



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

November 7, 2017

Sent Via Federal Express

Ivan Garcia
Garcia Farms
14729 Santa Lucia Avenue
Los Banos, CA 93635

Re: Decision and Order in the Matter of the Appeal of Garcia Farms;
Case No. 569-17

Dear Mr. Garcia,

Enclosed, please see the Decision and Order and Proof of Service in the above-referenced matter.

Please contact the CDFA Legal Office if you have any questions. Thank you.

Sincerely,

Brandon Morrow
Legal Office Hearing Coordinator

Enclosures

cc: Scott Renteria, Inspection and Compliance Branch
(with encls.)



**BEFORE THE
DEPARTMENT OF FOOD AND AGRICULTURE
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
)
Ivan Garcia)
Garcia Farms)
14729 Santa Lucia Avenue)
Los Banos, CA 93635)
)
)
Appellant)
_____)

**DECISION AND ORDER
ON APPEAL**

Case No. 569-17

The National Organic Program is the federal regulatory framework governing organic food. The program has created standards for farm, wild crop harvesting, and handling operations selling agricultural products as organically produced and has established a nationwide structure for organic certification. (7 U.S.C. §§ 6501-6524) Because it is not possible from appearance to determine whether a product is organic, the heart of the program lies in inspections, documentation, and reporting to validate that agricultural products advertised as such are indeed organic.

The Code of Federal Regulations, title 7, sections 205.1 through 205.690 contain the standards for implementation of the National Organic Program. These organic standards describe the specific requirements for the creation, production, handling, labeling, trade, and enforcement of all organic products. An accredited certifying agent must verify that these requirements are satisfied in order for products to be labeled organic. Certifying agents also initiate compliance actions to enforce program requirements. Noncompliance procedures are set forth in section 205.662 of the National Organic Program regulations.

The California State Organic Program was established by the California Organic Products Act of 2003 (the Act) (Food & Agr. Code §§ 46000-46029; Health & Safety Code §§ 110810-110959) Under the State Organic Program, the Secretary of the California Department of Food and Agriculture and County Agricultural Commissioners under the supervision and direction of the Secretary are responsible for enforcing the California Organic Product Act of 2003 and regulations promulgated under the act, the federal Organic Foods Production Act of 1990, and the National Organic Program regulations. If a violation has occurred, the Secretary or her

authorized representative may take any corrective action as specified in the Act and the National Organic Program regulations.

Section 46016.5 of the FAC allows a client to appeal the proposed action by a NOP accredited certifier to the Secretary for mediation.

FACTS

On February 22, 2017, Garcia Farms (Appellant) received a Notice of Noncompliance from the San Benito County Agricultural Commissioner's Office for "unresolved noncompliance with the federal Organic Foods Production Act of 1990 and NOP violations.

On March 14, 2017, CCOF Certification Services issued a Surrender of Certification notice to the Appellant informing it that its certification with CCOF had been surrendered, effective February 22, 2017. CCOF is the certifying agent for the Appellant.

On May 15, 2017, the Department issued a Notice of Expiration of Organic Registration to the Appellant indicating that its registration had expired on April 01, 2017 and as such it was no longer registered "organic" and ordered the Appellant to cease in the sale of any product as organic until it obtained registration.

On June 30, 2017, the Department issued a Final Notice of Expiration of Organic Registration to the Appellant that, for a second time, informed the Appellant that its registration had expired on April 01, 2017, that it was no longer registered "organic" and that should it continue to represent its products as "organic" it would be subject to civil penalties.

Despite these numerous warnings, the Appellant was observed representing its products as "organic" on June 24, 2017 at the San Mateo Farmer's Market, on July 8, 2017 at the San Mateo Farmer's Market and the Alameda Farmer's Market, and on July 18, 2017 at the San Mateo Farmer's Market. The Appellant received cease and desist letters from CCOF in all three instances.

On August 4, 2017, the Department issued a Notice of Proposed Action in which it levied civil penalties against the Appellant as follows: (1) representing products as "organic" without a valid organic registration in violation of FAC §§ 46013.1(a) and 46020(a) in the amount of \$5,000.00; (2) representing products as "CCOF Certified Organic" after surrendering certification with CCOF in violation of 7 CFR §§ 205.100(a) and 205.300(a) in the amount of \$10,000.00.

On or about August 23, 2017, the Appellant submitted its appeal. The only evidence submitted by the Appellant was a standard Hearing Request Form (Form), in which Appellant states, "Ivan Garcia was doing business with a second certificate that is CCOF certified and organic.

When inspector got to San Mateo Market we indicated section of certified organic section." Attached to the Form is a Certified Producer's Certificate from San Benito County for Roberto Gonzalez and Paola Roman dba Golden Rule Organics. The certificate is signed by Roberto Gonzalez.

FINDINGS

The Appellant fails to provide an explanation or evidence that the numerous violations summarized above are false. Rather, Appellant relies solely on a certification document of another, Golden Rule Organics, and provides no explanation how this certification applies to Garcia Farms.

In contrast, the Department supported its decision with photo evidence, communications and enforcement notices that prove the Appellant violated both the state and federal regulations.

Dated: NOV. 6, 2017

Michele Dias

Michele Dias
General Counsel and Hearing Officer
Department of Food and Agriculture

APPELLANT'S RIGHT TO SEEK JUDICIAL REVIEW

Judicial review of the decision of the Department may be sought within 30 days of the date of this decision pursuant to Section 1094.5 of the Code of Civil Procedure.

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)
Ivan Garcia)
Garcia Farms)
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)
)
Appellant)
_____)

**DECISION AND
ORDER ON APPEAL
Case # 569-17**

For the foregoing reason, the decision by the Department to levy civil penalties in the amount of \$15,000 stands.

This Decision and Order shall be effective November 6, 2017.

IT IS SO ORDERED this sixth day of November, 2017.

Michele Dias

Michele Dias
General Counsel and Hearing Officer
Department of Food and Agriculture

In the Matter of the Appeal of:
Garcia Farms
Case No. 569-17

PROOF OF SERVICE

I, Brandon Morrow, declare that I am employed in the County of Sacramento, that I am over the age of 18 and not a party to this action. My business address is 1220 N Street, Suite 400, Sacramento, California 95814.

On November 7, 2017, I served the following document(s):

DECISION AND ORDER ON APPEAL (dated November 6, 2017)

addressed as follows:

Ivan Garcia Garcia Farms 14729 Santa Lucia Avenue Los Banos, CA 93635	Scott Renteria Special Investigator, Inspection and Compliance Branch Department of Food and Agriculture 2800 Gateway Oaks, Suite 100 Sacramento, CA 95833 scott.renteria@cdfa.ca.gov (via email)
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by the following method(s):

U.S. MAIL: I am readily familiar with this Department's practice for the collection and processing of correspondence for mailing with the United States Postal Service and, pursuant to this Department's ordinary course of business, correspondence will be deposited with the United States Postal Service the same day that mail is placed for collection and mailing if placed for collection prior to 3:30 p.m.; after that time, it will be deposited the next business day.

Sent via:

- Certified mail
- Regular mail

OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:


- UPS
- Federal Express
- Messenger

FACSIMILE TRANSMISSION: A true copy of the above-described document(s) was/were transmitted by facsimile transmission to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008, and the transmission(s) was/were reported as complete and without error. A copy of the transmission report(s) issued by the transmitting machine is/are attached to the hard copy of the declaration of service to be sent by mail.

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand-delivered to the addressee(s) or office(s) of the addressee(s).

ELECTRONIC MAIL: By causing a true copy of the above-described document(s) to be sent to the e-mail address of the addressee(s).

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on November 7, 2017 in Sacramento, California.



Brandon Morrow