

II

On May 4, 2012, Respondent entered into a Consent Decision with Complainant (P&S Docket D-12-0240) in which Respondent paid a civil penalty of \$10,000.00 and agreed to cease and desist from violating the Act. Most notably, Respondent agreed to cease and desist from failing to pay, when due, for livestock. However, an August 2012 investigation conducted at Respondent's operation to determine if Respondent was in compliance with the aforementioned Consent Decision revealed that Respondent has purchased livestock and failed to pay, when due, the full purchase price of such livestock. See Appendix A attached.

III

By reason of the facts alleged herein, Respondent has willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§192(a) and 228b).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has in fact willfully violated the Act, this Complaint and Notice of Hearing shall be served upon Respondent. Respondent shall have twenty (20) days after receipt of this Complaint and Notice of Hearing 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 proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing.

Respondent is hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing, a hearing will be held in accordance with the Rules of Practice, at a place and time to be designated later. At the hearing, Respondent

will have the right to appear and show cause why an appropriate Order should not be issued in accordance with the provisions of the Act which requires that Respondent cease and desist from violating the Act with respect to matters alleged herein and assesses such civil penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.
this 29th day of July, 2013

Susan B. Keith
Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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US Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Program (P&SP)
Appendix A - Schedule of Failure to Pay When Due for Livestock
Entity Information

Investigation Date	Entity			DBA				Mailing Address
8/27/2012	David Mosner, Inc.							E-8 Hunts Point Cooperative Market Bronx, NY 10474
Purchase Date	Seller's Name	Number of Head	Net Invoice	Due Date	Payment Date	Check Number	Check Amount	Days Late Per Check Date
06/08/12	Provitello, LLC	90	\$102,155.80	06/11/12	06/21/12	60670	\$102,155.80	10
06/14/12	Provitello, LLC	49	\$51,119.00	06/15/12	06/29/12	60709	\$51,119.00	14
06/21/12	Provitello, LLC	55	\$59,111.72	06/22/12	07/03/12	60762	\$59,111.72	11
06/25/12	Provitello, LLC	95	\$99,205.60	06/26/12	07/13/12	60799	\$99,205.60	17
06/28/12	Provitello, LLC	55	\$54,949.16	06/29/12	07/19/12	60856	\$54,949.16	20
07/05/12	Provitello, LLC	51	\$53,156.04	07/06/12	07/19/12	60840	\$53,156.04	13
07/09/12	Provitello, LLC	92	\$86,282.05	07/10/12	07/26/12	60891	\$86,282.05	16
07/12/12	Provitello, LLC	51	\$52,879.56	07/13/12	07/27/12	60909	\$52,879.56	14
07/19/12	Provitello, LLC	49	\$51,821.72	07/20/12	08/02/12	60964	\$51,821.72	13
07/23/12	Provitello, LLC	95	\$99,427.60	07/24/12	08/02/12	60976	\$99,427.60	9
07/30/12	Provitello, LLC	51	\$49,442.76	07/31/12	08/09/12	61017	\$49,442.76	9

08/01/12	Provitello, LLC	51	\$51,861.96	08/02/12	08/09/12	61033	\$51,861.96	7
08/06/12	Provitello, LLC	89	\$92,761.50	08/07/12	08/16/12	61064	\$92,761.50	9
08/09/12	Provitello, LLC	53	\$53,618.68	08/10/12	08/16/12	61079	\$53,618.68	6
08/16/12	Provitello, LLC	55	\$59,563.20	08/17/12	08/23/12	61126	\$59,563.20	6