to comply with 7 U.S.C. § 499b(4), which requires full payment promptly.

47. The Square Group, LLC's violations detailed above in the Findings of Fact are willful within the meaning of the Administrative Procedure Act (*see* 5 U.S.C. § 558(c)).

48. The Square Group, LLC willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the purchase prices, or balances thereof, during February 22, 2014 (*see* paragraph 20) through August 19, 2014 (*see* paragraph 33), totaling more than $767,000.00 for fruits and vegetables, all being perishable agricultural commodities that The Square Group, LLC purchased, received, and accepted in the course of interstate or foreign commerce from 23 produce sellers, identified below by the same number shown for them in Appendix A to Complaint, and listed in the order in which they appear in paragraphs 17 - 39 (in the Findings of Fact):

31. ABC Produce, Inc. $72,474.92 [and *see* first sheet Schedule F]

9. Advantage Produce, Inc. $12,484.75 [and *see* first sheet Schedule F]

17. Benito Turrubiartes $16,300.00 [and *see* attachment sheet 1 of 28 Schedule F]

15. E & DA Farm $42,623.00 [and *see* attachment sheet 5 of 28 Schedule F]

11. ETR Merchandise Co. $22,837.20 [and *see* attachment sheet 6 of 28 Schedule F]

7. Green West Farm, Inc. $645.00 [and *see* attachment sheet 8 of 28 Schedule F]

16. Harmoni International Spice, Inc. $15,115.00 [and *see* attachment sheet 9 of 28 Schedule F]

28. Joscott, Inc. d/b/a House of Produce $12,800.50 [and *see* attachment sheet 10 of 28 Schedule F]

8. JML Produce, Inc. $15,879.58 [and *see* attachment sheet 10 of 28 Schedule F]

13. L & C Distributing, Inc. $10,263.00 [and *see* attachment sheet 14 of 28 Schedule F]

19. Lucky Hong Farm, Inc. $48,979.00 [and *see* attachment sheet 15 of 28 Schedule F]

29. Lucky Taro, Inc. $18,124.35 [and *see* attachment sheet 15 of 28 Schedule F]

30. Maui Fresh International $82,886.40 [and *see* attachment sheet 16 of 28 Schedule F]

24. QSI $43,788.00 [and *see* attachment sheet 19 of 28 Schedule F]

20. Quality 1st Produce, Inc. $95,179.40 [and *see* attachment sheet 19 of 28 Schedule F]

10. T Fresh Company d/b/a Yes Produce $81,161.30 [and *see* attachment sheet 23 of 28 Schedule F]

32. T & C Company $7,204.00 [and *see* attachment sheet 23 of 28 Schedule F]

24. TAC Produce, Inc. $53,262.50 [and *see* attachment sheet 23 of 28 Schedule F]

26. The Choice Produce $17,893.50 [and *see* attachment sheet 24 of 28 Schedule F]

14. Times Produce, Inc. $23,906.50 [and *see* attachment sheet 24 of 28 Schedule F]

22. Two HK, Inc. $17,251.10 [and *see* attachment sheet 24 of 28 Schedule F]

6. Valley Fruit and Produce, Inc. $47,857.75 [and *see* attachment sheet 25 of 28 Schedule F]

12. WF Produce Trading $8,892.00 [and *see* attachment sheet 26 of 28 Schedule F]

49. For the foregoing reasons, the following Order is issued.

Order

50. The Square Group, LLC's PACA license is **revoked**, pursuant to section 8(a) of the PACA, 7 U.S.C. § 499h(a).

51. The portions of the Complaint are **dismissed**, relating to whether The Square Group, LLC paid, in accordance with the PACA, the following 9 produce sellers identified by the same number shown for them in Appendix A to the Complaint:

1. Moo Gung International, Inc. $358,927.15 [DISPUTED, attachment sheet 16 Schedule F]

2. Morita Produce $4,750.00 [not found in Schedule F]

3. Brizo's Citrus, Inc. $5,020.00 [not found in Schedule F]

4. Giumarra Bros. Fruit Co., Inc. $3,941.00 [not found in Schedule F]

5. Aramburro Produce, Inc. $4,614.40 [not found in Schedule F]

18. Guy Taghavi $13,998.00 [not found in Schedule F]

21. Spring Land, Inc. $5,869.00 [not found in Schedule F]

23. D.P. Farms, Inc. $16,671.50 [not found in Schedule F]

27. Fuji Natural Foods, Inc. $8,577.90 [not found in Schedule F].

52. This Order shall take effect on the 11th day after this Decision and Order becomes final.

53. Any employment sanctions attendant to this Decision and Order pursuant to section 8(b) of the PACA, 7 U.S.C. § 499h(b), shall take effect on the 11th day after this Decision and Order becomes final.

54. See next paragraph for when this Decision and Order becomes final.

Finality

55. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 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 shall be served by the Hearing Clerk upon each of the parties (to Respondent's counsel by certified mail; to AMS's counsel by in-person delivery to an Office of the General Counsel representative).

Done at Washington, D.C.
this 28th day of April 2016

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
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Washington, DC 20250-9203
202-720-4443
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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

. . . .

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

. . .

§ 1.145 Appeal to Judicial Officer.

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

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

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

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

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

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

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

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

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

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

7 C.F.R. § 1.145