

U.S. DEPT. OF AGRICULTURE
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-12-0081
Bro Pack, Inc., and)
Andrew Broberg,)
Respondents) Complaint and Notice of Hearing

There is reason to believe that the Respondents named herein have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1-201.200) (regulations), and, therefore, this complaint and notice of hearing is issued alleging the following:

I

(a) Bro Pack, Inc. (Respondent Bro Pack) is a corporation organized and existing under the laws of the State of California. Its business mailing address is P.O. Box 6545, Pico Rivera, California 90660.

- (b) Respondent Bro Pack is, and at all times material herein was:
- (1) Engaged in the business of buying livestock in commerce for the purpose of slaughter; and
 - (2) A packer within the meaning of, and subject to the provisions of, the Act.

(c) Andrew Broberg (Respondent Broberg) is an individual whose current business mailing address is P.O. Box 6545, Pico Rivera, California 90660.

- (d) Respondent Broberg is, and at all times material herein was:
- (1) President of the Respondent Bro Pack;

- (2) One hundred percent owner of Respondent Bro Pack;
- (3) Registered agent of Respondent Bro Pack;
- (4) Responsible for the direction, management, and control of the business activities of the Respondent Bro Pack, including acts and practices alleged herein;
and
- (5) A packer within the meaning of, and subject to the provisions of, the Act.

II

On June 25, 2007, Respondents received a Letter of Notice from the Packers and Stockyards Program, stating that their weighing practices were in violation of section 202 of the Act (7 U.S.C. § 192) and sections 201.99(d), 201.71(a) (d), and 201.72 (a)(b) of the regulations (9 C.F.R. §§ 201.99(d), 201.71(a) (d), and 201.72 (a)(b)). Additionally, this letter informed Respondents that because they used a scale — which at the time was maintained at the facilities of Manning Beef, LLC— to determine the hot weights when Respondents purchased cattle on a carcass grade and weight basis, Respondents must ensure that the scale they use complies with the regulations. Respondents were further informed that continued violations of the Act and regulations may result in administrative action and civil penalties.

III

(a) Respondent Bro Pack, under the direction, management, and control of Respondent Broberg, in connection with its operations subject to the Act, failed to use an accurate scale for the purpose of determining livestock carcass weights at the slaughter facility located at Manning Beef LLC, Pico Rivera, CA (Manning Beef). Specifically, on August 26,

2009, the dynamic monorail scale at Manning Beef, which Respondents used to determine hot carcass weights of cattle Respondents purchased, failed to meet applicable accuracy tolerances for dynamic monorail scales established by the National Institute of Standards and Technology ("NIST").

(b) On August 26, 2009, and March 10, 2010, the Respondent Bro Pack, under the direction, management, and control of the Respondent Broberg, in connection with its purchase of livestock on a carcass grade and weight basis at the facilities of Manning Beef, failed to use hooks, rollers, gambrels, and other equipment that were uniform in weight.

(c) On August 26, 2009, the Respondent Bro Pack, under the direction, management, and control of Respondent Broberg, purchased approximately 180 head of livestock totaling approximately \$192, 666.77 on a hot weight basis using the monorail scale at Manning Beef, and in connection with those purchases, failed to use the livestock scale as to ensure accurate weights.

IV

By reason of the facts alleged in paragraph III herein, Respondents have willfully violated section 202(a) of the Act, (7 U.S.C. § 192(a)), and also sections 201.71(a), 201.71(d), and 201.99(d) of the regulations (9 C.F.R. §§ 201.71(a), 201.71(d), 201.99(d)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have in fact willfully violated the Act and regulations issued thereunder, this Complaint and Notice of Hearing shall be served upon Respondents. Respondents shall have twenty (20) days following 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.

Respondents are 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, Respondents 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 require that Respondents cease and desist from violating the Act with respect to matters alleged herein and assessing such civil penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.
this 18 day of November, 2011

for Amy R. Blochinger
Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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