

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P. & S. Docket No. D-07-0054
)	
Benton Packing Company, Inc.,)	
and Arthur F. "Tinker" Green,)	
)	
)	
Respondents)	Amended Complaint and Notice of Hearing

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 referred to as the Act, and the Regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the Regulations, and therefore, this amended complaint is issued alleging the following:

I.

(a) Benton Packing Company, Inc., hereinafter referred to as "Corporate Respondent," is a corporation incorporated and doing business in the State of Arkansas whose mailing address is 1837 Southland Circle, Benton, Arkansas 72015.

(b) Respondent at all times material to this complaint was:

- (1) Engaged in the business of buying livestock in commerce for the purpose of slaughter; and
- (2) A packer within the meaning of and subject to the provisions of the Act.

(c) Arthur F. "Tinker" Green, hereinafter referred to as "Respondent Green," is an individual whose business mailing address is 1837 Southland Circle, Benton, Arkansas 72015.

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

- (1) President and 100% owner of Corporate Respondent; and
- (2) Responsible for the management, direction, and control of Corporate Respondent; and
- (3) 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 set forth below, Corporate Respondent, under the management, direction, and control of Respondent Green, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Due Date	Date Paid	# Days Late	Seller	No. of Head	Livestock Amount
2/5/05	2/18/05	3/11/05	21	Beebe Livestock Auction	7	\$4,217.10
2/12/05	2/25/05	3/11/05	14	Beebe Livestock Auction	2	\$885.40
2/19/05	3/4/05	3/11/05	7	Beebe Livestock Auction	7	\$3,842.11
2/24/05	2/25/05	3/11/05	14	Pee Wee Strother	7	\$3,397.41
2/26/05	2/28/05	3/11/05	11	Pee Wee Strother	2	\$614.14
TOTAL						\$12,956.16

(b) On or about the dates and in the transactions set forth below Corporate Respondent, under the management, direction, and control of Respondent Green, purchased livestock and failed to pay the full purchase price of such livestock.

Purchase Date	Due Date	Seller	No. of Head	Livestock Amount Unpaid
7/10/04	7/12/04	Beebe Livestock Auction	11	\$7,381.06
8/17/04	8/18/04	Mid-Ark. Cattle Co.	21	\$6,430.30
8/24/04	8/25/04	Mid-Ark. Cattle Co.	21	\$10,568.09

9/1/04	9/2/04	Mid-Ark. Cattle Co.	4	\$1,895.42
9/7/04	9/8/04	Mid-Ark. Cattle Co.	4	\$2,494.42
9/16/04	9/17/04	Hope Livestock Auction	13	\$7,956.94
9/17/04	9/18/04	Mid-Ark. Cattle Co.	3	\$1,172.42
9/21/04	9/22/04	Mid-Ark. Cattle Co.	7	\$3,273.97
9/23/04	9/26/04	Hope Livestock Auction	15	\$7,090.45
9/28/04	9/29/04	Mid-Ark. Cattle Co.	2	\$1,700.82
9/30/04	10/1/04	Hope Livestock Auction	13	\$5,749.69
10/12/04	10/13/04	Mid-Ark. Cattle Co.	10	\$4,549.86
10/14/04	10/15/04	Hope Livestock Auction	15	\$7,797.93
10/15/04	10/18/04	Mid-Ark. Cattle Co.	3	\$1,687.50
10/19/04	10/20/04	Mid-Ark. Cattle Co.	1	\$367.50
10/26/04	10/27/04	Mid-Ark. Cattle Co.	8	\$3,216.55
10/26/04	10/27/04	Mid-Ark. Cattle Co.	8	\$6,277.64
10/30/04	11/1/04	Beebe Livestock Auction	6	\$3,081.70
11/6/04	11/8/04	Beebe Livestock Auction	8	\$3,961.95
TOTAL				\$86,654.21

(c) As of the date of issuance of this complaint, all of the \$86,654.21 referred to in paragraph II (b) above remains unpaid.

III.

(a) During the period November 22, 2006 through January 24, 2007, Corporate Respondent, under the management, direction, and control of Respondent Green, issued false accounts of 64 purchases made on a carcass weight basis. Specifically, Corporate Respondent deducted ten (10) pounds (plus any tenths of pounds measured) from each of the actual measured weights of 61 carcasses purchased, and deducted twenty (20) pounds (plus any tenths of pounds measured) from each of the actual measured weights of three (3) carcasses purchased, when

recording the weights on sellers' settlement invoices. The deductions resulted in underpayment to sellers in the amount of \$600.89.

(b) On February 5, 2007, Corporate Respondent, under the management, direction, and control of Respondent Green, issued false accounts of six (6) purchases made on a carcass weight basis. Specifically, Corporate Respondent substituted its own (larger) estimates of tare weights for the actual (smaller) weights of the hooks and rollers used on its scale. The resulting estimate yielded a deduction of an additional 21.5 pounds per carcass over the actual tare. The additional deductions resulted in underpayments on these six purchases totaling \$103.20.

IV.

During the period November 22, 2006 through January 24, 2007, Corporate Respondent, under the management, direction, and control of Respondent Green, on 14 separate occasions, employed a scale for livestock purchases that was not equipped with a printing device to record weights, and purchased livestock without issuing a printed scale ticket.

V.

By reason of the facts alleged in paragraph I herein, Respondent Green is the alter ego of Corporate Respondent, Benton Packing Company, Inc.

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

By failing to transmit or deliver a true written account of purchases made on a carcass weight basis, as alleged in paragraph III (a), Respondents have willfully violated section 202(a) of the Act and section 201.99(b) of the regulations (9 C.F.R. § 201.99(b)).

By making purchases of livestock on a carcass weight basis using weights which were not actual hot weights, with tare which did not include only the weight of the equipment, as alleged in paragraph III (b), Respondents have willfully violated section 202(a) of the Act and section 201.99(d) of the regulations (9 C.F.R. § 201.99(d)).

By paying sellers less than the full purchase price of livestock by reason of the facts alleged in paragraph III, Respondents have willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b).

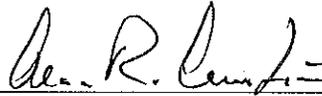
By reason of the facts alleged in paragraph IV, Respondents have willfully violated section 202(a) of the Act and sections 201.71(b) and 201.49(a) of the regulations (9 C.F.R. §§ 201.71(b), 201.49(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the Respondents have, in fact, willfully violated the Act, this Amended Complaint and Notice of Hearing shall be served upon the Respondents. The Respondents shall have twenty (20) days after receipt of this Amended Complaint and Notice of Hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 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 Amended 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 Amended 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). The Respondents are hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing as provided by sections 1.136 and 1.141 of the Rules of Practice, a hearing for

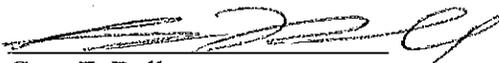
the above-mentioned purpose will be held at a place and time to be later designated before an administrative law judge authorized to conduct such hearing. At such hearing, Respondents will have the right to appear and show cause why an appropriate order should not be issued in accordance with the provisions 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 27 day of November, 2007



Alan R. Christian
Deputy Administrator,
Packers and Stockyards Program



Gary F. Ball
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
Room 2309, Stop 1413
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1413
Telephone: (202) 720-1636