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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P&S Docket No. D-11-0402  
)  
)  
)  
) Josephine E. Bonaccurso Inc., )  
) d.b.a. Salem Packing Co., )  
) Samuel Bonaccurso, and )  
) Josephine E. Bonaccurso )  
)  
) Complaint and Notice of Hearing

There is reason to believe that the respondents 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 (9 C.F.R. § 201.1-201.200)(regulations); therefore, this complaint is issued alleging the following:

I.

a. Josephine E. Bonaccurso Inc., d.b.a. Salem Packing Co., (Salem Packing) is a corporation with a mailing address of P.O. Box 131, Salem New Jersey 08079 and its principal place of business at 705 Salem Quinton Road, Salem, New Jersey 08079.

b. Salem Packing is a packer operating in commerce subject to the provisions of the P&S Act, 7 U.S.C. § 181 *et seq.*

c. Samuel Bonaccurso is:

1. The president and 49% shareholder of Salem Packing;

2. is responsible for the purchase of all livestock and the payment of all debts;

3. is, with his mother Josephine E. Bonnacurso, operating Salem Packing his alter ego; and

4. is a packer as defined in 7 U.S.C. § 191.

d. Josephine E. Bonnacurso is:

1. The 51% shareholder of Salem Packing;

2. is, with her son Samuel Bonnacurso, operating Salem Packing as her alter ego; and

3. is a packer as defined in 7 U.S.C. § 191.

## II.

a. On June 24, 2003, Salem Packing and its then owner, Anthony Bonnacurso, entered into an administrative consent decision with the Department of Agriculture, which among other things, ordered Salem Packing, its owners, its agents and employees, directly or through any corporate or other device, to cease and desist from: (1) failing to pay, when due, for livestock purchases, (2) failing to pay the full purchase price of livestock, and (3) failing to maintain an adequate bond.

b. In 2007, the Department of Justice pursued injunctive relief on behalf of the GIPSA for Salem Packing's violation of the Secretary's Order, because Salem Packing and Samuel Bonnacurso failed to pay, when due, for livestock. The parties

reached an agreement, and the court entered a consent decision that permanently enjoined Salem Packing and Samuel Bonaccorso from "violating the provisions of the Secretary of Agriculture's June 24, 2003 Order, by which Defendants were ordered to cease and desist from failing to pay, when due, the full purchase price of livestock as required by the section 409 of the Packers and Stockyards Act (7 U.S.C. 228h) and the regulations promulgated thereunder."

### III.

a. As of January 31, 2010, Salem Packing had current liabilities of \$541,270.43 and current assets of \$272,967.59. Salem Packing's current liabilities exceeded its current assets by \$268,302.84.

b. As of March 31, 2010, Salem Packing had current liabilities of \$536,562.87 and current assets of \$285,903.85. Salem Packing's current liabilities exceeded its current assets by \$250,659.02.

c. As of April 16, 2011, Salem Packing had current liabilities of \$1,287,682.03 and current assets of \$448,494.25. Salem Packing's current liabilities exceeded its current assets by \$839,187.78.

### IV.

a. From October 10, 2007 to July 23, 2010, Salem Packing has failed to pay, when due, for over \$700,000 worth of livestock. A schedule of transactions is attached as Exhibit A to this Complaint.

b. As of April 16, 2011, Defendants had failed to pay, when due, for outstanding livestock debt in the amount of \$784,511.62 in the transactions and amounts as more fully described in Exhibit B.

V.

By reason of the facts alleged in paragraph I, Salem Packing is the alter ego of Respondents Samuel Bonaccorso and Josephine E. Bonaccorso.

By reason of the facts alleged in paragraph III, Salem Packing's financial condition does not meet the requirements of the Act as supplemented (7 U.S.C. § 204) and the regulations promulgated under it (9 C.F.R. § 203.10), and Respondents have willfully violated section 202(a) of the Act (7 U.S.C. § 192(a)).

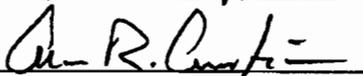
By reason of the facts alleged in paragraph IV, Salem Packing has willfully violated sections 202(a) and 409 of the Act (7 U.S.C. § 192(a), 228b) and section 201.43 of the regulations.

Wherefore, it is hereby ordered that for the purpose of determining whether Respondents have, in fact, willfully violated the Act, this Complaint and Notice of Hearing shall be served upon Respondents. Respondents shall have twenty (20) days after receipt of this Complaint and Notice of Hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, an answer with an original and three copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material allegation of this Complaint and Notice of Hearing. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer

shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing unless the parties have agreed to a consent decision pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138). Respondents are notified that unless a hearing is waived, whether expressly or by failure to answer and request a hearing as provided by sections 1.136 and 1.141 of the Rules of Practice (7 C.F.R. §§ 1.136, 1.141), a hearing for the above-mentioned purpose will be held at a place and time to be later designated before an administrative law judge authorized to conduct a hearing. 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, requiring Respondents to cease and desist from violating the Act with respect to the matters alleged herein, and assessing an appropriate civil penalty.

Done at Washington, D.C.

this 14 day of September 2011



Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

JONATHAN D. GORDY  
Attorney for Complainant  
Office of the General Counsel  
United States Department of Agriculture  
Trade Practices Division  
1400 Independence Avenue, S.W.  
Room 2004, South Building  
Washington, D.C. 20250  
Telephone: (202) 720-5065

Exhibit A

| Name of Livestock Seller                           | Amount Due for Livestock Purchases | Purchase Date (M/D/Y) | Payment Due Date (M/D/Y) | Date Payment Completed  |
|--|------------------------------------|-----------------------|--------------------------|---|
| Cowtown Auctioneers, Inc.<br>Woodstown, NJ         | \$1,594.49                         | 10/09/2007            | 10/10/2007               | As of 07/03/2010 payment was not made for the listed livestock purchases from Cowtown Auctioneers. <sup>1</sup> |
| Cowtown Auctioneers, Inc.                          | \$14,740.90                        | 10/16/2007            | 10/17/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$18,014.80                        | 10/23/2007            | 10/24/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$17,872.36                        | 10/30/2007            | 10/31/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$21,339.21                        | 11/06/2007            | 11/07/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$15,180.52                        | 11/13/2007            | 11/14/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$12,728.95                        | 11/20/2007            | 11/21/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$7,403.30                         | 11/27/2007            | 11/28/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$17,292.08                        | 12/04/2007            | 12/05/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$13,312.84                        | 12/11/2007            | 12/12/2007               |   |
| Cowtown Auctioneers, Inc.                          | \$15,475.66                        | 12/18/2007            | 12/19/2007               |   |
| New Holland Sales Stables, Inc.<br>New Holland, PA | \$5,755.54                         | 12/31/2009            | 01/04/2010               | 02/05/2010  |
| New Holland Sales Stables, Inc.                    | \$17,872.81                        | 01/07/2010            | 01/08/2010               | 02/05/2010  |
| New Holland Sales                                  | \$16,006.33                        | 01/11/2010            | 01/12/2010               | 02/12/2010  |

<sup>1</sup> Plaintiff's investigation into the prompt payment occurred in August 2010, and Defendants had not made prompt payment at the time of the investigation to Cowtown Auctioneers, Inc. Regardless of the date of payment, if it has in fact been made at all, Defendants have not made timely payment as required by the Act, the Order of the Secretary, or the injunction issued by the District Court.

|                                 |             |            |            |   |
|---------------------------------|-------------|------------|------------|---|
| Stables, Inc.                   |             |            |            |   |
| New Holland Sales Stables, Inc. | \$17,759.58 | 01/14/2010 | 01/15/2010 | 02/12/2010  |
| New Holland Sales Stables, Inc. | \$22,361.43 | 01/18/2010 | 01/19/2010 | 03/04/2010  |
| New Holland Sales Stables, Inc. | \$16,307.50 | 01/21/2010 | 01/22/2010 | 02/18/2010  |
| New Holland Sales Stables, Inc. | \$17,368.02 | 01/25/2010 | 01/26/2010 | 02/25/2010  |
| New Holland Sales Stables, Inc. | \$14,680.91 | 01/28/2010 | 01/29/2010 | 02/18/2010  |
| New Holland Sales Stables, Inc. | \$21,467.81 | 03/05/2010 | 03/08/2010 | 04/09/2010  |
| New Holland Sales Stables, Inc. | \$19,522.58 | 03/09/2010 | 03/10/2010 | 04/02/2010  |
| New Holland Sales Stables, Inc. | \$16,970.03 | 03/11/2010 | 03/12/2010 | 04/02/2010  |
| New Holland Sales Stables, Inc. | \$20,729.97 | 03/15/2010 | 03/16/2010 | 04/09/2010  |
| New Holland Sales Stables, Inc. | \$18,790.53 | 03/18/2010 | 03/19/2010 | 04/16/2010  |
| New Holland Sales Stables, Inc. | \$19,100.77 | 03/22/2010 | 03/23/2010 | 04/16/2010  |
| New Holland Sales Stables, Inc. | \$20,574.54 | 03/25/2010 | 03/26/2010 | 04/23/2010  |
| New Holland Sales Stables, Inc. | \$3,113.75  | 03/29/2010 | 03/30/2010 | 04/16/2010  |
| New Holland Sales Stables, Inc. | \$23,068.68 | 03/29/2010 | 03/30/2010 | 04/23/2010  |
| Frank Fillippo                  | \$28,839.00 | 06/23/2010 | 06/24/2010 | As of 07/30/2010 payment was not made for the listed livestock purchases from Frank Fillippo <sup>2</sup> |
| Frank Fillippo                  | \$29,197.00 | 06/24/2010 | 06/25/2010 |   |

<sup>2</sup> Plaintiff's investigation into the prompt payment occurred in August 2010, and Defendants had not made prompt payment at the time of the investigation to Cowtown Auctioneers, Inc. Regardless of the date of payment, if it has in fact been made at all, Defendants have not made timely payment as required by the Act, the Order of the Secretary, or the injunction issued by the District Court.

|                                 |              |            |            |                                    |
|---------------------------------|--------------|------------|------------|------------------------------------|
| Frank Fillippo                  | \$26,571.00  | 07/12/2010 | 07/13/2010 |                                    |
| Frank Fillippo                  | \$25,288.00  | 07/14/2010 | 07/15/2010 |                                    |
| Frank Fillippo                  | \$31,931.00  | 07/15/2010 | 07/16/2010 |                                    |
| New Holland Sales Stables, Inc. | \$20,372.37  | 07/15/2010 | 07/16/2010 | Payment was not made by 07/30/2010 |
| Frank Fillippo                  | \$23,256.00  | 07/19/2010 | 07/20/2010 |                                    |
| New Holland Sales Stables, Inc. | \$27,696.83  | 07/19/2010 | 07/20/2010 | Payment was not made by 07/30/2010 |
| Frank Fillippo                  | \$24,816.00  | 07/21/2010 | 07/22/2010 |                                    |
| Frank Fillippo                  | \$28,359.00  | 07/22/2010 | 07/23/2010 |                                    |
| New Holland Sales Stables, Inc. | \$22,343.06  | 07/22/2010 | 07/23/2010 | Payment was not made by 07/30/2010 |
| Total delayed payment:          | \$735,075.15 |            |            |                                    |

Exhibit B

| Name of Seller                  | Amount owed for unpaid livestock as of April 16, 2011 | Purchase Date |
|---------------------------------|---|---------------|
| Frank Fillippo <sup>1</sup>     | \$14,673.00   | 02/28/2011    |
| Frank Fillippo                  | \$25,581.00   | 03/02/2001    |
| Frank Fillippo                  | \$25,181.00   | 03/03/2011    |
| Frank Fillippo                  | \$25,847.00   | 03/07/2011    |
| Frank Fillippo                  | \$26,451.00   | 03/09/2011    |
| Frank Fillippo                  | \$25,410.00   | 03/10/2011    |
| Frank Fillippo                  | \$26,389.00   | 03/14/2011    |
| Frank Fillippo                  | \$29,415.00   | 03/16/2011    |
| Frank Fillippo                  | \$29,503.00   | 03/17/2011    |
| Frank Fillippo                  | \$24,473.00   | 03/21/2011    |
| Frank Fillippo                  | \$32,364.00   | 03/23/2011    |
| Frank Fillippo                  | \$27,397.00   | 03/24/2011    |
| Frank Fillippo                  | \$26,606.00   | 03/28/2011    |
| Frank Fillippo                  | \$35,149.00   | 03/30/2011    |
| Frank Fillippo                  | \$27,757.00   | 03/31/2011    |
| Frank Fillippo                  | \$29,288.00   | 04/04/2011    |
| Frank Fillippo                  | \$34,308.00   | 04/05/2011    |
| Frank Fillippo                  | \$29,541.00   | 04/06/2011    |
| Frank Fillippo                  | \$28,305.00   | 04/11/2011    |
| Frank Fillippo                  | \$27,214.00   | 04/13/2011    |
| Frank Fillippo                  | \$29,979.00   | 04/14/2011    |
| New Holland Sales Stables, Inc. | \$27,723.00   | 12/21/2010    |
| New Holland Sales Stables, Inc. | \$6,901.50  | 12/24/2010    |
| New Holland Sales Stables, Inc. | \$20,705.14   | 12/27/2010    |
| New Holland Sales Stables, Inc. | \$24,758.89   | 12/30/2010    |
| New Holland Sales Stables, Inc. | \$27,130.78   | 04/11/2011    |
| New Holland Sales Stables, Inc. | \$26,628.41   | 04/15/2011    |
| T. Kenneth Emery, LLC           | \$4,381.50  | 11/18/2010    |

<sup>1</sup> Mr. Fillippo and Defendant have both indicated that these purchases were not cash sales, and were made pursuant to a written credit agreement. However, Defendant and Mr. Fillippo have been unable to produce the written credit agreement to that includes a valid trust waiver as required by 9 C.F.R. § 201.43(ii)(3) and 9 C.F.R. § 201.200.

|                       |              |            |
|-----------------------|--------------|------------|
| T. Kenneth Emery, LLC | \$2,564.43   | 11/25/2010 |
| T. Kenneth Emery, LLC | \$3,315.21   | 12/01/2010 |
| T. Kenneth Emery, LLC | \$569.25     | 12/06/2010 |
| T. Kenneth Emery, LLC | \$4,592.00   | 12/16/2010 |
| T. Kenneth Emery, LLC | \$618.00     | 12/20/2010 |
| T. Kenneth Emery, LLC | \$2,914.50   | 12/30/2010 |
| T. Kenneth Emery, LLC | \$1,272.93   | 01/16/2011 |
| T. Kenneth Emery, LLC | \$1,673.60   | 01/13/2011 |
| T. Kenneth Emery, LLC | \$940.56     | 01/21/2011 |
| T. Kenneth Emery, LLC | \$3,167.50   | 01/30/2011 |
| T. Kenneth Emery, LLC | \$3,499.80   | 02/03/2011 |
| T. Kenneth Emery, LLC | \$1,664.23   | 02/07/2011 |
| T. Kenneth Emery, LLC | \$1,926.70   | 02/10/2011 |
| T. Kenneth Emery, LLC | \$1,996.73   | 02/16/2011 |
| T. Kenneth Emery, LLC | \$3,672.63   | 02/24/2011 |
| T. Kenneth Emery, LLC | \$2,909.55   | 02/28/2011 |
| T. Kenneth Emery, LLC | \$2,486.00   | 03/03/2011 |
| T. Kenneth Emery, LLC | \$3,755.50   | 03/07/2011 |
| T. Kenneth Emery, LLC | \$878.00     | 03/08/2011 |
| T. Kenneth Emery, LLC | \$4,928.90   | 03/09/2011 |
| T. Kenneth Emery, LLC | \$2,214.30   | 03/17/2011 |
| T. Kenneth Emery, LLC | \$1,450.00   | 03/20/2011 |
| T. Kenneth Emery, LLC | \$5,248.13   | 03/21/2011 |
| T. Kenneth Emery, LLC | \$239.40     | 03/22/2011 |
| T. Kenneth Emery, LLC | \$1,140.00   | 03/27/2011 |
| T. Kenneth Emery, LLC | \$1,513.75   | 03/28/2011 |
| T. Kenneth Emery, LLC | \$408.80     | 03/31/2011 |
| T. Kenneth Emery, LLC | \$240.50     | 04/03/2011 |
| T. Kenneth Emery, LLC | \$1,970.50   | 04/04/2011 |
| T. Kenneth Emery, LLC | \$1,680.00   | 04/07/2011 |
| Total                 | \$784,511.62 |            |