

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0002

In re: Kao Vang and Chue Thao,
d/b/a California Fresh Meats,

Respondents

**“AMENDED AND CORRECTED”
Default Decision and Order**

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter “Act”), by a Complaint filed on October 4, 2011, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (hereinafter “Complainant”), alleging that Respondent Kao Vang and Respondent Chue Thao, d/b/a California Fresh Meats (hereinafter “Respondents”), willfully violated the Act.

On October 4, 2011, the Hearing Clerk mailed copies of the Complaint to Respondent Kao Vang and Respondent Chue Thao, d/b/a California Fresh Meats, by certified mailings, together with copies of the Hearing Clerk's notice letter and copies of the Rules of Practice. The United States Postal Service marked each mailing “unclaimed” and returned the mailings to the Hearing Clerk. On December 6, 2011, the Hearing Clerk re-mailed the complaint and service letter, by ordinary mail, to each respondent, pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). The Respondents were informed in the letter of service that an answer needed to be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

Respondents failed to file an Answer within the time period prescribed by the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136; hereinafter “Rules of Practice”), and upon the Motion of the Complainant, the following Findings of fact, Conclusions of Law and Order will be pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Kao Vang and Respondent Chue Thao are individuals d/b/a California Fresh Meats, a partnership, whose business mailing address is in Sanger, California.

2. At all times material to the Complaint, Respondents were:

(a) Engaged in the business of buying and selling livestock in commerce as a dealer for their own account;

(b) Registered with the Secretary of Agriculture as a dealer within the meaning of and subject to the provisions of the Act; and

3. On or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, Respondents issued checks in payment for livestock purchases, which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

4. On or about the dates and in the transactions set forth in Appendix B and incorporated herein by reference, Respondents purchased livestock in commerce and failed to pay, when due, the full purchase price of such livestock. As of the date of issuance of this complaint, the livestock purchases from Western Stockman’s Market, referred to in Appendix B, remain unpaid.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated section 312(a) and 409 of the Act (7 U.S.C. § 213(a) and §228b).

Order

1. Respondent Kao Vang and Respondent Chue Thao, d/b/a California Fresh Meats, as individuals, and their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

(a) Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented;

(b) Failing to pay, when due, the full purchase of livestock; and

(c) Failing to pay the full purchase price of livestock.

2. Respondent Kao Vang and Respondent Chue Thao, d/b/a California Fresh Meats are suspended as registrants under the Act for a period of five (5) years.

3. Pursuant to section 312(b) of the Act, (7 U.S.C. § 213(b)), Respondents are assessed, jointly and severally, a civil penalty in the amount of Twelve Thousand Five Hundred Eight Dollars and Sixty Four Cents (\$12,508.64).

4. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this Decision and Order shall be served upon the parties.

March 27, 2012

Peter M. Davenport
Chief Administrative Law Judge

Appendix A

| PURCHASED FROM | PURCHASE DATE | NO. OF HEAD | LIVESTOCK AMOUNT | DUE DATE PER § 409 (a) | CHECK NUMBER | RETURN DATE |
|---------------------------|---------------|-------------|--------------------|------------------------|--------------|-------------|
| Visalia Livestock Market | 6/2/10 | 3 | \$3,210.03 | 6/3/10 | 1326 | 6/4/10 |
| Western Stockman's Market | 6/3/10 | 25 | \$2,508.64 | 6/4/10 | 1327 | 6/21/10 |
| Circle M Livestock | 7/14/10 | 35 | \$4,765.00 | 7/15/10 | N/A | N/A |
| TOTAL | | 63 | \$10,483.67 | | | |

Appendix B

| PURCHASED FROM | PURCHASE DATE | NO. OF HEAD | LIVESTOCK AMOUNT | DUE DATE PER § 409 (a) | UNPAID BALANCE |
|---------------------------|---------------|-------------|------------------|------------------------|----------------|
| Visalia Livestock Market | 6/2/10 | 3 | \$3,210.03 | 6/3/10 | |
| Western Stockman's Market | 6/3/10 | 25 | \$2,508.64 | 6/4/10 | \$2,508.64 |
| Circle M Livestock | 7/14/10 | 35 | \$4,765.00 | 7/15/10 | |