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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-09- **0135**
)
Townsend Farms of Arkansas, Inc.)
)
Respondent)
) Complaint

There is reason to believe that the Respondent named herein has willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; hereinafter "Act"), and, therefore, this complaint is issued alleging the following:

I.

(a) Townsend Farms of Arkansas, Inc. (hereinafter "Respondent"), is a corporation organized and existing under the laws of the State of Arkansas, and is a wholly owned subsidiary of Townsends, Inc., whose business mailing address is 1600 White Drive, Batesville, Arkansas 72501.

(b) At all times material herein, Respondent was:

- (1) Engaged in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughter; and
- (2) A live poultry dealer within the meaning of and subject to the provisions of the Act.

II.

(a) For approximately a two week period from the end of December 2007 through the beginning of January 2008, Respondent initiated density trial tests among 33 poultry growers with whom Respondent had ongoing poultry growing arrangements. Respondent's employees

orally guaranteed to the poultry growers that for the purpose of the density trial test, the rate of compensation under these special poultry growing arrangements would be equal to the average payment for their last three flocks prior to the density trial test if their payment for the test flock was less than the three flock average. Of the 33 growers, the test flock pay of 32 growers was less than that grower's three flock average.

(b) Respondent, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, obtained live chickens under special poultry growing arrangements and failed to pay, when due, for this live poultry when it failed to deliver to the poultry growers, before the fifteenth day following the week in which the poultry was slaughtered, the three flock average orally guaranteed to the poultry growers whose flock pay was adversely affected by the density trial test.

(c) Respondent later informed the adversely affected poultry growers that instead of paying them the orally guaranteed three flock average payment, Respondent would place extra birds with the poultry growers at a future date.

(d) On August 7, 2008, Packers and Stockyards Program personnel contacted John Pastrana, Respondent's Director of Poultry Operations, via telephone and inquired as to whether Respondent intended to pay the adversely affected growers the orally guaranteed three flock average payment. Respondent, after discussion with Townsends, Inc., agreed to pay the poultry growers adversely affected by the density trial test the orally guaranteed three flock average payment. On September 5, 2008, Townsend Farms, Inc., another wholly owned subsidiary of Townsends, Inc., issued checks to the poultry growers in amounts equal to the difference between what Respondent had already paid to the poultry growers and the three flock average payment. (Appendix A) The additional payments totaled \$114,555.29.

III.

By reason of the facts alleged in paragraph II, Respondent has willfully violated section 410(a) of the Act (7 U.S.C. § 228b-1(a)).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondent for the purpose of determining whether Respondent has willfully violated the Act. Respondent shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9200, 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"). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint.

The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), requests:

1. That unless Respondent fails to file an answer within the time allowed, 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; and
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations of the Act found to exist, and assessing such civil penalties


against Respondent as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 10 day of June, 2009



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program



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Grower Name	Date Placed	Date Moved	Grower Pay	Check Date	Check Number	Pay Amount	Total Deductions	Net Amount	Adj. Check Date	Adj. Check Number	3-Flock Avg. Adj. Pay	15 Day Due date	Days Late
MIKE HUCKABEE	05/31/07	08/01/07	\$30,553.81	03/11/08	1308473635	\$27,143.11	\$12,811.50	\$14,331.61	09/05/08	1308497001	\$5,435.17	03/24/08	165
MIKE HUCKABEE	08/10/07	10/11/07	\$35,998.07										
MIKE HUCKABEE	10/26/07	12/28/07	\$31,782.95										
		divided by 3-Flock Average Pay	\$97,734.83										
			3.00										
			\$32,578.28										
Test Flock MIKE HUCKABEE	01/08/08	03/06/08	\$27,143.11	03/11/08	1308473635	\$27,143.11	\$12,811.50	\$14,331.61	09/05/08	1308497001	\$5,435.17	03/24/08	165
		Difference	\$32,578.28										
			-\$5,435.17										
		05/31/07	\$21,728.27										
		08/10/07	\$22,046.82										
		10/16/07	\$21,011.08										
		12/28/07	\$64,786.17										
		divided by 3-Flock Average Pay	3.00										
			\$21,595.39										
Test Flock MIKE HUCKABEE	01/08/08	03/06/08	\$19,112.98	03/11/08	1308473636	\$19,112.98	\$14,008.50	\$5,104.48	09/05/08	1308497002	\$2,482.41	03/24/08	165
		Difference	\$21,595.39										
			-\$2,482.41										
		05/28/07	\$6,146.33										
		08/06/07	\$6,905.33										
		10/22/07	\$5,182.45										
		12/26/07	\$18,234.11										
		divided by 3-Flock Average Pay	3.00										
			\$6,078.04										
Test Flock PAUL IVY	01/10/08	03/13/08	\$4,765.05	03/18/08	1308474779	\$4,765.05	\$2,946.47	\$1,818.58	09/05/08	1308497003	\$656.49	03/31/08	168
		Difference	\$6,078.04										
			-\$1,312.99										
		05/14/07	\$10,009.75										
		07/26/07	\$11,174.09										
		10/04/07	\$11,995.37										
		12/07/07	\$33,119.21										
		divided by 3-Flock Average Pay	3.00										
			\$11,039.74										
Test Flock JEANIE JOHNSON	12/27/07	02/29/08	\$7,477.72	03/04/08	1308472798	\$7,477.72	\$28.80	\$7,448.92	09/05/08	1308497005	\$3,562.02	03/17/08	172
		Difference	\$11,039.74										
			-\$3,562.02										

* Mike Huckabee operates multiple farms and received two flocks that were subject to the density trial test.

Grower Name	Date Placed	Date Moved	Grower Pay	Check Date	Check Number	Pay Amount	Total Deductions	Net Amount	Adj. Check Date	Adj. Check Number	3-Flock Avg. Adj. Pay	15 Day Due date	Days Late
LA FARMS MILLER POULTRY & CATTLE, INC.	05/29/07	08/01/07	\$40,614.64										
LA FARMS MILLER POULTRY & CATTLE, INC.	08/09/07	10/12/07	\$42,980.20										
LA FARMS MILLER POULTRY & CATTLE, INC.	10/29/07	01/03/08	\$41,120.06 \$124,714.90 3.00 Average Pay										
LA FARMS MILLER POULTRY & CATTLE, INC.	01/10/08	03/12/08	\$33,115.48 \$41,571.63 -\$8,456.15 Difference	03/18/08	1308474767	\$33,115.48	\$0.00	\$33,115.48	09/05/08	1308497018	\$8,456.15	03/31/08	158
LEA BARBER	05/22/07	07/20/07	\$14,421.76										
LEA BARBER	08/02/07	10/02/07	\$14,032.38										
LEA BARBER	10/16/07	12/18/07	\$14,655.34 \$43,109.48 3.00 divided by 3-Flock Average Pay										
LEA BARBER	12/28/07	02/26/08	\$12,865.31 \$14,369.83 -\$1,504.52 Difference	03/04/08	1308472776	\$12,865.31	\$98.00	\$12,767.31	09/05/08	1308496983	\$1,504.52	03/17/08	172
RICHARD W. ODOM	10/15/07	12/14/07	\$31,960.33 estimated cash flow										
RICHARD W. ODOM	12/28/07	02/27/08	\$33,092.28 \$33,092.28 \$98,144.89 3.00 divided by 3-Flock Average Pay	03/04/08	1308472789	\$27,610.91	\$21,715.00	\$5,895.91	09/05/08	1308497019	\$5,104.05	03/17/08	172
KEVIN TODD PHILLIPS	05/25/07	07/23/07	\$28,634.91										
KEVIN TODD PHILLIPS	08/03/07	10/04/07	\$25,391.45										
KEVIN TODD PHILLIPS	10/26/07	12/31/07	\$28,813.58 \$86,839.94 3.00 divided by 3-Flock Average Pay										
KEVIN TODD PHILLIPS	01/10/08	03/08/08	\$28,946.65 \$28,946.65 -\$6,915.07 Difference	03/11/08	1308473638	\$22,031.58	\$16,232.21	\$5,799.37	09/05/08	1308497020	\$3,803.29	03/24/08	165

Grower Name	Date Placed	Date Moved	Grower Pay	Check Date	Check Number	Pay Amount	Total Deductions	Net Amount	Adj. Check Date	Adj. Check Number	3-Flock Avg. Adj. Pay	15 Day Due date	Days Late
CLIFTON JONES	05/07/07	06/28/07	\$19,985.72										
CLIFTON JONES	07/10/07	09/14/07	\$22,236.43										
CLIFTON JONES	10/07/07	12/03/07	\$21,981.02										
			\$64,203.17										
		divided by	3.00										
		Average Pay	\$21,401.06										
Test Flock	12/24/2007	02/22/08	\$18,545.95	02/26/08	1308471788	\$18,545.95	\$43.20	\$18,502.75	09/05/08	1308497012	\$2,855.11	03/10/08	179
		Difference	-\$2,855.11							Grand Total	\$114,555.29		