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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-10-0452  
Lake Odessa Livestock Auction, )  
Inc., and LaVerne Lettinga, )  
          )  
          ) Respondents ) Amended Complaint

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.; hereinafter "Act") and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.; hereinafter "Regulations"), and, therefore, this complaint is issued alleging the following:

I.

- a) Lake Odessa Livestock Auction, Inc. (hereinafter "Respondent Lake Odessa"), is a corporation organized and existing under the laws of the State of Michigan, whose mailing address is 3675 W. Tupper Lake Road, Lake Odessa, Michigan 48849.
- b) At all times material herein, Respondent Lake Odessa was:
  - 1. Engaged in the business of a market agency selling livestock in commerce on a commission basis;
  - 2. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account; and
  - 3. Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis.

(29311)

c) LaVerne Lettinga (hereinafter "Respondent Lettinga"), is an individual whose mailing address is PO Box 573, Lake Odessa, Michigan 48849.

d) At all times material herein, Respondent Lettinga was:

1. President of Respondent Lake Odessa;
2. General manager of Respondent Lake Odessa;
3. Director of Respondent Lake Odessa;
4. Fifty percent owner of Respondent Lake Odessa<sup>1</sup>; and
5. Responsible for the management, direction, and control of Respondent Lake Odessa.

## II.

Respondents were placed on notice, by certified mail received on or about February 16, 2007, that operating with a Custodial Account for Shippers' Proceeds (hereinafter "custodial account") shortage is considered an unfair and deceptive practice in violation of section 312(a) of the Act (7 U.S.C. § 213(a)).<sup>2</sup> Respondents were also placed on notice that failure to timely reimburse the custodial account is a violation of section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)) and that withdrawal of bank charges from the custodial account is a violation of section 201.42(d) of the Regulations (9 C.F.R. § 201.42(d)).

## III.

Respondent Lake Odessa, under the direction, management and control of Respondent Lettinga, during the period of April 30, 2007, through June 29, 2007, failed to maintain

<sup>1</sup> As of the date of this complaint, Respondent Lettinga is the 100% owner of Lake Odessa Livestock Auction, Inc.

<sup>2</sup> United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0000 9893 1973 was signed by Verne Lettinga on February 20, 2007.

properly its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

- (a) As of April 30, 2007, Respondent Lake Odessa had outstanding checks drawn on its custodial account in the amount of \$384,206.68 and had to offset such checks, a balance in the custodial account of \$8,747.67 and proceeds receivable of \$124,312.16 resulting in a deficiency of \$251,146.85.
- (b) As of May 31, 2007, Respondent Lake Odessa had outstanding checks drawn on its custodial account in the amount of \$663,872.76 and had to offset such checks, a negative balance in the custodial account of (\$63,112.88) and proceeds receivable of \$332,854.15 resulting in a deficiency of \$394,131.49.
- (c) As of June 29, 2007, Respondent Lake Odessa had outstanding checks drawn on its custodial account in the amount of \$413,428.74 and had to offset such checks, a balance in the custodial account of \$115,587.38 and proceeds receivable of \$90,868.29 resulting in a deficiency of \$206,973.07.
- (d) The shortages in Respondent Lake Odessa's custodial account were due, in part, to Respondent Lake Odessa's failure to deposit in its custodial account, within the time prescribed by section 201.42 of the Regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock; its deposit of custodial funds into its general account; and the deduction of bank charges from the custodial account.

IV.

- (a) Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, on or about the dates and in the transactions set forth below, misused its custodial account by depositing custodial account proceeds into its general account.

Purchaser	Sale Date	Deposit Date	Payment Amount	Amount Deposited to General Account	Amount Deposited to Custodial Account
Lynn Zandbergen	4/24/07	5/15/07	\$475.00	\$475	\$0
Carry Kamps	4/26/07	5/2/07	\$2,425.00	\$166.50	\$2,258.50
Dave Brower	4/26/07	5/8/07	\$2,808.04	\$2,808.04	\$0
Chris Cavanaugh	4/26/07	5/8/07	\$2,011.20	\$2,011.20	\$0
Tom Roberts	4/26/07	5/8/07	\$4,303.20	\$4,303.20	\$0
Ron Christensen	4/26/07	5/15/07	\$4,662.48	\$4,662.48	\$0
Thomas Timm	5/26/07	6/9/07	\$590.00	\$90	\$500
Gerald Warner	6/26/07	7/3/07	\$550.20	\$550.20	\$0
John Rogers	6/26/07	7/3/07	\$399.00	\$399.00	\$0
West Michigan Cattle	6/26/07	7/3/07	\$3,406.88	\$3,406.88	\$0
Ralph Lettinga	6/26/07	7/9/07	\$16,600.00	\$16,600.00	\$0
Lynn Zandbergen	6/26/07	7/17/07	\$2,011.25	\$2,011.25	\$0
Carl Venneman	6/26/07	7/3/07	\$247.00	\$247.00	\$0
<b>TOTALS</b>			<b>\$39,889.25</b>	<b>\$37,131.00</b>	<b>\$2,758.50</b>

- (b) Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, misused its custodial account by permitting the withdrawal of bank charges from its custodial account.

V.

(a) Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, acting in its capacity as a market agency, in connection with its operations subject to the Act, on or about the dates and in the transactions set forth below, sold livestock on a commission basis and in purported payment of the net proceeds thereof, issued checks to consignors or shippers of such livestock which were returned unpaid by the bank upon which they were drawn because Respondent Lake Odessa did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

Consignor	Sale Date	Date Proceeds Due	Check Amount	Check No.	Date Paid <sup>1</sup>
Pete Baumer	05/29/07	05/30/07	\$12,158.50	92006	06/11/07
Art Koan	05/29/07	05/30/07	\$8,932.85	92116	06/08/07
Maple Row Farm	05/29/07	05/30/07	\$51,510.66	92203	06/15/07
Swisslane Farms	06/12/07	06/13/07	\$2,924.05	92589	06/26/07
Southfork Farm	06/13/07	06/14/07	\$2,414.82	92628	07/02/07
Sanborn & Sons LLC	06/13/07	06/14/07	\$1,675.80	92638	06/26/07
Swisslane Farms	06/13/07	06/14/07	\$1,513.02	92639	06/26/07
Lynn Zanderergen	06/19/07	06/20/07	\$2,289.20	92697	06/27/07
Marv Zylstra	06/19/07	06/20/07	\$3,276.00	92711	06/26/07
Ron & Carol Ferris	06/18/07	06/19/07	\$5,493.80	92765	06/28/07
Buehler Bros.	06/19/07	06/20/07	\$6,323.09	92783	06/26/07
Yankee Spring Dairy	06/19/07	06/20/07	\$5,366.63	92868	06/26/07
<b>TOTAL</b>			<b>\$103,878.42</b>		

<sup>1</sup> The date paid is the date the check cleared upon second presentment.

(b) Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, acting in its capacity as a market agency, in connection with its

operations subject to the Act, on or about the dates and in the transactions set forth in subparagraph (a) above, failed to remit, when due, the net proceeds due to consignors from the sale of livestock on a commission basis.

VI.

During the period November 2, 2007 through April 18, 2008, various consignors, who wished to sell their livestock on a grade and weight basis, brought a total of 252 head of livestock to Respondent Lake Odessa. Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, then sold the 252 head of livestock on a grade and weight basis to two packers: West Michigan Beef and Emmpak Food. West Michigan Beef and Emmpak Food issued payment to Respondent Lake Odessa and provided the kill information listing the back tags, weight, grade and purchase price for each head.

The original purchase weight of the 252 head was 159,749 pounds for a price of \$153,114.19. Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, reduced the weight as reported to it from the packer when it provided a settlement invoice to the consignor. The weight reported to consignors by Respondent Lake Odessa was 149,765 pounds for a price of \$144,131.97.

In connection with the sale of livestock to consignors, Respondent Lake Odessa, under the direction, management, and control of Respondent Lettinga, misrepresented to consignors the actual weight and purchase prices of livestock resulting in a monetary loss to consignors; prepared and issued, or caused to be prepared and issued, in connection with the purchase or

sale of livestock, accounts of purchase, invoices, billings, or any other documents showing false, inaccurate, or misleading weight and purchase price entries for such livestock.

VII.

By reason of the facts alleged in paragraph I, Respondent Lettinga is the alter ego of Respondent Lake Odessa.

By reason of the facts alleged in paragraph III-IV, Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)), and section 201.42 of the Regulations (9 C.F.R. § 201.42).

By reason of the facts alleged in paragraph V, Respondents willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.43 of the Regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in paragraph VI, specifically, Respondents' practice of paying consignors for livestock in commerce based on false weights, and preparing and maintaining false invoices to support the sales in which it paid consignors for these fraudulently decreased weights, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213 (a)), and sections 201.49, 201.55, and 201.71 of the regulations (9 C.F.R. §§ 201.49, 201.55 and 201.71).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondents for the purpose of determining whether Respondents have willfully violated the Act and the Regulations. Respondents 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,

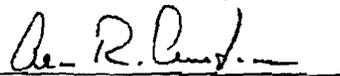
D.C. 20250-9200, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice"). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure 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 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 and the Regulations found to exist, suspending Respondents as registrants under the Act, and assessing such civil penalties against Respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 1 day of October, 2010



Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

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APPENDIX A

BANK FEES CHARGED TO THE CUSTODIAL ACCOUNT

Bank Statement Date	Description	Amount
04/19/07	NSF Paid Item Fee	\$1,320.00
04/20/07	NSF Paid Item Fee	\$1,050.00
04/23/07	NSF Paid Item Fee	\$1,200.00
04/24/07	NSF Paid Item Fee	\$1,230.00
04/30/07	Service Charge	\$169.37
05/02/07	NSF Paid Item Fee	\$720.00
05/07/07	NSF Paid Item Fee	\$1,470.00
05/08/07	NSF Paid Item Fee	\$250.00
05/09/07	NSF Paid Item Fee	\$750.00
05/11/07	NSF Paid Item Fee	\$1,200.00
05/14/07	NSF Paid Item Fee	\$750.00
05/16/07	NSF Paid Item Fee	\$120.00
05/17/07	NSF Paid Item Fee	\$960.00
05/18/07	NSF Paid Item Fee	\$1,140.00
05/25/07	NSF Paid Item Fee	\$30.00
05/31/07	NSF Paid Item Fee	\$60.00
05/31/07	Service Charge	\$175.33
06/01/07	NSF Paid Item Fee	\$30.00
06/04/07	NSF Return Item Fee	\$150.00
06/08/07	Stop Item Fee	\$30.00
06/12/07	NSF Paid Item Fee	\$30.00
06/13/07	NSF Paid Item Fee	\$660.00
06/18/07	NSF Paid Item Fee	\$30.00
06/20/07	NSF Paid Item Fee	\$150.00
06/22/07	NSF Return Item Fee	\$300.00
06/29/07	Service Charge	\$155.82
<b>TOTAL</b>		<b>\$14,130.52</b>