

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P & S Docket No. D-16-0082
)
BP Livestock, LLC,)
)
and)
)
Brody Peak,)
)
Respondents) Complaint

There is reason to believe that the Respondents named herein have willfully violated provisions of 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 *et seq.*) and, therefore, this complaint is issued alleging the following:

I.

(a) BP Livestock, LLC (Respondent BP) is a Kansas limited liability company with a business mailing address of 502 Albert Street, Emporia, KS 66801.

(b) At all times material to the allegations herein, Respondent BP was:

(1) Engaged in the business of a dealer, buying and selling livestock in commerce; and

(2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock.

(c) Respondent Brody Peak (Respondent Peak) is an individual whose business mailing address is 502 Albert Street, Emporia, KS 66801.

(d) At all times material to the allegations herein, Respondent Peak was:

- (1) Engaged in the business of a dealer, buying and selling livestock in commerce; and
- (2) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock.
- (3) The 100% owner of Respondent BP;
- (4) Responsible for the day-to-day management, direction, and control of Respondent BP.

II.

On or about the dates and in the transactions set forth in Appendix A, Respondent BP, under the direction, management, and control of Respondent Peak, purchased livestock and failed to pay, when due, the full purchase price of the livestock.

III.

On or about the dates and in the transactions set forth in Appendix B, Respondent BP, under the direction, management, and control of Respondent Peak, purchased cattle for and sold cattle to certain customers, purportedly on the basis of the same weights at which Respondent BP purchased the cattle. However, Respondent BP billed and collected from such customers on the basis of false and incorrect weights obtained by adding an arbitrary number of pounds to the weights at which the cattle were originally purchased.

IV.

Respondents, in connection with their operations subject to the Act, failed to keep and maintain records which fully and correctly disclose all of the transactions involved in their business as a dealer as required by section 401 of the Act (7 U.S.C. § 221). Specifically,

Respondents failed to keep accurate records of their original and final sales invoices, and scale tickets.

V.

By reason of the facts alleged in paragraph II herein, Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b)).

By reason of the facts alleged in paragraph III herein, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.55(a) of the regulations (9 C.F.R. § 201.55(a)).

By reason of the facts alleged in paragraph IV, Respondents have willfully violated section 401 of the Act (7 U.S.C. § 221), and section 203.4 of the regulations (9 C.F.R. § 203.4).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the Respondents for the purpose of determining whether Respondents have willfully violated the Act and the regulations. The Respondents shall have twenty (20) days after receipt of this complaint 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.*) (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.

Packers and Stockyards Program, GIPSA, requests:

1. That unless Respondents fail to file an answer within the time allowed, or file 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 Respondents to cease and desist from the violations of the Act found to exist, an order requiring Respondents to keep and maintain all accounts, records, and memoranda that fully and accurately disclose all transactions involved in their business, as required by section 401 of the Act, suspending Respondents as registrants under the Act, and assessing such civil penalties against Respondents as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 9th day of March, 2016


Susan B. Keith
Deputy Administrator
Packers and Stockyards Program
Grain Inspection, Packers and Stockyards
Administration

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Appendix A

<p align="center">US Department of Agriculture Grain Inspection, Packers and Stockyards Administration Packers and Stockyards Program (P&SP) Schedule of Failure to Pay within time period required by the Act for Livestock (V7 5-19-11)</p>															
Entity Information															
Investigation Date	Entity									DBA					
6/26/2012	BP Livestock, LLC														
Purchase Date	Seller's Name	Purchase Type	Number of Head	Livestock Amount	Net Invoice Adjustments	Net Invoice	Credit Agreement	Credit Days	Due Date	Payment Date	Ck #	Payment Amount	Days Late Per Check Date	Date Cleared Bank	Instrument Date to Date Cleared
6/27/2011	Bailey County Feeders	Live	322	\$350,188.76	\$0.00	\$350,188.76	No	0	6/28/2011	6/29/2011	1083	\$350,188.76	1	7/1/2011	2
7/7/2011	Hohenberger Cattle	Live	188	\$171,111.72	\$5,594.00	\$176,705.72	No	0	7/8/2011	7/9/2011	1095	\$176,705.72	1	7/12/2011	3
8/2/2011	Fredin Bros.	Live	1,185	\$1,114,386.90	\$0.00	\$1,114,386.90	No	0	8/3/2011	8/5/2011	1166	\$1,114,386.90	2	8/9/2011	4
8/3/2011	Eureka Livestock	Live	221	\$238,781.16	\$0.00	\$238,781.16	No	0	8/4/2011	8/5/2011	1167	\$238,781.16	1	8/10/2011	5
8/9/2011	DH Cattle Co.	Live	207	\$247,158.75	\$0.00	\$247,158.75	No	0	8/10/2011	8/11/2011	1176	\$247,158.75	1	8/15/2011	4
8/9/2011	Fredin Bros.	Live	350	\$332,681.00	\$0.00	\$332,681.00	No	0	8/10/2011	8/11/2011	1175	\$332,681.00	1	8/16/2011	5
8/25/2011	Fredin Bros.	Live	154	\$113,922.90	\$0.00	\$113,922.90	No	0	8/25/2011	8/30/2011	1217	\$113,922.90	4	9/2/2011	3
9/7/2011	Fredin Bros.	Live	120	\$117,763.25	\$0.00	\$117,763.25	No	0	9/8/2011	9/9/2011	1244	\$117,763.25	1	9/14/2011	5
9/7/2011	Fredin Bros.	Live	456	\$486,925.55	\$0.00	\$486,925.55	No	0	9/8/2011	9/12/2011	1247	\$550,429.55	4	9/16/2011	4
10/4/2011	Thompson Cattle, Inc	Live	243	\$248,768.23	\$0.00	\$248,768.23	No	0	10/5/2011	10/6/2011	1281	\$248,768.23	1	10/13/2011	7
10/19/2011	DH Cattle Co.	Live	65	\$76,356.09	\$0.00	\$76,356.09	No	0	10/20/2011	10/21/2011	1298	\$76,356.09	1	10/25/2011	4
2/3/2012	Fredin Bros.	Live	73	\$81,420.50	\$0.00	\$81,420.50	No	0	2/6/2012	2/7/2012	1464	\$81,420.50	1	2/10/2012	3
Total Transactions	12	Total Head	3,584		Total Price	\$3,585,058.81					Total Paid	\$3,648,562.81	2	Average Days to Clear	4

Appendix B

US Department of Agriculture

Packers and Stockyards Program (P&SP)

Dealer / BOC Review (v7) - Weight and Price Transactions (WP-2)

Entity Information

On-Site Review Date		Entity Name									DBA			Mailing Address				Control Number	
6/26/2012		BP Livestock, LLC												502 Albert St, Emporia, KS 66801				141808	
Type of Purchase	Purchase Date	Seller / Purchased From	Head	Description	Gross Weight	Percent Shrink	Net Weight	Price Per Cwt	Livestock Amount	Date Sold	Sold to / Purchased For	No. Head Sold	Description	Pay Weight	Price Per Cwt	Livestock Amount	Weight Difference	Gross Profit	Profit from Weight Difference
Dealer	6/16/2011	Thompson Cattle, Inc	110	Steers	107,280	3%	104,061	\$116.00	\$120,710.76	6/16/2011	HRC Feedyards	110	Steers	105,052	\$118.81	\$124,812.28	991	\$4,101.52	\$1,177.41
Dealer	6/27/2011	Bailey County Feeders	322	Steers	266,660	3%	278,060	\$125.94	\$350,188.76	6/27/2011	Thompson Cattle, Inc	322	Steers	280,926	\$126.62	\$355,708.50	2,866	\$5,519.74	\$3,628.93
Dealer	6/29/2011	Emporia Livestock Sales	36	Steers & Heifers	27,935	0%	27,935	\$126.83	\$35,429.81	7/1/2011	Associated Beef City	36	Steers & Heifers	28,085	\$128.96	\$36,218.02	150	\$788.21	\$193.44
Dealer	7/7/2011	Hohenberger Cattle	188	Heifers	142,015	2.4%	136,552	\$123.50	\$171,111.72	7/7/2011	DH Cattle Co.	187	Heifers	139,174	\$129.00	\$179,534.46	622	\$8,422.74	\$802.38
Dealer	7/29/2011	Bailey County Feeders	180	Steers	152,820	3%	148,235	\$125.08	\$185,412.34	7/30/2011	Golden Belt Feeders	180	Steers	149,761	\$128.72	\$192,772.36	1,526	\$7,360.02	\$1,964.27
Dealer	8/1/2011	Fredin Bros.	205	Heifers	156,310	0%	156,310	\$126.40	\$200,702.04	8/1/2011	Golden Belt Feeders	205	Heifers	157,795	\$131.50	\$207,500.43	1,485	\$6,798.39	\$1,952.78
Dealer	8/2/2011	Fredin Bros.	1185	Heifers	891,275	3%	864,536	\$128.90	\$1,114,386.90	8/2/2011	Golden Belt Feeders	1185	Heifers	873,379	\$130.50	\$1,139,792.85	3,943	\$25,405.95	\$11,540.45
Dealer	8/3/2011	Eureka Livestock	221	Steers & Heifers	202,445	0%	202,445	\$117.95	\$238,761.16	8/3/2011	Fredin Bros.	221	Steers & Heifers	202,465	\$121.76	\$246,521.51	20	\$7,740.35	\$24.35
Dealer	8/9/2011	DH Cattle Co.	207	Steers	193,850	0%	193,850	\$127.50	\$247,158.75	8/9/2011	Thompson Cattle, Inc	207	Steers	193,869	\$129.50	\$251,060.36	19	\$3,901.61	\$24.61
Dealer	8/9/2011	Fredin Bros.	350	Heifers	255,741	0%	255,741	\$130.09	\$332,681.00	8/9/2011	Golden Belt Feeders	350	Heifers	258,766	\$131.50	\$340,303.59	3,045	\$7,622.59	\$4,004.16
Dealer	8/25/2011	Fredin Bros.	154	Heifers	97,370	0%	97,370	\$117.00	\$113,922.90	8/25/2011	HRC Feedyards	154	Heifers	97,430	\$118.00	\$114,967.40	60	\$1,044.50	\$70.80
Dealer	8/29/2011	Fredin Bros.	68	Heifers	48,135	0%	48,135	\$120.75	\$58,123.01	8/29/2011	DH Cattle Co.	68	Heifers	48,178	\$122.00	\$58,777.16	43	\$654.15	\$52.46
Dealer	9/7/2011	Fredin Bros.	120	Heifers	93,500	0%	93,500	\$125.95	\$117,763.25	9/7/2011	Golden Belt Feeders	120	Heifers	94,341	\$126.45	\$119,294.19	841	\$1,530.94	\$1,063.44
Dealer	9/7/2011	Fredin Bros.	456	Heifers	388,825	0%	388,825	\$125.23	\$486,925.55	9/7/2011	Golden Belt Feeders	456	Heifers	391,384	\$126.45	\$494,905.07	2,559	\$7,979.52	\$3,235.86
Dealer	10/4/2011	Thompson Cattle, Inc	243	Heifers	201,595	0%	201,595	\$123.40	\$248,768.23	10/4/2011	Golden Belt Feeders	243	Heifers	203,673	\$127.70	\$260,090.42	2,078	\$11,322.19	\$2,653.61
Dealer	10/10/2011	DH Cattle Co.	120	Steers	101,356	0%	101,356	\$130.75	\$132,522.97	10/10/2011	Thompson Cattle, Inc	120	Steers	102,201	\$134.50	\$137,460.35	845	\$4,937.38	\$1,136.53
Dealer	10/19/2011	DH Cattle Co.	65	Steers	56,665	0%	56,665	\$134.75	\$76,356.09	10/19/2011	Thompson Cattle, Inc	65	Steers	56,712	\$135.25	\$76,702.98	47	\$346.89	\$63.57
Dealer	10/26/2011	Fredin Bros.	76	Heifers	49,185	0%	49,185	\$125.00	\$61,481.25	10/26/2011	HRC Feedyards	76	Heifers	49,210	\$125.00	\$61,512.50	25	\$31.25	\$31.25
Dealer	11/11/2011	Brandon Hermann & Bill Cline	64	Heifers	50,240	3%	48,733	\$126.31	\$61,553.18	11/11/2011	Cimarron Feeders	64	Heifers	49,529	\$128.53	\$63,659.62	796	\$2,106.44	\$1,023.10
Dealer	2/3/2012	Fredin Bros.	73	Steers	54,100	0%	54,100	\$150.50	\$81,420.50	2/6/2012	HRC Feedyards	73	Steers	54,315	\$152.50	\$82,930.38	215	\$1,409.88	\$327.88
Dealer	3/2/2012	Lafe Wilson	58	Heifers	51,660	3%	50,110	\$134.80	\$67,546.28	3/2/2012	Fredin Bros.	58	Heifers	50,626	\$138.50	\$70,117.01	516	\$2,588.73	\$714.66
Dealer	3/12/2012	Fredin Bros.	375	Heifers	249,110	1.0%	246,574	\$142.00	\$350,135.08	3/12/2012	HRC Feedyards	375	Heifers	249,086	\$143.75	\$358,061.13	2,512	\$7,926.05	\$3,611.00
Dealer	5/2/2012	Fredin Bros.	84	Heifers	57,158	0%	57,158	\$138.00	\$78,878.04	5/2/2012	DH Cattle Co.	84	Heifers	57,162	\$140.00	\$80,026.80	4	\$1,148.76	\$5.60
Dealer	5/14/2012	Hohenberger Cattle	495	Heifers	487,920	4%	468,403	\$118.74	\$556,181.72	5/14/2012	HRC Feedyards	495	Heifers	472,968	\$123.00	\$581,750.84	4,565	\$25,568.92	\$5,614.95
Totals			5,455		4,403,150	1.63%	4,331,434	\$126.70	\$5,488,143.25			5,454		4,366,107	\$129.05	\$5,634,380.01	34,673	\$146,236.72	\$44,917.47