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FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER ADAM H. PUTNAM

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**Please Respond To:**

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November 24, 2015

Judge John G. Van Laningham  
c/o DOAH Clerk  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

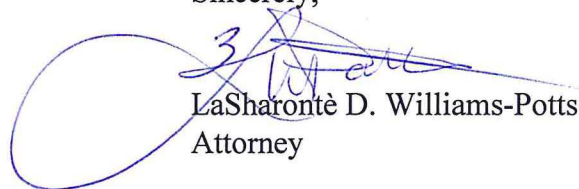
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FILED  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**Re: Agency Final Order  
Frontier Fresh of Indian River, LLC vs. United Indian River  
Packers, LLC and Fidelity and Deposit Insurance Co. of Maryland;  
Case No.: 15-1732**

Dear Judge Van Laningham,

Enclosed is a copy of the Department's Final Order. Please feel free to contact our office if you have any questions or concerns.

Sincerely,

  
LaSharontè D. Williams-Potts  
Attorney

**STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

FRONTIER FRESH OF  
INDIAN RIVER, LLC

Petitioner,

DOAH Case No.: 15-1732

vs.

UNITED INDIAN RIVER  
PACKERS, LLC,

and

FIDELITY AND DEPOSIT INSURANCE  
COMPANY OF MARYLAND, AS SURETY,

Respondents.

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**FINAL ORDER**

THIS CAUSE arising under the Florida Citrus Code, Sections 601.64 and 601.66, Florida Statutes, came before the Commissioner of the Florida Department of Agriculture and Consumer Services (“the Department”) for consideration and final agency action. The Commissioner of Agriculture and Consumer Services, as head of the Department, has jurisdiction over the subject matter and the parties.

**I. BACKGROUND**

On February 15, 2015, Frontier Fresh of Indian River, LLC, (“Frontier”) filed an Amended Complaint against United Indian River Packers, LLC (“United”) and the Fidelity and Deposit Insurance Company of Maryland (“Surety”) with the Florida Department of Agriculture and Consumer Services for a total of \$108,670.50. The Department provided notice of the Amended

Complaint to both United and Surety. In its Answer, United denied Frontier's allegations and requested a hearing. On or around March 25, 2015, the Department referred the matter to the Florida Division of Administrative Hearings ("DOAH") for formal hearing. Surety did not respond to the Amended Complaint nor did it appear in this proceeding.

The final hearing was conducted on June 16, 2015. During the live formal hearing, Frontier offered the testimonies of Michael Perry and Chad Durrell and entered its Exhibits 1 through 7 without objection. United presented the testimonies of Preston Perrone, Thomas P. Kennedy, and Kenneth P. Kennedy and entered its Exhibits 1 and 2.

A transcript of the proceedings was filed on July 8, 2015. Both parties timely filed proposed Recommended Orders pursuant to the ALJ's Order on Post-Hearing Submissions and a subsequent extension. Frontier also sought an award of attorney's fees pursuant to the fruit purchase contract.

On August 27, 2015, the ALJ entered an order recommending the entry of Final Order approving Frontier's claim against United in the amount of \$108,670.50, together with pre-award interest at the statutory rate from June 4, 2014, to the date of the final order. On September 11, 2015, United filed written exceptions to the Recommended Order. Frontier did not.

The Record consists of all notices, pleadings, supporting exhibits, transcripts, stipulations of the parties and the Recommended Order. The Recommended Order is attached hereto and incorporated herein.

## **II. EXCEPTIONS TO THE RECOMMENDED ORDER**

The Department's ruling in regard to written exceptions filed by United is as follows:

**Exception I:** United takes exception to the ALJ's findings of fact in paragraph 6 and endnote 1 of the Recommended Order. Particularly, endnote 1 states:

For reasons that will be made clear, it is not necessary for the undersigned to make detailed findings regarding the cause(s) of the relatively low yield of fresh-fruit quality grapefruit from the Emerald Grove in 2013/2014. No finding is made or implied here, one way or the other, on the question of whether the grapefruit sold under the purchase contract were nonconforming or whether Seller breached, e.g., the warranty of merchantability.

United argues that before a final order finding violation of the Florida Citrus Code could be entered in this case, a determination that the fruit was nonconforming to the agreement is necessary. United believes that it was not the breaching party because Frontier sold to it nonconforming goods which either caused the parties to enter into a modified agreement or caused United to revoke acceptance of the goods after the nonconformity was not seasonably cured. To support this argument, United references portions of the fruit purchase agreement, testimony by Thomas P. Kennedy, Michael Perry and Chad Durrell, and Section 672.101, Florida Statutes, which applies to transactions involving the sale of goods.

**Ruling on Exception I:** Pursuant to Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the findings of fact in a recommended order if the agency "first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or if the proceedings on which the findings were based did not comply with essential requirements of law." In this case, the ALJ found that United had accepted the fruit and therefore a finding as to whether the fruit was

nonconforming to the contract was unnecessary. After a review of the record, it does not appear that this finding was not based on competent substantial evidence. As such, the Department overrules Exception I.

**Exception II:** United takes exception to the ALJ's findings of fact in paragraphs 9, 11, 12, 13, and 15. In these passages, the ALJ found that United repudiated the contract between it and Frontier and subsequently asked Frontier to forgive a portion of the debt owed to it. United argues that there was a modification of the contract where the parties agreed that United would accept the impaired fruit and Frontier would accept a lower price which would be determined at a later date. Therefore, United did not violate the citrus code because it did not fail to make payment for the fruit. To support this argument, United references testimony by Thomas P. Kennedy, Michael Perry and Chad Durrell, Florida case law that interprets principles of contract law, and Section 672.305, Florida Statutes, which applies to transactions involving the sale of goods.

**Ruling on Exception II:** United argues that there is enough evidence to find that the parties entered into a modified agreement. However, whether a modified agreement was reached between the parties is a conclusion of law. Pursuant to Section 120.57(1)(l), Florida Statutes, an "agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." The Department is without legal authority to modify or reject this conclusion because it does not have substantive jurisdiction over Chapter 672, Florida Statutes or any other laws that govern contracts for the sale of goods. Further, after a review of the record, it does not

appear that the ALJ's findings were not based on competent substantial evidence. For these reasons, Exception II is overruled.

**Exception III:** United takes exception to the ALJ's finding of fact in paragraph 14 and the conclusions of law in paragraphs 27 and 28. In paragraph 14, the ALJ found that United accepted the fruit from Frontier without a proper and seasonable revocation of acceptance. Based on this finding, the ALJ further concluded in paragraphs 27 and 28 that United exercised ownership of the fruit it harvested from Frontier's groves despite any blemishes on the fruit. The ALJ went on to explain that pursuant to contract law, United could rightfully accept nonconforming fruit without penalty so long as acceptance is revoked within a reasonable time after it discovers or should have discovered the grounds for revocation and the Seller, in this case Frontier, is notified. United never provided Frontier with notice of revocation; United instead sold the fruit to others in the ordinary course of business inconsistent with revocation.

United argues that it accepted the goods, although nonconforming, because it reasonably believed that Frontier would seasonably cure the defect through an adjustment in price. It later revoked acceptance when it was notified that Frontier was not going to cure. To support this argument, United references Florida case law that interprets principles of contract law, and Sections 672.607 and 672.608, Florida Statutes, which apply to transactions involving the sale of goods.

**Ruling on Exception III:** United does not dispute the fact that it accepted the goods, but rather the finding that notice of revocation was not given within reasonable time after acceptance. After a review of the record, it does not appear that this finding was not based on competent substantial evidence.

Further the conclusions of law in paragraphs 27 and 28 are grounded in contract law. The Department cannot modify or reject these conclusions as it lacks the substantive jurisdiction to do so. For these reasons, Exception III is overruled.

### **III. FINDINGS OF FACT**

The Commissioner of Agriculture adopts the Findings of Fact set forth in the attached Recommended Order.

### **IV. CONCLUSIONS OF LAW**

The Commissioner of Agriculture adopts the conclusions of law set forth in the attached Recommended Order.

#### **ORDERED AND ADJUDGED:**

1. Respondent, United, is indebted to Petitioner, Frontier, in the amount of \$108,670.50.

2. Respondent, United shall pay to Petitioner, Frontier, \$108,0670.00 within thirty (30) days from the date of this Final Order. In the event Respondent United does not comply with this Final Order within thirty (30) days, Surety, the Fidelity and Deposit Company of Maryland, as Co-respondent, is hereby ordered to provide payment under the conditions and provisions of the citrus dealer's bond no. 21BSBGH6607, to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE. Should responsibility of payment evolve to the Co-respondent, the Fidelity and Deposit Company of Maryland, it will be notified by the Department. This Final Order is effective on the date filed with the Clerk of the Department.**

**NOTICE OF RIGHT TO APPEAL**

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.


**DONE and ORDERED** at Tallahassee, Leon County, Florida, this 24<sup>th</sup> day of November, 2015.

ADAM H. PUTNAM  
COMMISSIONER OF AGRICULTURE



Michael A. Joyner  
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 24<sup>th</sup> day of November, 2015.

  
for Stephen M. Donelan  
Agency Clerk

**Copies furnished to:**

Judge John G. Van Laningham, Administrative Law Judge, The Division of Administrative Hearings The Desoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399

Frontier Fresh of Indian River vs. United Indian River Packers  
DOAH Case No.: 15-1732



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Tom Steckler, Division Director, Division of Consumer Services, the Rhodes Building