

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	I & G Docket No. 04-0001
)	
Lion Raisins, Inc., a California)	
corporation; Lion Raisin)	
Company, a partnership or)	
unincorporated association;)	
Lion Packing Company,)	
a partnership or unincorporated)	
association; Alfred Lion, Jr., an)	
individual; Daniel Lion, an)	
individual; Jeffrey Lion, an)	
individual; Bruce Lion, an)	
individual; Larry Lion, an)	
individual; and Isabel Lion, an)	Decision and Order as to
individual,)	Lion Raisins, Inc.; Alfred Lion, Jr.;
)	Daniel Lion; Jeffrey Lion; and
Respondents)	Bruce Lion

PROCEDURAL HISTORY

The Associate Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], instituted this debarment proceeding by filing a Complaint on November 20, 2003.¹ The Administrator instituted the proceeding under the Agricultural Marketing Act of 1946, as amended

¹The Administrator filed an Amended Complaint on June 8, 2004, and a Second Amended Complaint on September 10, 2004.

(7 U.S.C. §§ 1621-1632) [hereinafter the Agricultural Marketing Act]; the regulations governing the inspection and certification of processed fruits and vegetables (7 C.F.R. pt. 52) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice Governing Withdrawal of Inspection and Grading Services (7 C.F.R. pt. 50) [hereinafter the Rules of Practice]. The Administrator seeks to debar Lion Raisins, Inc.; Lion Raisin Company; Lion Packing Company; Alfred Lion, Jr.; Bruce Lion; Daniel Lion; Jeffrey Lion; Larry Lion; and Isabel Lion [hereinafter Respondents] for violations of the Agricultural Marketing Act and the Regulations.

The Administrator alleges Respondents engaged in misrepresentation or deceptive or fraudulent practices or acts in connection with the use of inspection certificates and/or inspection results during the period May 24, 1996, through May 11, 2000 (Second Amended Compl. ¶¶ 11-198). Respondents answered, denying the factual allegations contained in the complaints and asserting affirmative defenses.

Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] dismissed the allegations in paragraphs 11 through 89 of the Second Amended Complaint pertaining to conduct occurring more than 5 years prior to the date of the filing of the Complaint as being barred by the statute of limitations in 28 U.S.C. § 2462 (December 20, 2005, Memorandum of Conference and Order at 3).

The ALJ conducted an oral hearing, commencing February 21, 2006, and continuing through February 23, 2006, in Washington, DC, and then reconvening in Fresno, California, on February 27, 2006, and concluding on March 3, 2006. Colleen A. Carroll, Office of General Counsel, United States Department of Agriculture [hereinafter USDA], Washington, DC, represented the Administrator (Tr. 4). Wesley T. Green, Selma, California, represented Lion Raisins, Inc. (Tr. 5). James A. Moody, Washington, DC, represented Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion (Notice of Entry of Appearance, filed December 1, 2005; Tr. 6-7). During the oral hearing, the Administrator called two witnesses and Respondents called 13 witnesses. In addition to the transcript of the hearing, the evidence includes 74 exhibits introduced by the Administrator that were admitted and 22 exhibits introduced by Respondents that were admitted. The Administrator and Respondents submitted post-hearing briefs in support of their respective positions.

On June 9, 2006, the ALJ issued a Decision and Order in which he: (1) concluded that on 33 occasions, during the period November 11, 1998, through May 11, 2000, Respondents willfully violated section 203(h) of the Agricultural Marketing Act (7 U.S.C. § 1622(h)) and section 52.54(a) of the Regulations (7 C.F.R. § 52.54(a)) by engaging in misrepresentation or deceptive or fraudulent practices or acts and (2) debarred Respondents from receiving inspection services under the Agricultural Marketing Act and

the Regulations for a period of 5 years.² On July 13, 2006, Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion [hereinafter the Lions] appealed to, and requested oral argument before, the Judicial Officer.³ On September 25, 2006, the Administrator filed a response to the Appeal Petition. The Hearing Clerk transmitted the record to the Judicial Officer on October 2, 2006, but later withdrew it. On June 5, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor modifications, the ALJ's Decision and Order as the final Decision and Order as to Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion.

²*In re Lion Raisins, Inc.*, 65 Agric. Dec. 193, 224, 232-33 (2006).

³On June 15, 2006, the Hearing Clerk served Lion Raisin Company, Lion Packing Company, and Isabel Lion with the ALJ's Decision and Order (United States Postal Service Domestic Return Receipts for article number 7004 1160 0004 4087 9979 and article number 7004 1160 0004 4087 9368), and on June 16, 2006, the Hearing Clerk served Larry Lion with the ALJ's Decision and Order (United States Postal Service Domestic Return Receipt for article number 7004 1160 0004 4087 9993). Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion did not file an appeal petition within 30 days after service of the ALJ's Decision and Order and the ALJ's Decision and Order became final and effective as to Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion 35 days after service of the ALJ's Decision and Order on Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion. (See 7 C.F.R. § 1.142(c)(4).)

DECISION

Background

David W. Trykowski, Chief of Investigations, Agricultural Marketing Service [hereinafter AMS] Compliance Office, USDA, testified that the investigation of the Lions was initiated after the AMS inspection office in Fresno, California, received an anonymous telephone call indicating Bruce Lion was falsifying USDA inspection certificates (Tr. 37). The information from the anonymous caller was subjected to a “credibility check” which was accomplished by sending letters to 109 overseas buyers of California raisins requesting that they provide information concerning the USDA inspection certificates they had received in connection with their raisin purchases (Tr. 38). The information provided in the responses received was then compared to the USDA inspection records maintained in the AMS Fresno inspection office, a preliminary report was drafted confirming that irregularities had been found, and the matter was referred to the Office of the Inspector General, USDA, for criminal investigation (Tr. 38-49). Incident to the criminal investigation, a search warrant was obtained and executed on October 19, 2000, and a number of the Lions’ records were seized. These records primarily pertained to the Lions’ export customers and covered the period from approximately 1995 through October 2000 (Tr. 49).

Mr. Trykowski personally reviewed both the USDA records and the Lions’ records, compared the parallel sets of records for each transaction, and noted the

non-conforming records (Tr. 49-55).⁴ A comparison of the Lions' shipping files with USDA's inspection files reveals that during the period November 11, 1998, through May 11, 2000, different results were reported in the respective files with respect to 33 invoices in three general areas: moisture, grade, and size. Moisture differences were the most prevalent, with 20 such variances. Grade differences, with changes from U.S. Grade C to U.S. Grade B,⁵ accounted for 14 variances, and there was a single instance in which a mixed-size determination was changed to midget size.⁶

Aside from the single instance in which a USDA certificate was altered to lower the moisture results from 16.0% to 15.4% (CX 72-CX 73), the allegations are primarily based upon the Lions' use of facsimile certificates prepared on Lion letterhead, but prepared in the same general format and containing the same information as that used by USDA and in which the source of the sample is identified as being an "officially drawn sample," a term defined in the Regulations.⁷ (7 C.F.R. § 52.2.)

⁴The results of the analysis of the two sets of records are summarized in tabular form in CX 126A. The exhibit identifies the type of conduct complained of, the alteration involved, the USDA inspection certificate (if applicable), the date of inspection, the customer, the product, the Lions' order number, the sales amount, the cash incentive received, the applicable paragraphs of the Second Amended Complaint, and the applicable exhibit numbers.

⁵U.S. Grade B requires a higher quality of raisin than U.S. Grade C.

⁶The record contains evidence of two instances in which both moisture and grade variances were present (CX 56-CX 57 and CX 59).

⁷The Lions note the use of a certificate, similar to the Lion certificate, by
(continued...)

The Lions argue, because the moisture content of raisins tends to drop rapidly after processing and even after packing, USDA moisture testing does not accurately reflect results that are representative of the moisture content of the raisins when they are received by the Lions' overseas customers. The Lions also suggest their customers were neither misled nor dissatisfied with the raisins they received,⁸ and USDA's testing results often are so negligently performed as to be inherently unreliable (Tr. 651, 1435). The Lions further argue the results from their own independent quality control moisture testing, the specifics of which differ from those used by USDA, are a far more accurate indication of actual raisin moisture content than USDA results.⁹ However, the relative accuracy of USDA testing results and the Lions' testing results is not at issue in the instant proceeding. Instead, the issue is whether the Lions engaged in misrepresentation or fraudulent or deceptive practices or acts. The record amply demonstrates a pattern of

⁷(...continued)

Sun-Maid (RX 3-0187 (LR 0745)). On Sun-Maid's certificate, however, the source of samples is "Sun-Maid" rather than "Officially Drawn."

⁸The testimony indicates that only one of the Lions' customers (Western Commodities) involved in this proceeding is no longer purchasing raisins from the Lions, but that Western Commodities is no longer purchasing California raisins (Tr. 1462).

⁹The differences between USDA and the Lions' testing included the stage of processing at which the raisins were tested for moisture, with the Lions testing before the application of oil in the processing and USDA testing after application of the oil. Other differences include the timing of the testing as well as the size of the sample. The Lions would also retain samples and would test the retained sample on occasion.

repeated conduct by the Lions to either deliberately alter or impermissibly misrepresent USDA inspection results to meet the Lions' needs.

As a remedy, the Administrator seeks debarment of each of the Lions for a period of 15 years (Tr. 374). Although the "remedy" witness, G. Neil Blevins, the Associate Deputy Administrator for Compliance Safety and Security, AMS, testified USDA did not intend to end the use of the Lion name on raisins sold from California (Tr. 516),¹⁰ he did indicate that in almost 20 years on this job, he had never seen a company as unethical in its dealing with USDA (Tr. 377) and stated that "[i]t is clearly the aim of the Agency that we never wish to provide service to this corporation or this family ever again." (Tr. 375.) In arriving at the 15-year period, Mr. Blevins suggested that normally debarment for 2 to 4 years for each willful violation would be appropriate in cases such as this one (Tr. 374-75).

On the basis of the evidence before me, I find the Lions engaged in a pattern of misrepresentation or deceptive or fraudulent practices or acts in connection with the use of inspection certificates and/or inspection results as alleged but the requested relief of debarment for 15 years sought by the Administrator against each of the Lions is excessive.

¹⁰Mr. Blevins was also asked if USDA intended to put the Lion family out of the raisin growing, handling, and marketing business and he answered "[a]bsolutely not and I don't see how it would do that." (Tr. 522.)

Findings of Fact

1. Lion Raisins, Inc., is a California corporation, formerly known as Lion Raisins and Lion Enterprises, Inc. (CX 1 at 6-14), with offices currently in Selma, California.¹¹ Lion Raisins, Inc., processes, packs, and sells processed raisins both domestically and internationally, being the second largest such company in the raisin industry. Lion Raisins, Inc., is a closely held Subchapter S family corporation, with the corporation's 1,000 shares of stock being held by only three individuals: Alfred Lion, Jr. (500 shares), Isabel Lion (499 shares), and Larry Lion (1 share).¹² (Tr. 1085-86, 1113-17.) Lion was incorporated in 1967;¹³ however, members of the Lion family have been in the raisin business for over 100 years (Tr. 1117-18).

2. Alfred Lion, Jr., is one of Lion Raisins, Inc.'s directors and is named as Lion Raisins, Inc.'s president on filings with the Raisin Administrative Committee [hereinafter the RAC] (CX 3 at 1-17). On other filings with the California Secretary of State's Office, Alfred Lion, Jr., is listed as the chief executive officer, chief financial officer, and registered agent of Lion Raisins, Inc. (Tr. 1186-88; CX 1 at 4-5). Bruce Lion, Daniel Lion, and Jeffrey Lion are Alfred Lion, Jr.'s sons. The Lion family

¹¹Lion Raisins, Inc., moved its operation from 3310 East California Avenue, Fresno, California, to 9500 South Dewolf, Selma, California, in 1999 (CX 3; Tr. 1373).

¹²Isabel Lion is Herbert Lion's widow; Larry Lion is their son (Tr. 1086).

¹³Lion was initially incorporated as Lion Enterprises, Inc.; however, its failure to file an annual report with the California Secretary of State's Office allowed another to take that name and the corporation was renamed Lion Raisins, Inc. (Tr. 1084).

involvement in the raisin industry began with Alfred Lion Jr.'s grandfather; prior to Lion's incorporation, he and his brother, Herbert Lion, owned the partnership known as Lion Packing Company (CX 1 at 40-46; Tr. 1082).

3. Bruce Lion is listed as one of Lion Raisins, Inc.'s directors on the 1997 and 2000 filings with the California Secretary of State and as a vice president of Lion Raisins, Inc., on the filings with the RAC for the crop years 1996 through 2004. Bruce Lion exercised responsibility and control over the sales and shipping operations of Lion Raisins, Inc. (CX 1 at 4-5, CX 3 at 1-11; Tr. 1111-21). Bruce Lion testified that he was an officer and director of the corporation (Tr. 1350) and that he exercised exclusive authority over whether raisins were to be "released" (Tr. 1467).

4. During 1998, 1999, and 2000, Daniel Lion exercised responsibility and control over Lion Raisins, Inc.'s production or processing department and was listed as one of Lion Raisins, Inc.'s vice presidents in the filing with the RAC only in 1997 (CX 3 at 9, CX 4; Tr. 1119-21).

5. During 1998, 1999, and 2000, Jeffrey Lion exercised responsibility and control over Lion Raisins, Inc.'s ranch and grower's operations and was named as one of Lion Raisins, Inc.'s vice presidents in filings with the RAC beginning in 1992 (CX 3 at 1-15; Tr. 119-21).

6. Lion failed to observe corporate formalities in numerous ways, including filing of inconsistent documents with the California Secretary of State's Office and the

RAC, naming different individuals as officers and directors of Lion with the California Secretary of State's Office and the RAC, failing to file required annual reports (which resulted in Lion losing its original corporate name of Lion Enterprises, Inc.), naming of officers of the corporation with a variety of different titles, using titles other than those contained on filings with the California Secretary of State's Office, designating individuals as vice presidents of the corporation without apparent approval or action by the board of directors,¹⁴ failing to hold annual shareholder meetings, failing to hold annual meetings of the board of directors, and failing to maintain accurate and appropriate minutes of those meetings¹⁵ (CX 1 at 3-4, CX 127; Tr. 1100-06, 1113-17, 1121-22).

7. During the period November 11, 1998, through May 11, 2000, as is indicated in the AMS Inspection and Grading Manual (RX 3-0189 (LR 0748-1025)), AMS inspectors recorded the results of their inspection sampling on line check sheets. AMS inspectors provided copies of their line check sheets to Lion Raisins, Inc. AMS

¹⁴The use of various titles was explained as "being management titles" rather than a corporate officer (Tr. 1044, 1046).

¹⁵Alfred Lion, Jr., testified that Susan Keller, one of Lion Raisins, Inc.'s employees, prepared the minutes, but did not attend the meetings (Tr. 1109-10). In one set of minutes, Larry Lion was indicated as being present for the meeting of the board of directors for 1999, 2000, and 2001; however, the testimony indicated Larry Lion did not attend corporate meetings or otherwise perform the duties of corporate secretary (Tr. 1102-05, 1109-10). None of the minutes refers to any litigation in which Lion Raisins, Inc., was involved, the retention of outside counsel, or personnel appointments, such as that of Kalem Barsarian as general manager.

inspectors retained the original line check sheets, along with the pack-out report provided by the packer. (RX 3-0189 (LR 0955, 0957).)

8. During the period November 11, 1998, through May 11, 2000, AMS' Processed Products Branch used Form FV-146 Certificate of Quality and Condition (Processed Foods), a packet form that comprised multiple pages, with the top page on white paper, identified as "original" in red in the lower right-hand corner, followed by seven blue tissue pages (separated by carbon paper) each identified by the word "copy" (also in red) in the lower right-hand corner. Each FV-146 form was identifiable by a singular serial number at the top right side. (Tr. 39-40; CX 47 at 15-16.) On the top page only, the serial number was printed in red. (See, e.g., CX 47 at 15.)

9. During the period November 11, 1998, through May 11, 2000, if requested by the packer, AMS inspectors prepared a certificate worksheet, using the inspection information from their line check sheets, and product labeling and buyer information supplied by the packer (RX 3-0189 (LR 0998)). The worksheet was essentially a "draft" of the inspection certificate (Tr. 40-41).

10. Packers could and did request USDA Certificates of Quality and Condition (FV-146) after the product had been shipped. In that event, the inspector would prepare the form using the inspection documents and the order information (RX 3-0189 (LR 0980)).

11. Once the FV-146 was prepared and signed, the original and up to four of the blue tissue copies were provided to the packer (or designee) (RX 3-0189 (LR 0981)). USDA retained a blue tissue copy in its files, along with any order information that had been provided by the packer when the certificate was requested, and the certificate worksheet, if it had been returned to the inspector (Tr. 39-42; RX 3-0189 (LR 0981)). The certificates were recorded in a ledger maintained by the AMS Inspection Service, with voided certificates being so noted. The voided original certificate was retained in the USDA files, and all blue tissue copies were destroyed. (CX 14; Tr. 39-42, 52-53; RX 3-0189 (LR 0976-77).) If the AMS inspector could not recover the original and all of the blue tissue copies, the inspector would issue a superseded certificate, according to the procedures set forth in the AMS inspection manual (Tr. 43; RX 3-0189 (LR 0977)).

12. AMS filed the blue tissue copies, in the case of valid certificates, and the original, in the case of void certificates, together in numerical order (Tr. 40-42; RX 3-0189 (LR 0977, 0981)).

13. During the period November 11, 1998, through May 11, 2000, AMS inspectors performed on-line in-plant inspections of product at Lion Raisins, Inc. Although AMS personnel were provided with office space, the inspectors lacked the capability of printing official inspection certificates and instead provided Lion Raisins, Inc.'s shipping clerks with blank FV-146 forms (CX 4). When Lion Raisins, Inc., requested a certificate, it would generally give the AMS inspector a copy of Lion Raisins,

Inc.'s "outside" order form, which contained information regarding the buyer, codes, labels, and product specifications (Tr. 84).

14. Lion Raisins, Inc.'s shipping files in evidence typically contain a customer order form, prepared by the sales department, and an "inside" invoice and "invoice trail," prepared by the shipping department. The customer order form, prepared by the sales department, contains the customer's order specifications. The "inside" invoice is an internal shipping department document that precedes the "invoice trail." The "invoice trail" denotes the customer's specifications, the contract price, the manner and date of shipment, and, usually, the date when the order documentation was mailed to the customer, generally by United Parcel Service.

15. Under a program operated by the RAC, packers who sold raisins for export could apply for, and receive, "cash back" for such sales by filing a RAC Form 100C. The amount of "cash back" was based on the weight of the raisins (See, e.g., CX 47 at 12). Lion Raisins, Inc., applied for "cash back" from virtually all of the sales that are the subject of the instant proceeding.¹⁶

16. Once Lion Raisins, Inc., developed a "Lion" certificate, Lion implemented the practice of charging its customers for USDA certificates, thereby creating a disincentive to request the USDA certificate FV-146 (CX 7). Customers were advised a "Lion" certificate would be provided without charge and Lion certificates contained the

¹⁶See generally Findings of Fact numbers 18-49. CX 126A does not reflect "cash back" from all transactions.

same information as USDA certificates. (See CX 73 at 44 (“Please note that the Lion certificate and the USDA certificate for each order is the same.”)).

17. Lion certificates were prepared not by Lion Raisins, Inc.’s quality control personnel, but rather by employees in the shipping department (CX 7). Lion certificates were prepared on Lion Raisins, Inc.’s letterhead but followed the same format used on the FV-146 in the body of the document, providing the same information categories found on the USDA worksheet and/or USDA certificate.

18. Order Number 43387. On October 26, 1998, Western Commodities, Ltd., contracted for 1,660 cases of oil-dressed, select raisins that were certified U.S. Grade B (CX 47 at 1-2). On November 11, 1998, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 46 at 8).¹⁷ Lion Raisins, Inc., requested an inspection certificate, USDA inspectors prepared a worksheet, provided it to Lion Raisins, Inc.’s shipping department, USDA certificate Y-869392 was prepared, and the inspector signed it (CX 46 at 1). Lion Raisins, Inc., retained the original inspection certificate Y-869392 and one copy in its shipping file (CX 47 at 15-16). Lion Raisins, Inc.’s shipping file contains a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES:

¹⁷According to the line check sheet, one pallet (which inspectors had found failed because of mold) was set aside, and Lion Raisins, Inc., elected to dump it back into the processing line. On a subsequent sampling, the raisins were certified as meeting U.S. Grade C, which was accepted by Lion Raisins, Inc.’s processing personnel. (CX 46 at 8 (see entries for mold and remarks: “C grade OK by Graham”).)

Officially Drawn” and contained the identical information concerning the raisins as the USDA certificate — except that “U.S. Grade B” was substituted for the U.S. Grade C found by USDA inspectors (CX 47 at 14). Lion Raisins, Inc., mailed the order documents to the buyer on December 2, 1998, and requested and received \$13,661.76 “cash back” from the RAC (CX 47 at 1, 12).

19. Order Number 43588. On November 5, 1998, Central Import contracted for 2,880 cases of oil-dressed, midget raisins, not more than 18% moisture (CX 99 at 1). On November 28, 1998, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant finding moisture levels of 17.8 to 18.0% in the officially drawn samples (CX 98 at 1). Lion Raisins, Inc., requested an inspection certificate, USDA inspectors prepared a worksheet, provided it to Lion Raisins, Inc.’s shipping department, USDA certificate B-033610 was prepared, and the inspector signed it (CX 98 at 1-2). Lion Raisins, Inc., retained the original USDA certificate B-033610 and one copy in its shipping file (CX 99 at 18-19). Lion Raisins, Inc.’s shipping file contains a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA certificate — except that the “Moisture” was stated to be “17.8 Percent” rather than 17.8 to 18.0% as was found by the USDA inspectors (CX 99 at 17). Lion Raisins, Inc., mailed the order documents to the buyer on December 10, 1998, and requested and received \$23,702 “cash back” from the RAC (CX 99 at 1, 13).

20. Order Number 43598. On November 5, 1998, Central Import placed an order for 1,440 cases of oil-treated, midget raisins, U.S. Grade B (CX 49 at 1). On January 6, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 114 at 7). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 49 at 11). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information as the USDA worksheet — except that "U.S. Grade B" was substituted for the U.S. Grade C found by the USDA inspectors (CX 49 at 6, 11). Lion Raisins, Inc., mailed the order documents to the buyer on January 20, 1999, and requested and received \$10,572.50 "cash back" from the RAC (CX 49 at 2, 9).

21. Order Number 43601. On November 5, 1998, Central Import placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B (CX 51 at 1). On February 3, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as mixed raisins and as U.S. Grade C (CX 50 at 6, CX 51 at 14).¹⁸ The raisins were shipped that day (CX 51 at 1).

¹⁸According to the line check sheet, the samples exceeded the maximum allowable
(continued...)

Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 50 at 6). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "U.S. Grade B" was substituted for the U.S. Grade C found by the USDA inspectors (CX 51 at 13-14).¹⁹ Lion Raisins, Inc., mailed the order documents to the buyer on February 11, 1999, and requested and received \$12,187.75 "cash back" from the RAC (CX 51 at 1, 11).

22. Order Number 43603. On November 5, 1998, Central Import placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B (CX 101 at 1). On February 3, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as mixed size and as U.S.

¹⁸(...continued)

number of substandard and underdeveloped raisins (CX 50 at 6). The raisins were certified as meeting U.S. Grade C, which was accepted by Lion Raisins, Inc.'s processing personnel (CX 50 at 6 (see remarks: "C grade sub OK'd by Robert"))).

¹⁹The USDA certificate worksheet contains both the range and average berry count; the "Lion" certificate gives only the average. This difference is present in a number of transactions.

Grade C (CX 50 at 6).²⁰ Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 50 at 6, CX 101 at 12, 21). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information as the USDA worksheet — except that the "U.S. Grade B" was substituted for the U.S. Grade C found by the USDA inspectors (CX 101 at 12, 21-22). Lion Raisins, Inc., mailed the order documents to the buyer on March 3, 2000, and requested and received \$12,187.75 "cash back" from the RAC (CX 101 at 1, 9).

23. Order Number 43612. On November 5, 1998, Shoei (U.S.A.) Foods, Inc., placed an order for 1,250 cases of oil-treated, midget raisins, U.S. Grade B, and requested a USDA certificate (CX 103 at 1). On November 21, 1998, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 102 at 1). Lion Raisins, Inc., requested an inspection certificate after the raisins were loaded in a container and sealed. USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department

²⁰The line check sheet reflects that the samples exceeded the maximum allowable number of substandard and underdeveloped raisins and were graded as U.S. Grade C. This grade was accepted by Lion Raisins, Inc. (see remarks: "C grade sub OK'd by Robert"). (CX 50 at 6.)

(CX 102 at 2). Lion Raisins, Inc., returned the USDA worksheet and a typed USDA certificate Y-869393 which the inspector signed (CX 102 at 1, CX 103 at 12). The original USDA certificate Y-869393 and a blue tissue copy were found in Lion Raisins, Inc.'s shipping file for this order (CX 103 at 12-13). The blue tissue copy was annotated with the words "don't send" written on its face in pencil (CX 103 at 13). Lion Raisins, Inc.'s shipping file also contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate — except that the "GRADE" is typed as "U.S. Grade B" instead of the U.S. Grade C found by the USDA inspectors (CX 103 at 11-12). Lion Raisins, Inc., mailed the order documents to the buyer on November 23, 1998, and requested and received \$8,199.39 "cash back" from the RAC (CX 103 at 1, 10). On the "inside" order sheet located in Lion Raisins, Inc.'s shipping file, there was a post-it note from "Yvonne" to "Bruce," stating:

Bruce—
USDA shows Grade C -
Do you want to send Lion
Cert of Quality instead
of USDA for both orders.
Tx, Yvonne

In pencil, the word "yes" was written in response. (CX 103 at 2.)

24. Order Number 43694. On November 12, 1998, Central Import placed an order for 1,440 cases of oil-treated, midget raisins, U.S. Grade B (CX 105 at 1). On November 24, 1998, USDA inspectors sampled processed raisins on-line at Lion Raisins,

Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 104 at 6). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 104 at 2-3). Lion Raisins, Inc., returned the worksheet and a typed certificate Y-869397 (CX 104 at 1, CX 105 at 24-25). The original USDA certificate Y-869397 (and one official copy) were found in Lion Raisins, Inc.'s shipping file for this order (CX 105 at 24-25). Lion Raisins, Inc.'s shipping file also contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate — except that the "U.S. Grade B" is substituted for the U.S. Grade C found by the USDA inspectors (CX 105 at 23). Lion Raisins, Inc., mailed the order documents to the buyer on December 8, 1998, and requested and received \$15,025.38 "cash back" from the RAC (CX 105 at 1, 13).

25. Order Number 43922. On December 1, 1998, Farm Gold placed an order for 3,200 cases of oil-treated, midget raisins, U.S. Grade B (CX 107 at 1). On November 29, 1998, and December 6, 1998, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 105 at 5, 8). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 106 at 2). Lion Raisins, Inc., returned the worksheet and a typed certificate B-033629 (CX 106 at 1, CX 107 at 33-34). The original USDA certificate

B-033629 (and one of the official copies) were found in Lion Raisins, Inc.'s shipping file for this order (CX 107 at 33-34). In addition, the shipping file contained a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate — except that the "U.S. Grade B" is substituted for the U.S. Grade C found by the USDA inspectors (CX 107 at 32). Lion Raisins, Inc., mailed the order documents to the buyer on December 24, 1998, and requested and received \$33,361.84 "cash back" from the RAC (CX 107 at 3, 22).

26. Order Number 43956. On December 3, 1998, Farm Gold placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B (CX 109 at 1). On January 20, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 108 at 5, CX 109 at 21). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 109 at 21). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "U.S. Grade B" was substituted for the U.S. Grade C found by the USDA inspectors (CX 109 at 20-21). Lion Raisins, Inc., mailed the

order documents to the buyer and requested and received \$15,844.08 “cash back” from the RAC (CX 109 at 1, 12).

27. Order Number 43957. On December 3, 1998, Farm Gold placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B, and requested a USDA certificate (CX 111 at 1, 4). On January 20, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 108 at 5, CX 111 at 25). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 111 at 25). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA worksheet — except that the “U.S. Grade B” was substituted for the U.S. Grade C found by the USDA inspectors. (CX 111 at 21, 25.) Lion Raisins, Inc., mailed the order documents to the buyer and requested and received \$15,844.08 “cash back” from the RAC (CX 111 at 1, 13).

28. Order Number 43975. On December 4, 1998, Central Import Muenster placed an order for 2,880 cases of oil-treated, midget raisins, U.S. Grade B (CX 53 at 2). On December 16, 1998, USDA inspectors sampled processed raisins on-line at Lion

Raisins, Inc.'s Fresno plant grading the officially drawn samples as U.S. Grade C (CX 52 at 17, CX 53 at 13-14). Lion Raisins, Inc., requested an inspection certificate after the raisins were loaded in a container and sealed.²¹ USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 52 at 2). Lion Raisins, Inc., returned the worksheet and a typed certificate B-033631 (CX 53 at 13-14). Lion Raisins, Inc.'s shipping file contained the original USDA certificate and a photocopy as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate — except that the "U.S. Grade B" was substituted for the U.S. Grade C found by the USDA inspectors (CX 53 at 12-14). Lion Raisins, Inc., mailed the order documents to the buyer on January 20, 1999, and requested and received \$23,682.12 "cash back" from the RAC (CX 53 at 1, 10).

29. Order Number 44120. On December 14, 1998, Navimpex, S.A., placed an order for 1,660 cases of oil-treated, select raisins, U.S. Grade B, with no more than 15% moisture and requested copies of the USDA's line check sheets (CX 55 at 1). On January 21, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant finding moisture levels of 16.4 to 16.5% in the officially drawn samples (CX 54 at 5, CX 55 at 7). Lion Raisins, Inc., requested an inspection certificate,

²¹CX 52 at 3. The document provided to the USDA inspectors reflects this order was loaded by "BH" in containers APMU 2751550 and TRIU 3706610 with seal numbers 0017053 and 0017054.

and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 55 at 7). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion Raisins, Inc.'s shipping file for this order contained the USDA worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn." (CX 55 at 6-7.) The Lion certificate contained the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "15.0 Percent" instead of the 16.4 to 16.5% found by the USDA inspectors (CX 55 at 6-7.) On the invoice, next to "LINE CHECK SHEETS," there appeared a handwritten notation "Do not send (per Bruce)." (CX 55 at 1.) Lion Raisins, Inc.'s shipping file also contained a copy (redacted) of the USDA's line check sheet for the inspection of these raisins. The copy bore a post-it note, in red ink:

Bruce—
Please note USDA
Line check sheets
show higher moisture
than spec.

Tx, Yvonne

The response, in pencil, said: "don't send or reduce them." The "don't send" was circled (CX 55 at 5). Lion Raisins, Inc., mailed the order documents to the buyer on February 3, 1999, and requested and received \$12,187.75 "cash back" from the RAC (CX 55 at 1, 15).

30. Order Number 44122. On December 14, 1998, Navimpex, S.A., placed an order for 1,660 cases of oil-treated, select raisins, U.S. Grade B, with no more than 15% moisture (CX 113 at 1). On March 1, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant finding moisture levels of 15.0 to 17.0% in the officially drawn samples (CX 112 at 4).²² Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department. Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion Raisins, Inc.'s shipping file for this order contained the USDA worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "15.0 Percent" rather than the 15.0 to 17.0% found by USDA inspectors (CX 113 at 14). Lion Raisins, Inc., mailed the order documents to the buyer on January 20, 1999, and requested and received \$15,844.08 "cash back" from the RAC (CX 57 at 1, 12).

31. Order Number 44184. On December 16, 1998, Heinrich Bruning placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B, with no more than 17% moisture (CX 57 at 1). On January 12, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant finding moisture levels of 16.7 to 17.0% in the

²²The USDA inspector noted that she "notified Joe on moisture." (CX 112 at 4.)

officially drawn samples and grading the raisins as U.S. Grade C (CX 56 at 4). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a certificate worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 57 at 22). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion Raisins, Inc.'s shipping file for this order contained the USDA worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "16.0 Percent" and the "GRADE" is typed as "U.S. Grade B" rather than the moisture of 16.7 to 17.0% and U.S. Grade C found by the USDA inspectors (CX 57 at 17, 22). Lion Raisins, Inc., mailed the order documents to the buyer on March 11, 1999, and requested and received \$12,187.75 "cash back" from the RAC (CX 113 at 1, 7).

32. Order Number 44185. On December 16, 1998, Heinrich Bruning placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B, with no more than 17% moisture (CX 59 at 1). On January 12, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant finding moisture levels of 16.7 to 17.0% in the officially drawn samples and grading the raisins as U.S. Grade C (CX 56 at 4). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 59 at 19). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion

Raisins, Inc.'s shipping file for this order contained the USDA worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "16.0 Percent" and the "GRADE" is typed as "U.S. Grade B" instead of the moisture level of 16.7 to 17.0% and U.S. Grade C found by the USDA inspectors (CX 59 at 18-19). Lion Raisins, Inc., mailed the order documents to the buyer on January 20, 1999, and requested and received \$15,844.08 "cash back" from the RAC (CX 59 at 1, 11).

33. Order Number 44351. On January 4, 1999, Central Import placed an order for 290 cases of oil-treated, midget raisins, with no more than 15.5% moisture (CX 115 at 1). On January 6, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Fresno plant finding moisture levels of 17% in the officially drawn samples (CX 114 at 7). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 115 at 21). Lion Raisins, Inc., returned a typed certificate B-033650 which stated that the raisins sampled were "officially drawn" and certified at 17% moisture (CX 114 at 1). Lion Raisins, Inc.'s shipping file contained the original USDA certificate B-033650 and the worksheet as well as a "Lion" certificate, signed by Rosangela Wisley, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate —

except that the “Moisture” was typed as “15.5%” rather than the 17% found by the USDA inspectors (CX 115 at 18-19, 21). Lion Raisins, Inc.’s shipping file also contains a post-it note from “RW” to “Bruce, as follows:

3/9

Bruce,
(See order attached)
The Berry count met the specs,
however the moisture did not.
According to USDA moisture
was 17%.

Tx,

RW

CX 115 at 15. Lion Raisins, Inc., mailed the order documents to the buyer on January 20, 1999, and requested and received \$2,768.03 “cash back” from the RAC (CX 115 at 1, 13).

34. Order Number 44488. On January 11, 1999, Heinrich Bruning placed an order for 4,980 cases of oil-treated, midget raisins, U.S. Grade B, with no more than 17% moisture (CX 61 at 1). On January 22, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant finding moisture levels of 16.6 to 17.0% in the officially drawn samples (CX 60 at 5). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 61 at 16). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by

Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA worksheet — except that the “Moisture” was typed as “16.0 Percent” instead of the 16.6 to 17.0% found by the USDA inspectors (CX 61 at 15-16). Lion Raisins, Inc., mailed the order documents to the buyer on February 3, 1999, and requested \$47,531.90 “cash back” from the RAC (CX 61 at 1, 24).

35. Order Number 44865. On February 4, 1999, Primex International placed an order for 440 cases of oil-treated, select raisins, with no more than 15% moisture, and requested a USDA certificate (CX 117 at 1). On February 8, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant finding moisture levels of 17.2% in the officially drawn samples (CX 116 at 2). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 117 at 14). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA worksheet — except that the “Moisture” was typed as “15.0 Percent” instead of the 17.2% found by the USDA inspectors (CX 117 at 13). There was a post-it note on the “Lion” certificate from “RW” to “Bruce”:

Bruce,
Moisture did not
meet spec of 15%
Actual moisture
is 17.2%.

RW

CX 117 at 13. Lion Raisins, Inc., mailed the order documents to the buyer on February 12, 1999, and requested and received \$3,235.41 “cash back” from the RAC (CX 117 at 1, 11).

36. Order Number 45199. On March 5, 1999, Sunbeam Australian Dried Fruits Sales placed an order for 3,320 cases of oil-treated, zante currant raisins, U.S. Grade B, with no more than 17.5% moisture (CX 63 at 1). On April 15, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant finding moisture levels of 17.6 to 18.9% in the officially drawn samples (CX 62 at 8).²³ Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 63 at 25). Lion Raisins, Inc., failed to return the worksheet or a typed certificate to USDA; however, the USDA worksheet was located in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by Rosangela Wisley, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA worksheet — except that the “Moisture” was typed as “17.5 Percent”

²³The inspector notified the processing staff that the moisture was high (CX 62 at 8 (“notified Robert on moist”). The maximum allowable moisture percentage for zante currant raisins is 20%. (7 C.F.R. § 52.1857.)

instead of the 17.6 to 18.9% found by the USDA inspectors (CX 63 at 25, 46). Lion Raisins, Inc., requested and received “cash back” from the RAC (CX 63 at 42 (the amount is obscured)).

37. Order Number 46171. On May 21, 1999, Sunbeam Australian Dried Fruits Sales placed an order for 3,320 cases of oil-treated, zante currant raisins, U.S. Grade B, with no more than 16.5% moisture (CX 65 at 1). On July 26, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Fresno plant finding moisture levels of 17.6 to 18.9% in the officially drawn samples (CX 64 at 5). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 65 at 41). Lion Raisins, Inc., failed to return the worksheet or a typed certificate to USDA; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the identical information about the raisins as the USDA worksheet — except that the “Moisture” was typed as “16.9 to 17.0 Percent” rather than the 17.6 to 18.9% found by the USDA inspectors (CX 65 at 31, 41).²⁴ Lion Raisins, Inc.’s shipping file also contained a letter, dated July 21, 1999, sent to Sunbeam Australian Dried Fruits Sales, which stated:

²⁴USDA stated that the certificate covered 91,489.24 pounds of product, while the “Lion” certificate referred to 91,489 pounds.

Your P O 8863 has already been processed. Enclosed please find a copy of the signed USDA certificate showing the moisture content of 17 percent which is below the maximum requirement of 18 percent.

Per your PO 9003 we have adjusted the maximum moisture specification to 17 percent to ensure the moisture level is reduced as per your request.

We will try testing under 17 percent but our production thinks it might be difficult to obtain the moisture any lower than the 17 percent.²⁵

Lion Raisins, Inc., mailed the order documents to the buyer on August 9, 1999, and requested and received \$36,032.50 “cash back” from the RAC (CX 65 at 26).

38. Order Number 46371. On May 14, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B, with no more than 16% moisture (CX 67 at 1). On September 1, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant finding moisture levels of 15.5 to 17.0% in the officially drawn samples (CX 66 at 5).²⁶ Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 67 at 23). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as two “Lion” certificates, signed by Barbara Baldwin, both of which used the legend “SOURCE OF SAMPLES: Officially

²⁵CX 65 at 12-13; see also CX 65 at 14 (noting “USDA readout 17.0%”). “PO” appears to refer to Sunbeam Australian Dried Fruits Sales’ purchase orders. See CX 65 at 6 (reference to PO9003), 14.

²⁶According to the line check sheets, the maximum moisture for the order was 17% (CX 66 at 5).

Drawn.” (CX 67 at 21-22.) One of the “Lion” certificates contained – in typewriting – the identical information about the raisins as the USDA worksheet — including the non-conforming “15.5 to 17.0” percent moisture (CX 67 at 22). The entire page, however, was struck through with a red line, and, in pencil, the “17.0 Percent” was obliterated and corrected with a handwritten “16.” (CX 67 at 22.) On the other “Lion” certificate, presumably the final version, the “Moisture” was typed as “15.5 to 16.0 Percent” instead of the 15.5 to 17.0% found by the USDA inspectors (CX 67 at 21, 23). Lion Raisins, Inc., mailed the order documents to the buyer on September 19, 1999, and requested and received \$10,725.22 “cash back” from the RAC (CX 67 at 1, 16).

39. Order Number 46811. On July 19, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B (CX 69 at 1). On September 19, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant grading the officially drawn samples as U.S. Grade C (CX 68 at 3).²⁷ Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 69 at 18). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as two “Lion” certificates, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially

²⁷The samples were graded U.S. Grade C as the maximum allowable number of substandard and underdeveloped raisins was exceeded for U.S. Grade B. The remarks reflect “C grade Sub OK. Robert” (CX 68 at 3).

Drawn” and contained the identical information about the raisins as the USDA worksheet — except that on one Lion certificate, the “GRADE” was typed as it is on the USDA worksheet, as “U.S. Grade C.” (CX 69 at 17-18.) The “C” was circled in pencil and a “B” placed next to it, also in pencil (CX 69 at 17-18). The other “Lion” certificate was corrected to read “GRADE: U.S. GRADE: B.” (CX 69 at 16.) Lion Raisins, Inc., mailed the order documents to the buyer on October 5, 1999, and requested and received \$10,725.22 “cash back” from the RAC (CX 69 at 1, 25).

40. Order Number 47456. On September 8, 1999, Farm Gold placed an order for 3,320 cases of oil-treated, midget raisins, U.S. Grade B (CX 119 at 1). On September 23, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant grading the officially drawn samples as U.S. Grade C (CX 118 at 4). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department. Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well a “Lion” certificate, signed by Barbara Baldwin, which used the legend “SOURCE OF SAMPLES: Officially Drawn” and stated that the “GRADE” was “U.S. GRADE: B” rather than the U.S. Grade C found by the USDA inspectors (CX 119 at 26). The “Lion” certificate also included an additional case code that does not appear on the USDA worksheet (CX 119

at 26). Lion Raisins, Inc., mailed the order documents to the buyer on October 14, 1999, and requested and received \$28,762.80 “cash back” from the RAC (CX 119 at 1, 12).

41. Order Number 48052. On October 20, 1999, Demos Ciclitira, Ltd., placed an order for 1,660 cases of oil-treated, Medos zante currant raisins, U.S. Grade B, with no more than 17% moisture, and requested a USDA certificate (CX 71 at 1, 6, 26). On October 27, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.’s Selma plant finding moisture levels of 17.0 to 18.0% in the officially drawn samples (CX 70 at 8). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.’s shipping department (CX 71 at 25). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.’s shipping file for this order as well as a “Lion” certificate, signed by Barbara Baldwin, that used the legend “SOURCE OF SAMPLES: Officially Drawn” and contained the same information about the raisins as the USDA worksheet — except that the moisture read “[blank] To 17.0 Percent” and the principal label marks contained additional information not found on the USDA worksheet (CX 71 at 24-25).²⁸ Lion Raisins, Inc., mailed the order documents to the buyer on November 18, 1999, and requested and received \$1,632.25 “cash back” from the RAC (CX 71 at 1, 14).

²⁸The Lion Raisins, Inc., shipping file contains an outside order form with the same label information that appears on the “Lion” certificate, but not on the USDA worksheet (CX 71 at 22).

42. Order Number 48137.

a. On October 25, 1999, Borges, S.A., contracted to buy 665 cases of oil-treated, Lion Select raisins, at no more than 16% moisture (CX 121 at 1). On November 4, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 16.8 to 17.0% in the officially drawn samples (CX 120 at 14).²⁹ After the raisins were loaded in a container, Lion Raisins, Inc., requested an inspection certificate, and the USDA inspector gave a worksheet to Lion Raisins, Inc.'s shipping department and received the USDA worksheet and typed USDA certificate B-034321 (CX 120 at 3-5). Lion Raisins, Inc.'s shipping file contained the original USDA certificate as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and represented the moisture as "16.0 Percent" instead of the 16.86 to 17.0% found by the USDA inspectors (CX 121 at 36, 38).

b. On October 25, 1999,³⁰ Borges contracted to buy 735 cases of oil-treated, golden raisins, at no more than 18% moisture (CX 121 at 1). On October 15, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 16.5 to 17.3% in the officially drawn samples (CX 120 at

²⁹The USDA line check sheet reflects only 16.8 to 17.0% moisture levels; however, the FV-146 reflects the 16.86 to 17.0% figures (CX 120 at 1, 14, CX 121 at 42).

³⁰October 25, 1999, appears to be the incorrect order date as it is well after the inspection of the raisins, but this order date is reflected in the exhibits.

12).³¹ After the raisins were loaded in a container, Lion Raisins, Inc., requested an inspection certificate, and the USDA inspector gave a worksheet to Lion Raisins, Inc.'s shipping department and received the USDA worksheet and typed USDA certificate B-034317 (CX 120 at 1-2). Lion Raisins, Inc.'s shipping file contained the original USDA certificate as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and represented the moisture as 16.0% rather than the 16.0 to 17.9% found by the USDA inspectors (CX 121 at 35, 37).

c. Lion Raisins, Inc., mailed the documents for order 48137 (both parts) to the buyer on January 6, 1999, and requested and received \$6,109.95 "cash back" from the RAC (CX 121 at 1, 10).

43. Order Number 48397. On November 10, 1999, NAF International AMBA placed an order for 650 cases of bagged, oil-treated, raisins, U.S. Grade B, with no more than 15% moisture, and 800 cases of oil-treated, select raisins, U.S. Grade B, with no more than 16% moisture (CX 73 at 1). On December 6, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 15.1 to 15.3% in the officially drawn samples (CX 72 at 12). Lion Raisins, Inc., requested an inspection certificate after the raisins were loaded in a container and sealed, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s

³¹The USDA line check sheet reflects moisture of 16.5 to 17.3%; however, the worksheet and the certificate reflected moisture levels of 16.0 to 17.9% (CX 120 at 1-2, 12).

shipping department (CX 72 at 8). Lion Raisins, Inc., returned the USDA worksheet and a typed USDA certificate B-034343 (CX 72 at 4).³² Lion Raisins, Inc.'s shipping file contained the original USDA certificate B-034343 (and several photocopies of the certificate) for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA certificate — except that the "Moisture" was typed as "15.3 TO 16.0 Percent" rather than the 15.3 to 15.4% recorded on the USDA certificate found in the USDA file (CX 72 at 4, CX 73 at 34 (original), 39, 40-43). The original USDA certificate was altered to read "Moisture - 15.3 TO 16.0 Percent," and a copy of the altered original was in the shipping file as well (CX 73 at 34, 39). Lion Raisins, Inc., mailed the order documents to the buyer on January 5, 2000, and requested and received \$6,751.94 "cash back" from the RAC (CX 73 at 1, 16).

44. Order Number 48416. On November 11, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, midget raisins, with no more than 17% moisture (CX 123 at 1). On December 13, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 17.9 to 18.0% in the officially drawn samples (CX 122 at 3). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping

³²Although the USDA worksheet records state the moisture as being 15.1 to 15.3% consistent with the line check sheet, USDA certificate B-034343 contains a moisture level of 15.3 to 15.4%.

department. Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and stated that the "Moisture" was 17.0% rather than the 17.9 to 18.0% found by the USDA inspectors. (CX 123 at 30-31.) Lion Raisins, Inc., mailed the order documents to the buyer on January 12, 2000, and requested and received \$17,664.63 "cash back" from the RAC (CX 123 at 1, 10).

45. Order Number 48487. On November 16, 1999, Farm Gold placed an order for 1,660 cases of oil-treated, select raisins, with no more than 16% moisture (CX 125 at 1). On November 30, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 15.1 to 15.8% in the officially drawn samples (CX 124 at 4). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department. Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and stated that the "Moisture" was 15.1 to 15.5% rather than the 15.1 to 15.8% found by the USDA inspectors (CX 125 at 29-30). Lion Raisins, Inc., mailed the order documents to the buyer on December 23, 1999, and requested and received \$17,664.63 "cash back" from the RAC (CX 125 at 3, 14).

46. Order Number 48523. On November 18, 1999, Heinrich Bruning placed an order for 1,660 cases of oil-treated, midget raisins, U.S. Grade B, with no more than 17% moisture (CX 75 at 1). On December 2, 1999, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 16.6 to 17.0% moisture in the officially drawn samples (CX 74 at 3). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 75 at 22). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and contained the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "16.0 Percent" rather than the 16.6 to 17.0% found by the USDA inspectors (CX 75 at 18, 22). The "Lion" certificate bore a post-it note (CX 75 at 18) stating:

USDA certificate shows a moisture of 16.6-17.0.

Lion Raisins, Inc., mailed the order documents to the buyer on December 30, 1999, and requested and received \$17,664.63 "cash back" from the RAC (CX 75 at 1, 9).

47. Order Number 49334. On January 20, 2000, EKO Produkter AB placed an order for 1,660 cases of oil-treated, select raisins, U.S. Grade B, with no more than 17% moisture (CX 77 at 1). On December 21 and 22, 1999, USDA inspectors had sampled

processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 16.6 to 17.8% in the officially drawn samples (CX 76 at 4, 13). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet which bore Order Number 49334 and provided it to Lion Raisins, Inc.'s shipping department (CX 77 at 22).³³ Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, the USDA worksheet was found in Lion Raisins, Inc.'s shipping file for this order as well as a "Lion" certificate, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" and which stated that the pack dates were January 21 and 22, 2000, and bore the identical information about the raisins as the USDA worksheet — except that the "Moisture" was typed as "16.6 To 17.0 Percent" rather than the 16.6 to 17.8% found by the USDA inspectors (CX 77 at 21). The "Lion" certificate bore a post-it note (CX 77 at 21) stating:

USDA shows no packing on the 21 & 22nd of January.
The moisture for the Dec. pack date shows 16.6 - 17.8%.

Lion Raisins, Inc., mailed the order documents to the buyer on February 7, 2000, and requested and received \$11,573.38 "cash back" from the RAC (CX 77 at 1, 12).

48. Order Number 50431. On April 14, 2000, NAF International AMBA placed an order for 1,440 cases of oil-treated, select raisins, U.S. Grade B, with 16 to 18% moisture (CX 79 at 1). On April 17, 2000, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant finding moisture levels of 17.2 to 17.5% in the

³³The record is not entirely clear as the order date is well after the inspection date.

officially drawn samples (CX 78 at 3). Lion Raisins, Inc., requested an inspection certificate, USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 79 at 25). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion Raisins, Inc.'s shipping file contains two "Lion" certificates, signed by Barbara Baldwin, that used the legend "SOURCE OF SAMPLES: Officially Drawn" (CX 79 at 23-24). One certificate contained the USDA's moisture results and bore a handwritten (in pencil) notation "16-17 adjacent to the moisture entry." (CX 79 at 23.) The second "Lion" certificate contained the typewritten moisture of 16 to 17% (CX 79 at 24). Lion Raisins, Inc., mailed the order documents to the buyer on April 20, 2000, and requested and received \$13,421.36 "cash back" from the RAC (CX 79 at 1, 4.)

49. Order Number 50750. On May 8, 2000, J.L. Priestly & Company, Ltd., placed an order for 1,660 cases of oil-treated, midget raisins (CX 81 at 1). On April 14 and May 11, 2000, USDA inspectors sampled processed raisins on-line at Lion Raisins, Inc.'s Selma plant grading the officially drawn samples as mixed size raisins (CX 80 at 6, 11). Lion Raisins, Inc., requested an inspection certificate, and USDA inspectors prepared a worksheet and provided it to Lion Raisins, Inc.'s shipping department (CX 81 at 21). Lion Raisins, Inc., failed to return the worksheet or a typed certificate; however, Lion Raisins, Inc.'s shipping file for the order contained the USDA worksheet as well as two "Lion" certificates (one signed by Barbara Baldwin) that used the legend "SOURCE

OF SAMPLES: Officially Drawn.” (CX 81 at 23-24, 26.) One certificate contained USDA’s size result and the other recorded the size as “Midget.” (CX 81 at 23-24, 26.) The shipping documents related to this order number 50750 also include a post-it note which stated:

Bruce,
The USDA certificate
shows a size of Mixed.

The handwritten response, in pencil indicated:

“Change to Midget,” circled. (CX 81 at 25.)

Lion Raisins, Inc., mailed the order documents to the buyer on May 25, 2000, and requested and received \$15,471.78 “cash back” from the RAC (CX 81 at 1, 3).

Conclusions of Law

1. The Secretary of Agriculture has the authority under the Agricultural Marketing Act to: (a) prescribe regulations for the inspection, certification, and identification of the class, quality, and condition of agricultural products and (b) issue regulations and orders to carry out the purposes of the Agricultural Marketing Act, including authority to issue debarment regulations and to debar persons and entities from benefits under the Agricultural Marketing Act.

2. The term “officially drawn sample,” as defined in 7 C.F.R. § 52.2, is limited to those samples selected by USDA inspectors, licensed samplers, or any other persons authorized by the Administrator. The use of the term “officially drawn” on Lion Raisins,

Inc., certificates, indicating that the source of samples was “officially drawn,” impermissibly attempts to extend the term “officially drawn sample” to sampling results performed by an entity’s quality control personnel. While no regulation prohibits the use of a non-USDA certificate or guarantee by a processor, packer, or seller of raisins, the use of the term “officially drawn” allows no leeway or deviation from the sampling results found by USDA inspectors.

3. U.S. Grades, as applied to raisins, are based upon a variety of components, only one of which is the maturity of the raisin. Lion Raisins, Inc.’s false representation that certain orders (which had been graded by USDA inspectors as U.S. Grade C) were in fact U.S. Grade B, based only upon maturity, was an impermissible use of the U.S. Grade designation given to the raisins in question.

4. Lion Raisins, Inc., impermissibly attempted to use its own standards to define the term “midget” when that term is defined and used by USDA as part of the identification of the size of a raisin.

5. By reason of Lion Raisins, Inc.’s failure to observe corporate formalities, Lion Raisins, Inc., is not an entity separate and apart from Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion.

6. On 33 occasions during the period November 11, 1998, through May 11, 2000, in connection with 32 orders, Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion willfully violated section 203(h) of the Agricultural

Marketing Act (7 U.S.C. § 1622(h)) and section 52.54(a) of the Regulations (7 C.F.R. § 52.54(a)), by engaging in misrepresentation or deceptive or fraudulent practices or acts in connection with the use of inspection certificates and/or inspection results, as follows:

a. Order Number 43387 (November 11, 1998). The Lions used an official inspection certificate (Y-869392) as a basis to misrepresent the U.S. Grade of 45,744.62 pounds of raisins sold by the Lions to Western Commodities, Ltd., as U.S. Grade B, when the official U.S. Grade of those raisins was U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when USDA had certified them as U.S. Grade C, as shown on the official certificate. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part the official inspection certificate issued for these raisins for the purpose of purporting to evidence the U.S. Grade of the raisins. (7 C.F.R. § 52.54(a)(1)(v).)

b. Order Number 43588 (November 28, 1998). The Lions used an official inspection certificate (B-033610) as a basis to misrepresent the moisture content of 79,364 pounds of raisins sold by the Lions to Central Import Meunster. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins to be 17.8% moisture, when the USDA’s officially drawn sample of those raisins was certified as 17.8 to 18.0% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that

simulated in part the official inspection certificate issued for these raisins for the purpose of purporting to evidence the officially drawn moisture level of the raisins. (7 C.F.R. § 52.54(a)(1)(v).)

c. Order Number 43598 (January 6, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 39,682.08 pounds of raisins sold by the Lions to Central Import Meunster as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

d. Order Number 43601 (February 3, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Central Import Meunster as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

e. Order Number 43603 (February 3, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Central Import Meunster as

U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

f. Order Number 43612 (November 21, 1998). The Lions used an official inspection certificate (Y-869393) as a basis to misrepresent the U.S. Grade of 37,500 pounds of raisins sold by the Lions to Shoei Foods (U.S.A.), Inc., as U.S. Grade B, when the official U.S. Grade of those raisins was U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when the official inspection certificate for the raisins certified them as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

g. Order Number 43694 (November 24, 1998). The Lions used an official inspection certificate (Y-869397) as a basis to misrepresent the U.S. Grade of 39,682.08 pounds of raisins sold by the Lions to Central Import Meunster, as U.S. Grade B, when the official U.S. Grade of those raisins was U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when

the official inspection certificate for the raisins certified them as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

h. Order Number 43922 (December 6, 1998). The Lions used an official inspection certificate (B-033629) to misrepresent the U.S. Grade of 88,182.40 pounds of raisins sold by the Lions to Farm Gold as U.S. Grade B, when the official U.S. Grade of those raisins was U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when the official inspection certificate certified them as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

i. Order Number 43956 (January 20, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold as U.S. Grade B, when the officially drawn sample for that product was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

j. Order Number 43957 (January 20, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold as U.S. Grade B, when the officially drawn sample for those raisins was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

k. Order Number 43975 (December 16, 1998). The Lions used an official inspection certificate (B-033631) as a basis to misrepresent the U.S. Grade of 79,364.16 pounds of raisins sold by the Lions to Central Import Meunster as U.S. Grade B, when the official U.S. Grade of those raisins was U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions also used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as U.S. Grade B, when the official inspection certificate certified them as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

l. Order Number 44120 (January 21, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Navimpex, S.A., at 15.0%

moisture, when the officially drawn sample for that product was certified at 16.4 to 16.5% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

m. Order Number 44122 (March 1, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Navimpex, S.A., at 15.0% moisture, when the officially drawn sample for that product was not certified at such moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

n. Order Number 44184 (January 12, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Heinrich Bruning, at 16.0% moisture and U.S. Grade B, when the officially drawn sample for those raisins was certified at 16.7 to 17.0% moisture and as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

o. Order Number 44185 (January 12, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Heinrich Bruning, at 16.0% moisture and U.S. Grade B, when the officially drawn sample for that product was certified at 16.7 to 17.0% moisture and as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

p. Order Number 44351 (January 6, 1999). The Lions used an official inspection certificate (B-033650) as a basis to misrepresent the moisture of 7,991.53 pounds of raisins sold by the Lions to Central Import Meunster as 15.5%. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified those raisins as having 15.5% moisture, when the officially drawn sample was certified at 17% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

q. Order Number 44488 (January 22, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 137,233.86 pounds of raisins sold by the Lions to Heinrich Bruning, at 16.0%

moisture, when the officially drawn sample for that product was not certified at such moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

r. Order Number 44865 (February 8, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 13,200 pounds of raisins sold by the Lions to Primex International, with final destination of Manila, Philippines, at 15.0% moisture, when the officially drawn sample for those raisins was certified as 17.2% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

s. Order Number 45199 (April 15, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 91,489.24 pounds of raisins sold by the Lions to Sunbeam Australian Dried Fruits Sales, at 17.5% moisture, when the officially drawn sample for those raisins was certified at 17.6 to 18.9% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

t. Order Number 46171 (July 26, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 91,489 pounds of raisins sold by the Lions to Sunbeam Australian Dried Fruits Sales, at 16.9 to 17.0% moisture, when the officially drawn sample for that product was certified at 16.9 to 17.5% moisture and the officially drawn sample for that product also had identified 91,489.24 pounds of product. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

u. Order Number 46371 (September 1, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold, at 15.5 to 16.0% moisture, when the officially drawn sample for those raisins was certified at 15.5 to 17.0% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

v. Order Number 46811 (September 19, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold, to be U.S. Grade B, when the officially drawn sample for that product was certified as U.S. Grade C.

(7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

w. Order Number 47456 (September 19, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified that 92,489.24 pounds of raisins sold by the Lions to Farm Gold were inspected on September 19, 1999, code marked “PKD 19 SEP 99L” and determined to be U.S. Grade B. The officially drawn sample for that product was drawn and inspected on September 23, 1999, was code marked “PKD 23 SEP 99L,” and the officially drawn sample was certified as U.S. Grade C. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

x. Order Number 48052 (October 27, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Demos Ciclitira, Ltd., at 17.0% moisture. The officially drawn sample for that product was certified at 17.0 to 18.0% moisture and the product was to have been packed under a different label. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

y. Order Number 48137 (November 4, 1999). The Lions used an official inspection certificate (B-034321) as a basis to misrepresent the moisture percentage of 19,950 pounds of raisins sold by the Lions to Borges, S.A. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins as containing 16% moisture, when the officially drawn sample for that product was not certified at such moisture percentage. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the U.S. Grade and officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

z. Order Number 48137 (October 15, 1999). The Lions used an official inspection certificate (B-034317) as a basis to misrepresent the moisture of 22,050 pounds of raisins sold by the Lions to Borges, S.A. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins at 16% moisture, when the officially drawn sample for that product was not certified at such moisture percentage. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

aa. Order Number 48397 (December 9, 1999). The Lions altered an official inspection certificate (Y-034343) to misrepresent the moisture of 22,045.6 pounds of raisins sold by the Lions to NAF International AMBA, by falsifying the moisture of the officially drawn sample. (7 C.F.R. § 52.54(a)(1)(iii).) The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified these raisins at 15.3 to 16.0% moisture, when the officially drawn sample for that product was not certified at such moisture and the product from which the official sample was drawn was to be packed under a different label. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

bb. Order Number 48416 (December 13, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold, at 17% moisture, when the officially drawn sample for that product was not certified at such moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

cc. Order Number 48487 (November 30, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had

certified 45,744.62 pounds of raisins sold by the Lions to Farm Gold, at 15.1 to 15.5% moisture, when the officially drawn sample for that product was not certified at such moisture percentage. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

dd. Order Number 48523 (December 2, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to Heinrich Bruning, at 16.0% moisture, when the officially drawn sample for that product was certified at 16.6 to 17.0% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

ee. Order Number 49334 (December 22, 1999). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to EKO Produkter AB, at 16.6 to 17.0% moisture, when the officially drawn sample for that product was certified at 16.6 to 17.8% moisture and the product from which the official sample was drawn was to be packed in containers bearing different code marks. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate

for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

ff. Order Number 50431 (April 17, 2000). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 39,682.08 pounds of raisins sold by the Lions to NAF International AMBA, at 16.0 to 17.0% moisture, when the officially drawn sample for that product was certified at 17.2 to 17.5% moisture. (7 C.F.R. § 52.54(a)(1)(iv).) The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn moisture level of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

gg. Order Number 50750 (May 11, 2000). The Lions used a legend (“SOURCE OF SAMPLES: Officially Drawn”) falsely signifying that USDA had certified 45,744.62 pounds of raisins sold by the Lions to J.L. Priestly & Company, Ltd., as “midget” size raisins, when the officially drawn sample for that product certified it as “mixed” size raisins and the product was to have been packed under a different label. The Lions also used a facsimile form that simulated in part an official inspection certificate for the purpose of purporting to evidence the officially drawn size of these raisins. (7 C.F.R. § 52.54(a)(1)(v).)

7. Each of the acts and practices described in Conclusions of Law number 6 was a willful violation of section 203(h) of the Agricultural Marketing Act (7 U.S.C. § 1622(h)) and section 52.54(a) of the Regulations (7 C.F.R. § 52.54(a)).

8. The acts and practices described in Conclusions of Law number 6, in connection with inspection documents for the Lions' raisins and raisin products, constitute sufficient cause for the debarment of Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion.

The Lions' Request for Oral Argument

The Lions' request for oral argument, which the Judicial Officer may grant, refuse, or limit,³⁴ is refused because the issues have been fully briefed by the parties and oral argument would serve no useful purpose.

Timeliness of the Lions' Appeal Petition

The Administrator asserts the Hearing Clerk served counsel for the Lions with the ALJ's Decision and Order on June 13, 2006; therefore, the Lions were required to file an appeal petition with the Hearing Clerk no later than 4:30 p.m., July 13, 2006.³⁵ The Administrator argues the Lions' Appeal Petition was late-filed as the Lions sent a

³⁴7 C.F.R. § 1.145(d).

³⁵The Rules of Practice provide that an appeal petition must be filed with the Hearing Clerk within 30 days after receiving the administrative law judge's written decision (7 C.F.R. § 1.145(a)). The Office of the Hearing Clerk receives documents from 8:30 a.m. to 4:30 p.m. *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570, 607 (2001), *aff'd*, 64 F. App'x 941 (6th Cir. 2003).

facsimile of the Appeal Petition to the Hearing Clerk beginning at 3:18 p.m., July 13, 2006, and ending at 4:38 p.m., July 13, 2006.

The most reliable evidence of the date and time a document reaches the Hearing Clerk is the date and time stamped by the Office of the Hearing Clerk on that document.³⁶ The Office of the Hearing Clerk stamped the Lions' Appeal Petition as having been received at 4:28 p.m., July 13, 2006. The Administrator further asserts the Lions' Appeal Petition was late-filed because the July 13, 2006, filing was a facsimile and the original of the Lions' Appeal Petition was not filed until July 14, 2006. I have long found that an appeal petition is timely-filed if a facsimile of the appeal petition is received by the Hearing Clerk within the time for filing the appeal petition and an original of the appeal petition is promptly filed after the filing of the facsimile, even if the original is not filed within the time for filing the appeal petition. Therefore, I find the Lions timely filed their Appeal Petition with the Hearing Clerk, and I reject the Administrator's contention that the Appeal Petition was late-filed.

The Lions' Appeal Petition

The Lions raise 30 issues in the Appeal Petition. First, the Lions contend the Secretary of Agriculture lacks authority to issue debarment regulations or to debar the Lions from raisin inspections by USDA (Appeal Pet. at 12-14, 85-108, 127-30, 135).

³⁶*In re Bruce Lion* (Ruling Granting Complainant's Motion Not to Consider Reply to Complainant's Appeal Petition; and Order Vacating the Administrative Law Judge's Initial Decision and Remanding Proceeding to the Administrative Law Judge), 65 Agric. Dec. 1214, 1221 (2006).

As an initial matter, the Lions' argument that the Secretary of Agriculture's debarment authority cannot be extended to mandatory inspection requirements under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], is misplaced. The AMAA does not authorize the Secretary of Agriculture to inspect the Lions' raisins. The instant proceeding concerns only debarment from receiving USDA inspection services under the Agricultural Marketing Act.

I agree with the ALJ's conclusion that the Secretary of Agriculture has authority to debar the Lions from receiving USDA inspection services under the Agricultural Marketing Act (ALJ's Decision and Order at 3-4). The Agricultural Marketing Act directs and authorizes the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade, and packaging and to recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.³⁷ The Secretary of Agriculture is also directed and authorized to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products under orders, rules, and regulations as the Secretary of Agriculture deems necessary to carry out the Agricultural Marketing Act.³⁸ The Secretary of Agriculture's debarment regulations (7 C.F.R. § 52.54) establish a means to maintain public confidence in the integrity and reliability of the processed products inspection service the Secretary is

³⁷7 U.S.C. § 1622(c).

³⁸7 U.S.C. §§ 1622(h), 1624(b).

directed and authorized to administer. Based on the plain language of the Agricultural Marketing Act, I conclude the Secretary of Agriculture has authority to promulgate debarment regulations and to debar persons who engage in misrepresentation or deceptive or fraudulent practices or acts in connection with the inspection services provided by the Secretary of Agriculture.

Moreover, the United States Court of Appeals for the Ninth Circuit specifically addressed the issue of the Secretary of Agriculture's authority to promulgate debarment regulations under the Agricultural Marketing Act, as follows:

American Raisin's contention that 7 U.S.C. § 1622(h) prohibits debarment for innocent or negligent misconduct is unavailing. Section 1622(h) provides ample authority for the promulgation of Section 52.54, in addition to establishing penalties for other abuses.

American Raisin Packers, Inc. v. U.S. Dep't of Agric., 66 F. App'x 706 (9th Cir. 2003).

Similarly, the United States Court of Appeals for the Eighth Circuit concluded the Agricultural Marketing Act authorizes the Secretary of Agriculture to promulgate regulations to withdraw meat grading services and affirmed the district court's denial of a request to enjoin the Secretary of Agriculture from holding an administrative hearing to determine whether meat grading services under the Agricultural Marketing Act should be withdrawn, as follows:

In summary, we uphold regulation 53.13(a), which permits the Secretary to withdraw grading services for misconduct in order to ensure the integrity of the grading service. The Secretary's interpretation of his power to enforce the substance of 53.13(a) has been followed, unchallenged, for at least thirty years. Moreover, the regulation was issued

pursuant to express rule making authority and is reasonably designed to preserve the integrity and reliability of the grading system the Secretary is directed and authorized to administer. Thus, although not expressly authorized, the regulation enjoys an especially strong presumption of validity which West has not rebutted. The regulation is not inconsistent either with an express statutory provision or with agriculture laws taken as a whole. Finally, the legislative history tends to support rather than strongly oppose the view that the regulations are authorized by Congress.

West v. Bergland, 611 F.2d 710, 725 (8th Cir. 1979), *cert. denied*, 449 U.S. 821 (1980).

Finally, in response to certified questions submitted to me by Administrative Law Judge Jill S. Clifton, I held the Secretary of Agriculture has authority under the Agricultural Marketing Act to debar persons from USDA inspection services.³⁹ The Lions characterize that Ruling on Certified Questions as conclusory. Admittedly, I viewed and continue to view the issue of the Secretary of Agriculture's debarment authority as a simple issue that does not require exhaustive discussion. The Lions have thoroughly addressed the issue of the Secretary of Agriculture's debarment authority in their Appeal Petition; however, the Lions' arguments fail to convince me that *In re Lion Raisins, Inc.* (Ruling on Certified Questions), 63 Agric. Dec. 836 (2004), is error or that the Secretary of Agriculture lacks authority to debar the Lions from receiving inspection services from USDA under the Agricultural Marketing Act.

Second, the Lions contend debarment from inspection services under the Agricultural Marketing Act constitutes withdrawal of a license and the Administrative

³⁹*In re Lion Raisins, Inc.* (Ruling on Certified Questions), 63 Agric. Dec. 836 (2004).

Procedure Act (5 U.S.C. § 558(c)) requires the Administrator to provide the Lions with notice of the conduct which may warrant withdrawal of the license and an opportunity to demonstrate or achieve compliance with all lawful requirements (Appeal Pet. at 14-16, 82, 123-27).

The ALJ found debarment from inspection services under the Agricultural Marketing Act did not constitute withdrawal of a license; hence, the Administrator was not required by 5 U.S.C. § 558(c) to provide the Lions with notice of the conduct which may warrant withdrawal of the license and an opportunity to demonstrate or achieve compliance with all lawful requirements (ALJ’s Decision and Order at 4-5).

The Administrative Procedure Act defines the word “license” as follows:

§ 551. Definitions

For the purpose of this subchapter—

.....

(8) “license” includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission[.]

5 U.S.C. § 551(8). Inspection and grading services performed by USDA for the Lions are not forms of permission granted to the Lions, but rather services performed by USDA for the Lions. The United States Court of Appeals for the Ninth Circuit, responding to a claim identical to that raised by the Lions, stated 5 U.S.C. § 558 is not applicable to debarment of inspection service under the the Agricultural Marketing Act, as follows:

American Raisin's claim that 5 U.S.C. § 558 requires that a party be given an opportunity to cure its misrepresentation before it is debarred also fails because Section 558 applies only to the revocation of a license and is not otherwise applicable to the facts of this case.

American Raisin Packers, Inc. v. U.S. Dep't of Agric., 66 F. App'x 706 (9th Cir. 2003).

Therefore, I reject the Lions' claims that debarment from the benefits of the Agricultural Marketing Act constitutes withdrawal of a license and that 5 U.S.C. § 558(c) is applicable to the instant proceeding.

Third, the Lions contend the ALJ's finding that Lion Raisins, Inc., lost its corporate form, is error (Appeal Pet. 16-27, 111-12).

Lion Raisins, Inc., failed to observe corporate formalities in numerous ways, including the filing of inconsistent documents with the California Secretary of State's Office and the RAC; naming different individuals as officers and directors of Lion Raisins, Inc., with the California Secretary of State's Office and the RAC; failing to file required annual reports (which resulted in Lion losing its original corporate name, Lion Enterprises, Inc.); naming of officers of the corporation with a variety of different titles; using titles other than those contained on filings with the California Secretary of State's Office; designating individuals as vice presidents of the corporation without apparent approval or action by the board of directors; failing to hold annual shareholder meetings; failing to hold annual board of directors meetings; and failing to maintain accurate and appropriate minutes of shareholder and board of directors meetings (CX 1 at 3-4, CX 127; Tr. 1100-06, 1113-17, 1121-22).

Lion Raisins, Inc., identified different officers and directors on different forms and records for the same years (CX 130). Alfred Lion, Jr., testified that Susan Keller, one of Lion's employees, prepared the minutes, but did not attend the meetings (Tr. 1109-10). In one set of minutes, Larry Lion was indicated as being present for the meeting of the board of directors for 1999, 2000, and 2001; however, the record indicates he did not attend corporate meetings or otherwise perform the duties of corporate secretary (Tr. 1102-05, 1109-10). None of the minutes refers to litigation in which Lion Raisins, Inc., was involved, the retention of outside counsel, or personnel appointments, such as that of Kalem Barsarian as general manager.

Therefore, I agree with the ALJ's conclusion that Lion Raisins, Inc., is not an entity separate and apart from Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion (ALJ's Decision and Order at 9-11, 37).

Fourth, the Lions contend the ALJ erroneously failed to find that USDA inspectors did not follow USDA procedures when inspecting the Lions' raisins and that USDA inspectors issued unreliable and inaccurate documents relating to the inspection of the Lions' raisins (Appeal Pet. at 27-28, 82-84, 131, 135-37).

I find irrelevant the Lions' contentions that USDA failed to follow its own procedures and issued unreliable documents. The issue in the instant proceeding is whether the Lions engaged in misrepresentation or deceptive or fraudulent practices or acts in connection with the use of inspection certificates and/or inspection results. Even if

I were to find that USDA inspectors issued unreliable documents in connection with the inspection of the Lions' raisins (which I do not so find), the Lions would be prohibited from altering USDA certificates or misrepresenting their own inspection results as USDA's inspection results.

Fifth, the Lions contend the ALJ erroneously found the invoice trail is the last document prepared with respect to the transactions that are the subject of the instant proceeding, the invoice trail denotes customer specifications, and the invoice trail indicates whether the customer requested a USDA certificate. The Lions contend the invoice trail is a Lion order form that indicates, among other things, whether the Lions requested a USDA certificate. (Appeal Pet. at 29-31.)

The record establishes that the invoice trail for each transaction that is the subject of the instant proceeding was prepared after the product reflected on the invoice trail had been inspected, graded, and shipped; therefore, the invoice trail could not be a "request" for a USDA certificate. Moreover, the record does not establish that the invoice trail was the last document prepared with respect to each transaction that is the subject of the instant proceeding. Consequently, I do not adopt the ALJ's finding that the invoice trail was "the last document prepared," and I do not find that the invoice trail establishes whether the Lions' customers requested a USDA certificate.

Sixth, the Lions, citing the ALJ's Decision and Order at 12 ¶ 14, contend the ALJ erroneously found USDA provided USDA certificates to the Lions' designee (Appeal Pet. at 32).

As an initial matter, the ALJ did not find that USDA provided USDA certificates to the Lions' designee, as the Lions assert. Instead, the ALJ found "[o]nce the FV-146 was prepared and signed, the original and up to four of the blue tissue copies were provided to the packer (or designee)." (ALJ's Decision and Order at 12 ¶ 14.) Further, the ALJ's Findings of Fact numbers 11 through 15 contain a description of AMS procedures applicable to packers generally, not simply procedures applicable to the Lions. Therefore, I reject the Lions' contention that the ALJ's Findings of Fact number 14, is error. I further note, the ALJ's description of the manner in which AMS distributed inspection certificates to the packer or the packer's designee comports with the Regulations, which provide as follows:

§ 52.21 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall be filed in such manner as the Administrator may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 52.49.

7 C.F.R. § 52.21.

Seventh, the Lions contend the ALJ's findings that the Lions requested and received cash back from the RAC are unsupported, irrelevant, and prejudicial (Appeal Pet. at 32-33).

The record establishes that, under a program operated by the RAC, packers who sold raisins for export could apply for, and receive, "cash back" for such sales by filing a RAC Form 100C. The amount of "cash back" was based on the weight of the raisins. The documents applicable to the transactions that are the subject of the instant proceeding establish that the Lions requested and received "cash back" from the RAC in virtually all of the transactions.⁴⁰ Therefore, I reject the Lions' contention that the ALJ's findings that the Lions applied for and received "cash back" are unsupported. Further, I find the ALJ's descriptions of the transactions, which are the subject of the instant proceeding, are neither irrelevant nor prejudicial.

Eighth, the Lions contend the ALJ's finding that the Lions charged a fee to customers that requested a USDA certificate, is error. The Lions state there is no evidence in the shipping files to support this finding of fact. (Appeal Pet. at 33-34.)

The ALJ found that "[o]nce Lion developed a 'Lion' certificate, Lion implemented the practice of charging its customers for USDA certificates" (ALJ's Decision and Order at 14 ¶ 19). The ALJ did not rely on the shipping files for this finding of fact. Instead, the ALJ relied upon an interview conducted by David W. Trykowski, Chief of

⁴⁰CX 126A reflects the Lions' receipt of "cash back" from the RAC in all but six transactions.

Investigations, AMS Compliance Office, with Rosangela Wisley, a shipping clerk employed by the Lions. Ms. Wisley stated the Lions' customers were charged a fee for USDA certificates, as follows:

WISLEY said that at a certain point in time Lion Raisins began charging an extra fee for customers to receive a USDA certificate but the customers were told they could receive a Lion certificate that contained the same information for no charge. WISLEY said Bruce LION had instructed the employees to tell customers that the Lion certificate was the equivalent of a USDA certificate.

CX 7. Therefore, I reject the Lions' contention that the ALJ's finding that the Lions had a practice of charging their customers for USDA certificates, is error.

Ninth, the Lions contend the ALJ's finding that the Lions advised their customers that Lion certificates contain the same information as USDA certificates, is error. The Lions contend the ALJ's support for this finding is unreliable hearsay. (Appeal Pet. at 35-37.)

The ALJ found "[c]ustomers were advised a 'Lion' certificate would be provided without charge and that Lion certificates contained the same information as a USDA certificate. See CX 73 at 44 ('Please note that the Lion certificate and the USDA certificate for each order is the same.')." (ALJ's Decision and Order at 14 ¶ 19.) The exhibit (CX 73 at 44) relied upon by the ALJ is a letter dated January 12, 2000, from Lion Raisins, Inc.'s export traffic administrator to NAF International - Copenhagen, which states, as follows:

Please find enclosed the USDA Certificates for the above mentioned shipments, per your request. We have also included copies of the Lion Certificates of Quality and Condition. Please note that the Lion certificate and the USDA certificate for each individual order is the same.

In an effort to remain competitive in the market, we began issuing Lion Quality and Condition certificates in place of the USDA. We do not feel it is justified to require Lion to absorb the cost of issuing USDA certificates when the Lion Certificate provides the same information (obtained from USDA). Please advise your customer that we will issue only Lion Certificates of Quality and Condition for future shipments, unless they are willing to compensate Lion for the administrative/clerical costs.

CX 73 at 44. I disagree with the Lions' contention that the letter is unreliable hearsay.

As an initial matter, I find the Lions' own letter a reliable reflection of the advice the Lions provided to their customers. Moreover, I do not find the letter hearsay as it was used by the ALJ not as support for the matter asserted ("the Lion certificate and the USDA certificate for each individual order is the same"), but merely to show that the Lions gave the advice that the Lion certificate and the USDA certificate for each individual order is the same.⁴¹

Tenth, the Lions contend the ALJ's finding that Lion certificates were prepared not by the Lions' quality control personnel, but rather by those in the shipping department is

⁴¹*In re George W. Saylor, Jr.*, 44 Agric. Dec. 2238, 2508 (1985) (stating "Mr. Gentry's testimony as to what Mr. Kostelecky requested would not have been hearsay since it would have been offered only to show that Mr. Kostelecky made the request; not to show the truthfulness of what Mr. Kostelecky said. See 6 Wigmore, *Evidence* § 1766 (Chadbourn rev. 1976).").

misleading because the shipping department prepared Lion certificates from Lion check sheets and either USDA line check sheets or USDA worksheets (Appeal Pet. at 37-38).

The Lions do not allege error by the ALJ, and I find none. The Lions appear to agree with the ALJ's finding that "Lion certificates were prepared not by Lion's quality control personnel, but rather by those in the shipping department." (ALJ's Decision and Order at 14 ¶ 20.)

Eleventh, the Lions contend the ALJ's finding that Lion certificates follow the same format and provide the same information as USDA certificates, is error (Appeal Pet. at 38-41).

The ALJ found "Lion certificates were prepared on Lion letterhead but follow the same format used on the FV-146 in the body of the document, providing the same information categories found on the USDA's worksheet and/or certificate." (ALJ's Decision and Order at 14 ¶ 20.) Based upon a comparison of the USDA certificates and the Lion certificates in the record, I agree with the ALJ's finding that Lion certificates followed the same format as USDA certificates and provided the same information categories as are found on the USDA's certificates. (Compare, e.g., CX 73 at 34 and CX 73 at 49.)

The Lions also state no customers complained that they mistook Lion certificates for USDA certificates and state they have changed the Lion certificates and improved

their audit trails in an attempt to satisfy USDA's concerns (Appeal Pet. 40-41). I find both of these statements irrelevant to the issues in the instant proceeding.

The Lions suggest that I decline to adopt the ALJ's finding that the Lion certificates "follow" the same format used on the USDA certificates, and, instead, use the past tense "followed" to indicate that the finding regarding similarity of format with regard to the Lion certificates and the USDA certificates relates only to the period material to the instant proceeding. I adopt the Lions' suggestion. (See Finding of Fact number 17, *supra*.)

Twelfth, the Lions contend the ALJ erroneously found the Lions' customers requested USDA certificates (Appeal Pet. at 41-47).

The ALJ relied on the notation "USDA Cert: YES" on the invoice trails as support for his finding that the Lions' customers requested USDA inspection certificates (see, e.g., CX 107 at 1); however, Mr. Trykowski testified he had been informed by former Lion employees that the notation "USDA Cert: YES" on the invoice trails indicates the Lions requested a USDA certificate (Tr. 161) and Mr. Bruce Lion confirmed Mr. Trykowski's testimony (Tr. 1483-84). Therefore, except for the four transactions in which the Lions state their customers did request USDA certificates (Appeal Pet. at 46-47; Findings of Fact 23, 27, 35, and 41, *supra*), I do not adopt the ALJ's findings that the Lions' customers requested USDA certificates.

Thirteenth, the Lions contend the ALJ erroneously suggested the Lions' retention of USDA worksheets and certificates was wrongful (Appeal Pet. at 41-47).

The evidence indicates the Lions' retention of USDA certificates and worksheets was lawful (Tr. 289-90). However, the Lions do not cite and I cannot locate any finding by the ALJ suggesting the Lions' retention of USDA worksheets and certificates was wrongful. Therefore, I reject the Lions' contention that the ALJ erroneously suggested the Lions' retention of USDA worksheets and certificates was wrongful.

Fourteenth, the Lions contend the ALJ erroneously found the Lions' customers ordered U.S. Grade B raisins in the majority of orders. The Lions assert that the ALJ based this finding on the notation "Grade: B" on the invoice trails and that the notations on those invoice trails only relate to maturity. The Lions further assert their customers were willing to accept raisins that met the overall standards for U.S. Grade C raisins as long as the raisins met the U.S. Grade B standards for maturity. (Appeal Pet. at 47-53, 109-10, 112-14.)

U.S. Grades, as applied to raisins, are based upon a number of factors, only one of which is maturity.⁴² The Regulations contain no U.S. Grade B designation for maturity only. The Lions' representations that raisins that had been graded by USDA as U.S. Grade C, were U.S. Grade B, because the raisins met the standards for U.S. Grade B based only upon maturity of the raisins was an impermissible use of the U.S. Grade

⁴²See 52 C.F.R. §§ 52.1846, .1849, .1852, .1853, .1855, .1857, .1858.

designation. Therefore, I reject the Lions' argument that they accurately represented raisins as U.S. Grade B, even though the raisins had been graded by USDA as U.S. Grade C.

Fifteenth, the Lions contend the ALJ erroneously found that on 21 occasions the Lions' customers ordered raisins with a maximum moisture percentage. The Lions contend customers specified a maximum moisture percentage with respect to only four loads of raisins (CX 71, CX 73, CX 117) and the remaining moisture percentages specified in documents related to these transactions are merely the Lions' internal targets for moisture percentage, not customer specifications. (Appeal Pet. at 53-61.)

I have reviewed the invoice trails and other documentation related to the transactions in question and find the record supports the ALJ's findings that the Lions' customers ordered raisins with maximum moisture percentages. For example, with respect to order number 44351, the record establishes that Central Import placed an order for raisins with a maximum moisture content of 15.5 percent. The invoice trail reflects this order (CX 115 at 1 ("Moisture %: 15.5% Max")) and all of the documents related to this transaction indicate that Central Import specified the maximum moisture percentage. I find nothing in the documents related to this transaction indicating that the maximum moisture percentage is merely an internal target set by the Lions. If the maximum moisture percentage were merely an internal target set by the Lions, there would be no basis for the post-it note to Bruce Lion from a Lion employee stating the moisture percent

did not meet the specifications in the order (CX 115 at 15) and no reason for the Lion certificate to reflect the information in the USDA certificate, except to indicate that the moisture was 15.5% rather than the 17% found by USDA inspectors (CX 115 at 18-19, 21).

Sixteenth, the Lions contend their test results more accurately reflect the quality and condition of raisins than the USDA test results, contend USDA inspections are not accurate or reliable, and contend USDA line check sheets, worksheets, and certificates are untrustworthy (Appeal Pet. at 57, 62-64, 74-81, 114-16, 131, 135-37).

Even if I were to find that the Lions' test results more accurately reflect the quality and condition of raisins than USDA test results and that USDA inspections are not accurate or reliable, I would not dismiss the instant proceeding. The issue in the instant proceeding is whether the Lions engaged in misrepresentation or deceptive or fraudulent practices or acts in connection with the use of inspection certificates and/or inspection results, not whether the Lions' test results more accurately reflect the quality and condition of raisins than USDA test results or whether USDA inspections are accurate and reliable. I find the relative accuracy of USDA test results and the Lions' test results and the accuracy and reliability of USDA inspections irrelevant to the instant proceeding.

Seventeenth, the Lions contend the ALJ concluded the Lions obliterated USDA certificate Y-034343, but did not make a finding that the Lions had obliterated USDA certificate Y-034343 (Appeal Pet. at 62).

The ALJ concluded the Lions obliterated “a portion of the remarks section of [USDA] certificate” B-034343 (ALJ’s Decision and Order at 47 ¶ 6aa). I agree with the Lions that the ALJ made no finding of fact that corresponds to this conclusion; therefore, I do not adopt the ALJ’s conclusion regarding obliteration of a portion of the remarks section of USDA certificate B-034343.

Eighteenth, the Lions contend the ALJ concluded the Lions used USDA certificate B-034321 to misrepresent the moisture and size of raisins sold by the Lions to Borges, S.A., but the ALJ did not make a finding that the Lions misrepresented the size of the raisins (Appeal Pet. at 61-62).

The ALJ concluded the Lions used an official inspection certificate (B-034321) as a basis to misrepresent the size of raisins sold by the Lions to Borges, S.A. (ALJ’s Decision and Order at 46 ¶ 6y). I agree with the Lions that the ALJ made no finding of fact that corresponds to this conclusion; therefore, I do not adopt the ALJ’s conclusion regarding the misrepresentation of raisin size with respect to this transaction.

Nineteenth, the Lions contend that they presented reasonable explanations for handwritten post-it notes that are in the Lions’ shipping files (Appeal Petition at 64-74).

The record contains handwritten post-it notes (CX 55 at 5, CX 75 at 18, CX 77 at 21, CX 81 at 25, CX 103 at 2, CX 115 at 15, CX 117 at 13). The ALJ correctly quoted statements on the post-it notes, and I reject the Lions’ explanations for the post-it notes. Instead, I find each of the post-it notes indicates that Bruce Lion instructed the Lions’

employees to prepare Lion certificates so that those certificates contained information indicating that the Lions' raisins met customer specifications, when USDA did not certify the raisins as meeting customer specifications. (See Findings of Fact numbers 23, 29, 33, 35, 46-47, 49, *supra*).

Twentieth, the Lions assert the ALJ failed to address a number of relevant and material facts. The Lions identify those purportedly relevant and material facts, as follows: (1) USDA has a contractual obligation to warn the Lions of their violations of the Agricultural Marketing Act and the Regulations; (2) the Lions received complaints about the accuracy of USDA certificates; (3) the Lions implemented a quality control department and testing procedures; (4) USDA's testing and inspection procedures were faulty; (5) the Lions' certificates accurately reflected the quality of their raisins; (6) the Lions did not receive complaints from their customers; (7) the Lions had outstanding business ethics; (8) the Lions made good faith efforts to demonstrate and achieve compliance with the Agricultural Marketing Act and the Regulations; (9) debarment would have an adverse impact on the Lions, the Lions' employees, minorities, the local community, the California raisin industry, growers, packers, and vendors; and (10) USDA found that Lion Raisins, Inc., is a responsible bidder to be awarded contracts. (Appeal Pet. at 82-84, 123-24.)

I do not address whether the evidence supports any of the facts listed by the Lions. However, I find that none of the purported facts listed is relevant and material to the issue

of whether the Lions engaged in misrepresentation or deceptive or fraudulent practices or acts in violation of the Agricultural Marketing Act and the Regulations. Therefore, I reject the Lions' assertion that the ALJ erroneously failed to address relevant and material facts.

Twenty-first, the Lions contend the ALJ erroneously concluded that the Lions' use of the term "officially drawn" on Lion certificates is an impermissible attempt to extend the meaning of the term "officially drawn sample" to include results found by the Lions' quality control personnel (Appeal Pet. at 108-09, 116-18).

I find the ALJ correctly determined that the Lions used the term "officially drawn" on Lion certificates to falsely equate the Lion certificates and the information on the Lion certificates with USDA certificates (ALJ's Decision and Order at 37 ¶ 2). The term "officially drawn sample" is defined in the Regulations, as follows:

§ 52.2 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

. . . .

Officially drawn sample. "Officially drawn sample" means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Administrator pursuant to the regulations in this part.

7 C.F.R. § 52.2. Samples drawn by the Lions' quality control personnel are not

"officially drawn sample[s]." The term "officially drawn" on Lion certificates is a legend

signifying that the product has been officially inspected. The results on the Lion certificates are in fact not from officially inspected samples; therefore, the Lion certificates constitute misrepresentations.

Twenty-second, the Lions contend the ALJ's conclusion that they willfully violated the Agricultural Marketing Act and the Regulations, is error (Appeal Pet. at 122-23).

An act is considered "willful" under the Administrative Procedure Act if the violator (1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice or (2) acts with careless disregard of statutory requirements.⁴³ The Lions' long-standing pattern of misrepresentation or deceptive or fraudulent practices or acts, in connection with the use of official inspection certificates and/or inspection results, constitutes careless disregard of the Agricultural Marketing Act and the Regulations, and the Lions' violations are clearly willful.

Twenty-third, the Lions contend USDA is attempting to punish the Lions for their violations of the Agricultural Marketing Act and the Regulations (Appeal Pet. at 123, 130, 133-35).

⁴³*Potato Sales Co. v. Dep't of Agric.*, 92 F.3d 800, 805 (9th Cir. 1996); *Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991).

Debarment from the benefits of the Agricultural Marketing Act is remedial, not punitive.⁴⁴ The purpose of debarment of those who engage in misrepresentation or deceptive or fraudulent practices or acts is to protect the integrity of the inspection service and to protect the public.⁴⁵ Debarment of such persons is designed to ensure that quality and condition standards are uniform and consistent, so that consumers obtain the quality product they desire unaffected by corrupt influences. Therefore, I reject the Lions' contention that USDA is attempting to punish the Lions.

Twenty-fourth, the Lions assert the ALJ had discretion to reject the Administrator's recommended remedy and impose no debarment even if the ALJ found the Lions engaged in misrepresentation or deceptive or fraudulent practices or acts. The

⁴⁴See *United States v. Borjesson*, 92 F.3d 954, 956 (9th Cir.) (determining debarment is not punishment), *cert. denied*, 519 U.S. 1047 (1996); *Bae v. Shalala*, 44 F.3d 489, 493 (7th Cir. 1995) (stating the provision in the Generic Drug Enforcement Act for civil debarment was remedial where debarment served compelling government interests unrelated to punishment and punitive effects were merely incidental to the overriding purpose to safeguard the integrity of the generic drug industry while protecting public health); *United States v. Holtz*, 1993 WL 482953 *11 (E.D. Pa. 1993) (stating debarment is designed to purge government programs of corrupt influences and to prevent improper dissipation of public funds; removal of persons whose participation in those programs is detrimental to public purposes is remedial by definition), *aff'd*, 31 F.3d 1174 (3d Cir. 1994) (Table).

⁴⁵See *Manocchio v. Kusserow*, 961 F.2d 1539 (11th Cir. 1992) (stating a 5-year suspension from the Medicare program was remedial because its purpose was to protect the public from those who defraud the program); *United States v. Drake*, 934 F. Supp. 953, 959 (N.D. Ill. 1996) (stating suspension from obtaining loans from the Commodity Credit Corporation for failure to employ good faith in disposition of secured crops "is not punitive in nature, rather, the regulation exists to protect the integrity of the CCC and the price support loan program").

Lions also assert the Administrator's remedy recommendation is not entitled to any weight. (Appeal Pet. at 132-33, 138-41.)

I agree with the Lions' assertion that the ALJ had discretion to impose no period of debarment despite a finding that the Lions engaged in misrepresentation or deceptive or fraudulent practices or acts. The Regulations clearly provide that any misrepresentation or deceptive or fraudulent practice or act "may be deemed sufficient cause for . . . debarment[.]"⁴⁶ However, I find no indication that the ALJ was unaware that he could find the Lions violated the Agricultural Marketing Act and the Regulations and also determine that the Lions' violations were not a sufficient cause for debarment.

I reject the Lions' assertion that the remedy recommendations of administrative officials are entitled to no weight. Instead, I conclude the recommendations of administrative officials charged with the responsibility for achieving the congressional purposes of the Agricultural Marketing Act are entitled to great weight and must be considered by the administrative law judge when determining whether to debar a person for engaging in fraud or misrepresentation described in 7 C.F.R. § 52.54(a). However, administrative officials' recommendations are not controlling and may be rejected by the administrative law judge. The ALJ rejected the 15-year debarment period recommended by administrative officials and imposed a 5-year debarment period; thereby indicating the

⁴⁶7 C.F.R. § 52.54(a).

ALJ fully understood that the recommendations of administrative officials are not controlling.

Twenty-fifth, the Lions contend one of the purposes of the Agricultural Marketing Act is the promotion of the marketing of agricultural products through voluntary inspections and debarment of the Lions from receiving USDA inspection services is contrary to this purpose of the Agricultural Marketing Act (Appeal Pet. at 135).

The Secretary of Agriculture is directed and authorized to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products in accordance with orders, rules, and regulations as the Secretary of Agriculture deems necessary to carry out the Agricultural Marketing Act.⁴⁷ The Secretary of Agriculture's debarment regulations (7 C.F.R. § 52.54) establish a means to maintain public confidence in the integrity and reliability of the processed products inspection service by withdrawing USDA services from persons who have engaged in misrepresentation or deceptive or fraudulent practices or acts in connection with inspection certificates and/or inspection results. I find the maintenance of public confidence in the integrity and reliability of the processed products inspection service is fully consistent with the purposes of the Agricultural Marketing Act.

Twenty-sixth, the Lions assert any conclusion that the Lions lack present business integrity would be arbitrary and capricious (Appeal Pet. 144-51).

⁴⁷ 7 U.S.C. §§ 1622(h), 1624(b).

The Lions do not cite and I cannot locate any conclusion of law by the ALJ that states the Lions “lack present business integrity.” Therefore, I reject, as speculative, the Lions’ assertion that any conclusion that the Lions lack present business integrity “would be” arbitrary and capricious.

Twenty-seventh, the Lions contend the ALJ’s imposition of a 5-year period of debarment is unreasonable under the circumstances (Appeal Pet. at 151-54).

In light of the number and the nature of the Lions violations of the Agricultural Marketing Act and the Regulations and the 2-year period during which the Lions violated the Agricultural Marketing Act and the Regulations, I find the ALJ’s imposition of a 5-year period of debarment reasonable and conclude the 5-year period of debarment is sufficient and necessary to maintain public confidence in the integrity and reliability of the processed products inspection service.

Twenty-eighth, the Lions contend the ALJ erroneously debarred Lion Raisins, Inc.’s employees, successors, and assigns (Appeal Pet. at 154).

The Regulations provide any person committing an act or engaging in a practice or causing an act or practice described in 7 C.F.R. § 52.54(a)(1)-(3) may be debarred from any or all of the benefits of the Agricultural Marketing Act. In addition, the Regulations provide that “agents, officers, subsidiaries, or affiliates” of the person who actually committed an act or engaged in a practice or caused an act or practice described in 7 C.F.R. § 52.54(a)(1)-(3) may be debarred from any or all benefits of the Agricultural

Marketing Act. The Regulations do not identify “employees, successors, and assigns” as subject to debarment. Therefore, I do not adopt the ALJ’s Order debarring Lion Raisins, Inc.’s “employees, successors, and assigns.” Instead, I debar Lion Raisins, Inc., and its agents, officers, subsidiaries, and affiliates, as provided in the Regulations.

Twenty-ninth, the Lions contend the Administrator did not present one “iota or scintilla of evidence” that Alfred Lion, Jr.; Isabel Lion; Larry Lion; or Jeffrey Lion violated the Agricultural Marketing Act or the Regulations; therefore, the ALJ’s debarment of Alfred Lion, Jr.; Isabel Lion; Larry Lion; and Jeffrey Lion, is error (Appeal Pet. at 154).

As an initial matter, Isabel Lion and Larry Lion did not appeal the ALJ’s June 9, 2006, Decision and Order and the ALJ’s debarment of Isabel Lion and Larry Lion became final and effective in July 2006. As for Alfred Lion, Jr., and Jeffrey Lion, the record establishes they were officers of Lion Raisins, Inc., and Lion Raisins, Inc., is not an entity separate and apart from Alfred Lion, Jr., and Jeffrey Lion. Therefore, even if I were to find that the Administrator presented no evidence that Alfred Lion, Jr., and Jeffrey Lion violated the Agricultural Marketing Act and the Regulations, that finding would not affect my disposition of the instant proceeding as to Alfred Lion, Jr., and Jeffrey Lion.

Thirtieth, the Lions contend the ALJ’s Decision and Order providing that the Lions may petition the Secretary of Agriculture or the Secretary’s designee, is error, and the

Order should be modified to provide that the Lions may petition the ALJ or the Judicial Officer (Appeal Pet. at 154-55).

The ALJ provided that the 5-year period of debarment may be suspended, as follows:

3. After a period of one year, upon a showing of good faith and adequate assurances of future compliance, the Respondents, or any of them, may petition the Secretary or his designee to suspend the balance of the period of debarment; however, with such suspension conditioned upon no violations being found during the remaining period of suspension. In the event additional violations were to be found, the full suspended balance of the period of debarment would then be reinstated.

ALJ's Decision and Order at 50. I find the third paragraph in the ALJ's Order is superfluous as a party may seek suspension of a period of debarment from benefits under the Agricultural Marketing Act and the ALJ lacked authority to impose restrictions on a party's request for suspension of a period of debarment. Therefore, I do not adopt that portion of the ALJ's Order which limits the Lions' right to seek suspension of the 5-year period of debarment from benefits under the Agricultural Marketing Act.

The ALJ Erred in Dismissing Allegations as Time-Barred

On December 20, 2005, the ALJ issued a Memorandum of Conference and Order dismissing paragraphs 11 through 89 of the Second Amended Complaint on the ground that they alleged violations that were time-barred by reason of 28 U.S.C. § 2462.

The limitation in 28 U.S.C. § 2462 applies only to proceedings for “civil fines, penalties, and forfeitures,” and is strictly construed in favor of the government.⁴⁸

Debarment is not a fine, penalty, or forfeiture. Debarment is “the act of precluding someone from having or doing something” and “does not extract payment in cash or in kind.”⁴⁹ Forfeiture, on the other hand, imposes a loss by the taking away of some specific

⁴⁸*E.I. Dupont de Nemours & Co. v. Davis*, 264 U.S. 456, 462 (1924) (stating statutes of limitations sought to be applied to bar rights of the government must receive a strict construction in favor of the government); *United States v. Whited & Wheless, Ltd.*, 246 U.S. 552, 561 (1918) (stating this court strictly construes statutes of limitations when urged to apply those statutes to bar the rights of government); *United States v. Nashville, C. & St. L. Ry.*, 118 U.S. 120, 125 (1886) (stating the United States, asserting its rights vested in it as a sovereign government, is not bound by any statute of limitations unless Congress has clearly manifested its intention that the United States should be so bound).

⁴⁹*In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165, 186 n.6 (2001) (citing *Printup v. Alexander & Wright*, 69 Ga. 553, 556 (Ga. 1882) (“to debar” is to cut off from entrance, to preclude, to hinder from approach, entry, or enjoyment, to shut out or exclude); *Haynesworth v. Hall Constr. Co.*, 163 S.E. 273, 277 (Ga. Ct. App. 1932) (“to debar” is to cut off from entrance, to preclude, to hinder from approach, entry, or enjoyment, to shut out or exclude); BLACK’S LAW DICTIONARY 407 (7th ed. 1999) (defining debarment as the act of precluding someone from having or doing something; exclusion or hindrance); WEBSTER’S COLLEGIATE DICTIONARY 296 (10th ed. 1997) (defining “debar” as to bar from having or doing something); 4 THE OXFORD ENGLISH DICTIONARY 308 (2d ed. 1991) (defining “debar” as to exclude or shut out from a place or condition; to prevent or prohibit from entrance or from having, attaining, or doing anything)).

property or preexisting valid right without compensation.⁵⁰ Moreover, 28 U.S.C. § 2462 applies to “penalty actions”⁵¹ and debarment is not penal.

The United States Supreme Court, interpreting the predecessor statute to 28 U.S.C. § 2462, has said that “penalty or forfeiture” means “something imposed in a punitive way for an infraction of public law.” *Meeker v. Lehigh Valley R.R. Co.*, 236 U.S. 412, 423, 35 S.Ct. 328, 59 L.Ed 644 (1915). Where the liability sought to be enforced is not punitive, but rather “strictly remedial,” the catch-all statute of limitations does not apply. *Id.*

United States v. Rebelo, 358 F. Supp.2d 400, 408-09 (D.N.J. 2005) (footnote omitted).

Debarment from the benefits of the Agricultural Marketing Act is strictly remedial.⁵² The

⁵⁰*L & K Realty Co. v. R.W. Farmer Const. Co.*, 633 S.W.2d 274, 279 (Mo.App.1982).

⁵¹*United States v. Rebelo*, 358 F. Supp.2d 400, 408 (D.N.J. 2005) (stating 28 U.S.C. § 2462, the catch-all statute of limitations, has particular applicability to penalty actions).

⁵²*See United States v. Borjesson*, 92 F.3d 954, 956 (9th Cir.) (determining categorically that debarment is not punishment), *cert. denied*, 519 U.S. 1047 (1996); *Bae v. Shalala*, 44 F.3d 489, 493 (7th Cir. 1995) (stating the Generic Drug Enforcement Act’s provision for civil debarment was remedial where debarment served compelling government interests unrelated to punishment and punitive effects were merely incidental to the “overriding purpose to safeguard the integrity of the generic drug industry while protecting public health.”); *United States v. Furlett*, 974 F.2d 839, 844 (7th Cir. 1992) (stating debarment from all trading activity reasonably can be viewed as a remedial measure); *United States v. Bizzell*, 921 F.2d 263, 267 (10th Cir. 1990) (stating removal of persons whose participation in government programs is detrimental to public purposes is remedial by definition); *Taylor v. Cisneros*, 913 F. Supp. 314, 320 (D.N.J. 1995) (stating, while debarment manifestly carried the “sting of punishment” in the eyes of the defendant, that alone could not recast a remedial measure as punishment because the analysis does not proceed from the defendant’s perspective; purposes, not deterrent effects, are paramount), *aff’d*, 102 F.3d 1334 (3d Cir. 1996); *United States v. Holtz*, 1993 WL 482953 (E.D. Pa. 1993) (holding the Federal Aviation Administration’s revocation of an aviation license for violating federal aviation regulations by falsifying

(continued...)

purpose of debarring those who engage in misrepresentation or deceptive or fraudulent practices or acts is to protect the integrity of the inspection service and to protect the public.⁵³ The exclusion of such persons helps to ensure that quality and condition standards are uniform and consistent, so that consumers may be able to obtain the quality product that they desire unaffected by corrupt influences.

Therefore, I conclude debarment under section 52.54 of the Regulations (7 C.F.R. § 52.54) is not “a fine, penalty, or forfeiture” and the statute of limitations in 28 U.S.C. § 2462 does not apply to the instant proceeding. The ALJ’s determination that paragraphs 11 through 89 of the Second Amended Complaint are time-barred, is error; however, even if I were to remand the instant proceeding to the ALJ and he were to find the Lions committed the violations alleged in paragraphs 11 through 89 of the Second Amended

⁵²(...continued)

maintenance records subject to FAA inspection was not a punitive sanction), *aff’d*, 31 F.3d 1174 (3d Cir. 1994) (Table); *Doe v. Poritz*, 142 N.J. 1, 43 (1995) (stating a statute that can fairly be characterized as remedial, both in its purpose and implementing provisions, does not constitute punishment even though its remedial provisions have some inevitable deterrent impact, and even though it may indirectly and adversely affect, potentially severely, some of those subject to its provisions; a law does not become punitive simply because its impact, in part, may be punitive unless the only explanation for that impact is a punitive purpose: the intent to punish.).

⁵³*See Manocchio v. Kusserow*, 961 F.2d 1539 (11th Cir. 1992) (stating a 5-year suspension from the Medicare program was remedial because its purpose was to protect the public from those who defraud the program); *United States v. Drake*, 934 F. Supp. 953, 959 (N.D. Ill. 1996) (stating suspension from obtaining loans from the Commodity Credit Corporation for failure to employ good faith in disposition of secured crops “was not punitive in nature, rather, the regulation exists to protect the integrity of the CCC and the price support loan program.”).

Complaint, I would not change the disposition of the instant proceeding. Therefore, I decline to remand the proceeding to the ALJ, and I dismiss paragraphs 11 through 89 of the Second Amended Complaint.

For the foregoing reasons, the following Order is issued.

ORDER

1. Lion Raisins, Inc., and its agents, officers, subsidiaries, and affiliates are debarred for a period of 5 years from receiving inspection services under the Agricultural Marketing Act and the Regulations.

2. Alfred Lion, Jr.; Bruce Lion; Daniel Lion; and Jeffrey Lion are each debarred for a period of 5 years from receiving inspection services under the Agricultural Marketing Act and the Regulations.

3. This Order shall become effective 30 days after service of this Order on the Lions.

Done at Washington, DC

April 17, 2009

William G. Jenson
Judicial Officer