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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
          ) P. & S. Docket No. D-08-0034  
          ) )  
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          ) )  
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Respondent ) Complaint

There is reason to believe that the Respondent named herein has willfully violated the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181 et seq.), hereinafter referred to as the Act, and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §201.1 et seq.), hereinafter referred to as the regulations. Therefore, this complaint is issued alleging the following:

I

(a) D.A. Upton, hereinafter referred to as Respondent, is an individual doing business in the State of New Mexico. Respondent's business mailing address is P.O. Box 93, Clovis, New Mexico, 88102. Respondent's residential address is P.O. Box 65, Portales, NM 88130.

(b) Respondent is, and at all times material herein, was:

(1) Engaged in the business of a dealer buying and selling livestock in commerce for its own account;

(2) Registered with the Secretary of Agriculture as a dealer buying and selling livestock.

## II

(a) During the period September 29, 2004 through November 17, 2004, Respondent purchased livestock and failed to pay, when due, for these livestock purchases.

(b) Respondent's purchases for which it failed to pay, when due, were as follows:

Customer Name	Date of Purchase	No. Head	Date Payment Due Per \$409(a)	Date Paid Per \$409(a)	Total Livestock Amount
Clovis Livestock, Inc.	9/29/04	13	9/30/04	10/02/04	\$8,720.26
Clovis Livestock, Inc.	10/06/04	13	10/07/04	10/10/04	\$9,622.42
Clovis Livestock, Inc.	10/13/04	31	10/14/04	10/16/04	\$19,067.46
Portales Livestock Auction, Inc.	10/21/04	24	10/22/04	10/24/04	\$12,341.64
Portales Livestock Auction, Inc.	10/28/04	22	10/29/04	11/03/04	\$14,593.06
Clovis Livestock, Inc.	11/10/04	27	11/11/04	11/15/04	\$17,728.19
Clovis Livestock, Inc.	11/17/04	20	11/18/04	11/24/04, 11/26/04	\$13,789.45
				Total	\$95,862.48

## III

By reason of the facts alleged in paragraph II herein, specifically, Respondent's practice of failing to pay, when due, for livestock, Respondent has violated sections 312(a) (7 U.S.C. § 213 (a)) and 409 (7 U.S.C. § 228(b)) of the Act, and section 201.43 of the regulations (9 C.F.R. § 201.43(b)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has in fact willfully violated the Act and regulations issued thereunder, this complaint shall be served upon Respondent. Respondent shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted By the Secretary Under Various

Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice"). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

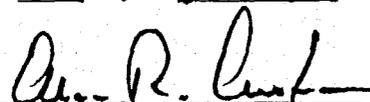
Packers and Stockyards Program, GIPSA, requests:

1. That unless Respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act; and

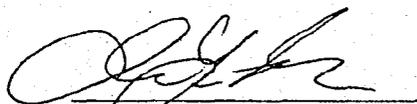
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from violations of the Act and assessing such civil penalties as are authorized by the Act and warranted in the premises.

Done at Washington, D.C.

this 17 day of December 2007



Alan R. Christian  
Deputy Administrator,  
Packers and Stockyards Program



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Office of the General Counsel  
Trade Practices Division  
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