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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-09-0041
)
)
Potter Sausage Co.,)
Respondent) Complaint and Notice of Hearing

There is reason to believe that the Respondent named herein has willfully violated 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 therefore, this Complaint and Notice of Hearing is issued alleging the following:

I

(a) Potter Sausage Co., hereinafter referred to as "Respondent", is a corporation organized and existing under the laws of the State of Delaware. Its business mailing address is P. O. Box 689, Durant, Oklahoma 74702-0689.

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

(1) Engaged in the business of buying livestock in commerce for the purposes of slaughter and of manufacturing or preparing meats or meat products for sale or shipment in commerce; and

(2) A packer within the meaning of and subject to the provisions of the Act.

II

(a) On or about the dates and in the transactions listed below, Respondent purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

| Livestock Seller | Purchase Date | No. of Head | Livestock Purchase Amount | Check Number and Amount | Check Date | Date Payment Due per § 409(a) | Number of Days Late |
|------------------------|---------------|-------------|---------------------------------|-------------------------|------------|-------------------------------|---------------------|
| Wiechman Pig Co., Inc. | 3/17/08 | 76 | \$15,254.53 | #122691 \$30,420.21 | 4/14/08 | 3/18/08 | 27 |
| | 3/17/08 | 89 | <u>15,165.68</u> \$30,420.21 | | | 3/18/08 | 27 |
| Wiechman Pig Co., Inc. | 3/13/08 | 86 | \$15,455.55 | #122579 \$31,006.80 | 4/10/08 | 3/14/08 | 27 |
| | 3/13/08 | 87 | <u>15,551.25</u> \$31,006.80 | | | 3/14/08 | 27 |
| Wiechman Pig Co., Inc. | 3/12/08 | 82 | \$15,180.00 | #122536 \$30,294.00 | 4/09/08 | 3/13/08 | 27 |
| | 3/12/08 | 91 | <u>15,114.00</u> \$30,294.00 | | | 3/13/08 | 27 |
| Wiechman Pig Co., Inc. | 3/11/08 | 84 | \$15,980.00 | #122526 \$31,839.30 | 4/08/08 | 3/12/08 | 27 |
| | 3/11/08 | 85 | <u>15,859.30</u> \$31,839.30 | | | 3/12/08 | 27 |
| Wiechman Pig Co., Inc. | 3/06/08 | 89 | \$16,765.00 | #122479 \$16,765.00 | 4/04/08 | 3/07/08 | 28 |
| Wiechman Pig Co., Inc. | 3/05/08 | 87 | \$16,406.25 | #122409 \$32,522.25 | 4/03/08 | 3/06/08 | 28 |
| | 3/05/08 | 91 | <u>16,116.00</u> \$32,522.25 | | | 3/06/08 | 28 |
| Wiechman Pig Co., Inc. | 3/04/08 | 86 | \$16,303.55 | #122361 \$32,527.25 | 4/02/08 | 3/05/08 | 28 |
| | 3/04/08 | 82 | <u>16,223.70</u> \$32,527.25 | | | 3/05/08 | 28 |
| Wiechman Pig Co., Inc. | 3/03/08 | 85 | \$15,785.00 | #122352 \$32,386.50 | 4/01/08 | 3/04/08 | 28 |
| | 3/03/08 | 81 | <u>16,601.50</u> \$32,386.50 | | | 3/04/08 | 28 |
| Wiechman Pig Co., Inc. | 2/28/08 | 82 | \$15,592.50 | #122287 \$63,624.70 | 3/31/08 | 2/29/08 | 31 |
| | 2/28/08 | 82 | 16,813.80 | | | 2/29/08 | 31 |
| | 2/27/08 | 86 | 15,946.00 | | | 2/28/08 | 32 |
| | 2/27/08 | 81 | <u>15,272.40</u> \$63,624.70 | | | 2/28/08 | 32 |
| Wiechman Pig Co., Inc. | 2/26/08 | 87 | \$15,997.00 | #122168 \$31,960.25 | 3/18/08 | 2/27/08 | 20 |
| | 2/26/08 | 81 | <u>15,963.25</u> \$31,960.25 | | | 2/27/08 | 20 |
| Wiechman Pig Co., Inc. | 2/25/08 | 85 | \$15,481.90 | #122132 \$30,791.90 | 3/17/08 | 2/26/08 | 20 |
| | 2/25/08 | 77 | <u>15,310.00</u> \$30,791.90 | | | 2/26/08 | 20 |
| Wiechman Pig Co., Inc. | 2/21/08 | 87 | \$15,837.20 | #122048 \$31,923.70 | 3/13/08 | 2/22/08 | 20 |
| | 2/21/08 | 80 | <u>16,086.50</u> \$31,923.70 | | | 2/22/08 | 20 |

| Livestock Seller | Purchase Date | No. of Head | Livestock Purchase Amount | Check Number and Amount | Check Date | Date Payment Due per § 409(a) | Number of Days Late |
|-----------------------------|---------------|-------------|---------------------------|-------------------------|------------|-------------------------------|---------------------|
| Wiechman Pig Co., Inc. | 2/20/08 | 85 | \$15,747.10 | | | 2/21/08 | 20 |
| | 2/20/08 | 77 | <u>14,853.75</u> | #122995 | | 2/21/08 | 20 |
| | | | \$30,600.85 | \$30,600.85 | 3/12/08 | | |
| Wiechman Pig Co., Inc. | 2/19/08 | 84 | \$15,487.00 | | | 2/20/08 | 20 |
| | 2/19/08 | 84 | <u>15,946.00</u> | #121980 | | 2/20/08 | 20 |
| | | | \$31,433.00 | \$31,433.00 | 3/11/08 | | |
| Wiechman Pig Co., Inc. | 2/18/08 | 91 | \$14,899.20 | | | 2/19/08 | 20 |
| | 2/18/08 | 84 | <u>14,755.00</u> | #121957 | | 2/19/08 | 20 |
| | | | \$29,654.20 | \$29,654.20 | 3/10/08 | | |
| Wiechman Pig Co., Inc. | 1/15/08 | 87 | \$12,646.80 | | | 1/16/08 | 20 |
| | 1/15/08 | 81 | <u>13,051.20</u> | #121086 | | 1/16/08 | 20 |
| | | | \$25,698.00 | \$25,698.00 | 2/05/08 | | |
| Wiechman Pig Co., Inc. | 1/14/08 | 85 | \$12,829.60 | | | 1/15/08 | 20 |
| | 1/14/08 | 88 | <u>11,913.75</u> | #121076 | | 1/15/08 | 20 |
| | | | \$24,743.35 | \$24,743.35 | 2/04/08 | | |
| Wiechman Pig Co., Inc. | 1/10/08 | 84 | \$13,548.00 | | | 1/11/08 | 20 |
| | 1/10/08 | 83 | <u>13,641.10</u> | #121026 | | 1/11/08 | 20 |
| | | | \$27,189.10 | \$27,189.10 | 1/31/08 | | |
| Wiechman Pig Co., Inc. | 1/09/08 | 81 | \$12,987.00 | | | 1/10/08 | 20 |
| | 1/09/08 | 80 | 12,959.45 | | | 1/10/08 | 20 |
| | 1/08/08 | 81 | 13,204.50 | | | 1/09/08 | 21 |
| | 1/08/08 | 84 | <u>12,984.60</u> | #121014 | | 1/09/08 | 21 |
| | | | \$52,135.55 | \$52,135.55 | 1/30/08 | | |
| Wiechman Pig Co., Inc. | 1/07/08 | 85 | \$13,877.50 | | | 1/08/08 | 20 |
| | 1/07/08 | 81 | <u>13,487.25</u> | #120966 | | 1/08/08 | 20 |
| | | | \$27,364.75 | \$27,364.75 | 1/28/08 | | |
| Wiechman Pig Co., Inc. | 1/04/08 | 83 | \$13,732.50 | | | 1/07/08 | 18 |
| | 1/03/08 | 77 | 12,780.00 | | | 1/04/08 | 21 |
| | 1/03/08 | 79 | 12,887.75 | | | 1/04/08 | 21 |
| | 1/02/08 | 70 | 11,232.00 | | | 1/03/08 | 22 |
| | 1/02/08 | 74 | <u>12,246.00</u> | #120946 | | 1/03/08 | 22 |
| | | | \$62,878.25 | \$62,878.25 | 1/25/08 | | |
| Lynch Livestock, Inc. | 1/03/08 | 84 | \$11,691.35 | \$11,691.35 #120545 | 1/07/08 | 1/04/08 | 3 |
| Parks of Iowa Ottumwa | 12/28/07 | 84 | \$13,406.10 | \$13,406.10 #120963 | 1/28/08 | 12/31/07 | 28 |
| Parks of Iowa LC- Ellsworth | 12/28/07 | 88 | \$14,612.35 | \$14,612.35 #120898 | 1/24/08 | 12/31/07 | 24 |

| Livestock Seller | Purchase Date | No. of Head | Livestock Purchase Amount | Check Number and Amount | Check Date | Date Payment Due per § 409(a) | Number of Days Late |
|-------------------------|---------------|-------------|---------------------------|-------------------------|------------|-------------------------------|---------------------|
| Parks of Minnesota, LLC | 12/29/07 | 91 | \$15,272.22 | \$15,272.22 #120975 | 1/29/08 | 12/31/07 | 29 |
| Parks of Nebraska, LLC | 2/28/08 | 84 | \$16,572.95 | \$16,572.95 #121805 | 3/04/08 | 2/29/07 | 4 |
| Parks of Nebraska, LLC | 1/10/08 | 97 | \$13,052.20 | \$13,052.20 #120899 | 1/24/08 | 1/11/07 | 13 |

(b) Respondent made the above livestock purchases without having first obtaining written credit agreements with prescribed trust waivers signed by the sellers.

(c) Respondent failed to pay for the above livestock purchases within the time period required by the Act despite having been placed on notice by a certified letter, dated October 24, 2007, that; (1) Respondent's practice of failing to pay for its livestock purchases by the close of the next business day after purchase and transfer of possession of the livestock constituted a violation of section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)); and (2) that Respondent, before purchasing livestock on credit, must obtain written acknowledgments from livestock sellers in the form prescribed in section 201.200 of the regulations.¹

III

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

¹ As specified in section 201.200 of the regulations, in order to effect payment in a manner other than as required by section 409(a) of the Act, any written agreement obtained by Respondent to purchase livestock on credit as a packer under section 409(b) of the Act must contain the written acknowledgment of the livestock seller, in the specific form prescribed by section 201.200 of the regulations, indicating that the livestock seller understands that as a result of the credit purchase, the seller will have no trust rights under section 206 of the Act.

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 3 day of December, 2008



ALAN R. CHRISTIAN
Deputy Administrator,
Packers and Stockyards Program
Grain Inspection, Packers and Stockyards
Administration



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