

# **UNITED STATES DEPARTMENT OF AGRICULTURE**

## **BEFORE THE SECRETARY OF AGRICULTURE**

PACA Docket No. D-08-0189

In re: FJB, INC., d/b/a EMPIRE PRODUCE,

Respondent

### **DEFAULT DECISION AND ORDER**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter “PACA”), instituted by a Complaint filed on September 25, 2008, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period May 1, 2006, through March 30, 2007, Respondent FJB, Inc., d/b/a Empire Produce (hereinafter “Respondent”), failed to make full payment promptly to 63 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,325,025.50 for 501 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

A copy of the Complaint was served on Respondent’s principal, Robert Garsha, by certified mail on October 4, 2008. A copy of the Complaint was also served on Respondent’s attorney, Mark Mandell, Esq., by certified mail on September 27, 2008. Respondent failed to file an answer as prescribed by section 1.136 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136; hereinafter “Rules of Practice”). Pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. §

1.136(c)), Respondent's failure to file an answer constitutes an admission of the allegations in the Complaint. The time for filing an answer having run, and upon the motion of Complainant for the issuance of a Decision Without Hearing by Reason of Default, the following decision and order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. FJB, Inc., d/b/a Empire Produce, is a corporation organized and existing under the laws of the State of New York. Its business and mailing address was 337 Row C, New York City Terminal Market, Bronx, New York 10474. Respondent ceased business operations on March 2, 2007. Respondent's current mailing addresses are through its attorney, Mark Mandell, Esq., 42 Herman Thau Road, Annandale, New Jersey, 08801, and through its principal, Robert Garsha, in the State of California.

2. At all times material to this decision, Respondent was licensed under the provisions of the PACA. License number 2007-0742 was issued to Respondent on April 30, 2004. The license terminated on April 30, 2007, 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 1, 2006, through March 30, 2007, failed to make full payment promptly to 63 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,325,025.50 for 501 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

4. On February 6, 2007, a civil complaint was filed against Respondent, and Respondent's principal, Robert Garsha, in the United States District Court, Southern District of New York to

enforce the trust provisions of the PACA (7 U.S.C. § 499e(c)). The civil complaint was designated case number 1:07-cv-00898-CM-DFE. Final judgments have been entered as to the PACA claims of 25 of the 63 sellers listed in paragraph III of the Complaint. In all instances, the court found that Respondent was liable to the 25 sellers to the extent of their PACA claims. The amounts found to be due and owing to 23 of the 25 sellers in the PACA trust case were greater than or equal to the amounts in the Complaint. The chart below compares the amounts due per the Complaint to the amounts found to be due and owing in the PACA trust case by the New York district court.

<b>Seller Name</b>	<b>Complaint</b>	<b>PACA Trust Case</b>
Hintz Reiman, Inc., d/b/a River City Produce	\$27,890.50	\$27,913.00
Team Produce International, Inc.	\$12,025.50	\$12,025.50
Natural Selection Foods, LLC, d/b/a Earthbound Farms	\$26,867.45	\$28,143.45
William Consalo & Sons Farms, Inc.	\$24,262.55	\$24,332.55
Classic Salads, LLC	\$55,548.25	\$58,136.62
Eco Farms Sales, Inc.	\$14,824.00	\$14,824.00
Stellar Distributing, Inc.	\$18,316.80	\$18,316.80
John Vena Specialties, LLC	\$3,709.50	\$3,836.50
Ger-Nis International, LLC	\$89,733.65	\$85,910.65
Church Brothers, LLC	\$75,519.85	\$79,562.40
Calavo Growers, Inc.	\$153,841.60	\$153,841.60
J. Marchini & Son, Inc.	\$18,156.50	\$18,396.50
Fresh Directions International, Inc.	\$58,957.50	\$59,514.00
Nasiff International, Inc.	\$6,416.00	\$6,416.00
Gourmet Veg-Paq, Inc.	\$56,639.00	\$56,639.00
Robert Masha Sales, Inc.	\$84,953.75	\$81,332.15
Consolidated Farms, Inc., d/b/a Crystal Valley Foods	\$79,365.75	\$90,683.50
Top Banana, LLC	\$10,236.25	\$10,236.25
Nathel & Nathel, Inc.	\$11,782.00	\$12,745.50
Pio Enterprises, Inc.	\$13,593.50	\$13,593.50
Maurice A. Auerbach, Inc.	\$9,673.50	\$9,673.50
A.J. Trucco, Inc.	\$980.00	\$980.00
G&V Farms, LLC	\$82,507.50	\$82,607.50
Del Monte Fresh Produce N.A., Inc.	\$58,699.00	\$58,699.00

Moog Marketing, Inc.	\$11,173.00	\$11,173.00
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### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly to 63 sellers in the total amount of \$1,325,025.50 for 501 lots of perishable agricultural commodities constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the order below is issued.

### **Order**

Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

This order shall take effect on the 11th day after this decision becomes final.

Pursuant to the Rules of Practice governing procedures under the PACA, 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, 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.  
December 16, 2008

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**PETER M. DAVENPORT**  
Administrative Law Judge

