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Agricultural Marketing Service

Fruit and Vegetable Programs-PACA Branch

"Perishable Agricultural Commodities Act (PACA) - Facilitating fair trade practices in the fruit and vegetable industry through education, mediation, arbitration, licensing and enforcement"

PACA Administrative Newsletter

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Special points of interest found on PACA Web Page:

- PACA License Search Engine
- Protecting Your Trust Rights
- PACA Internet Training Program
- PACA Publications

Inside this issue:

Trust Enforcement Action Nets $29.5 Million to Creditors

Earlier this year, Winn-Dixie Stores, Inc., Jacksonville, Florida, paid $29.5 million in undisputed claims to produce creditors who had preserved their trust rights under the PACA trust provisions. Winn-Dixie had filed for Chapter 11 bankruptcy protection in February 2005.

This is one example of many where creditors have taken steps to enforce their trust rights under the PACA by filing actions with the U.S. District Courts. Typically, several creditors will retain an attorney to file a joint action on their behalf. Every unpaid produce seller should take steps to ensure that they have properly preserved their trust benefits for each of their produce transactions. If a creditor is a PACA licensee, this is easily accomplished by the addition of a trust preservation statement on their invoice or billing statement. Non-licensed growers may perfect their trust claims by sending a trust notice to their customer for each transaction.

Unpaid sellers have used the PACA trust to recover hundreds of millions of dollars that most likely would not otherwise have been collected. Prior to the enactment of the PACA statutory trust provisions, security interest holders such as banks and finance companies frequently diverted the debtor's assets away from produce sellers, and unsecured produce sellers recovered very little, if any, money. This is because quite often, sellers were unaware of security agreements entered into between the buyer and others, such as a bank, which gave the bank a priority interest in the

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Fresh Fruit and Vegetable Inspection Service Goes Electronic!

Fruit and vegetable traders realize that the industry is highly competitive and fast moving, and produce transactions can involve vast sums of money. So, it is no surprise that when a receiver notifies a shipper about problems in a load of produce, the first questions that the shipper typically asks is, "Did you get an inspection?" and "What were the results?" These questions illustrate the importance, for both the receiver and the shipper, of obtaining a timely USDA inspection and having the inspection results documented. A USDA inspection certificate attests to the quality and condition of the product at the time it was inspected, provides evidence that may be used in a PACA reparation complaint, and can be the catalyst for quick settlement of a dispute.

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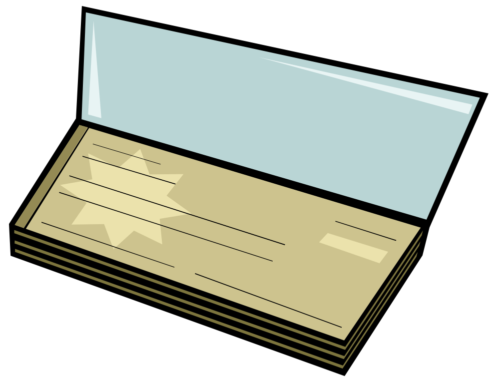
Accord and Satisfaction

A buyer may sometimes send a seller a check that does not cover the total amount of an invoice. A PACA seller must handle this partial payment check with care, because accepting a check in partial payment may prevent the seller from obtaining the difference between the check amount and the invoice amount.



During the informal handling of a reparation claim, we may become aware of a check for less than invoice price that a buyer has offered in full payment to resolve a dispute. When this happens, we request a statement from the firm issuing the check agreeing to release the check as an undisputed amount. If we receive a statement, we advise the recipient that it is safe for them to cash the check and maintain its claim for the difference. But occasionally we discover that a seller has already cashed a check for less than invoice price, in which case the acceptance of the partial payment may create an "accord and satisfaction" of the dispute.

"Accord and satisfaction" occurs when (1) a bona fide (good faith) dispute exists between a buyer and seller of produce concerning the amount due, (2) the buyer tenders in good faith a check for less than the invoice price, (3) the buyer clearly indicates that the check is given in full settlement of the invoice, and (4) the seller accepts the check. Generally, a bona fide dispute occurs when there is a genuine disagreement between the buyer and the seller. A buyer tenders a check in good faith when the check is part of an honest effort to settle the dispute. The language on the check that indicates it is offered to settle an invoice is often "in full accord" or "payment in full," and can also be written in a document accompanying the check. Finally, acceptance of the amount occurs when the seller or someone on the seller's behalf deposits the check, or the seller keeps the check for a long period.

Ultimately, an "accord and satisfaction" terminates the seller's right to pursue a claim for the full invoice amount. To preserve your rights, seek legal advice when presented with a partial payment check.

Trust Enforcement Action Nets $29.5 Million to Creditors

"The PACA trust provisions have… added stability to the marketplace…"

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buyer's assets. This vulnerability often resulted in cascading financial failures as produce sellers throughout the vertical marketing chain absorbed the burden of a financial failure of a buyer. The PACA trust provisions have limited this peril and thus added stability to the marketplace by earmarking trust money to pay produce accounts when they came due.

For further information about the PACA trust provisions and how to preserve your rights, you may refer to the July 2005 issue of the *PACA Administrative Newsletter* which may be found on the PACA Branch Web site, http://www.ams.usda.gov/fv/paca.htm or by contacting any one of the PACA regional offices shown in our Office Directory.

Fresh Fruit and Vegetable Inspection Service Goes Electronic!

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Inspectors with the Fresh Products Branch of USDA's Fruit and Vegetable Programs conduct inspections of fresh fruits and vegetables from offices nationwide. A technologically innovative program, developed by the Fresh Products Branch, became fully operational in all 35 Federal inspection offices at the beginning of this year. This program, which uses the latest in software and electronic transmission technology, expedites the collection and dissemination of inspection information. The "Fresh Electronic Inspection Reporting/ Resource System" (FEIRS) permits inspectors to take information about a particular lot of inspected produce and enter it onto an electronic certificate via a laptop computer — all while still in the field! The result is a more legible, uniform, concise, professional, and reader-friendly certificate. When an inspection is completed, the results are immediately transmitted by the inspector to all financially interested parties (usually the applicant/receiver and the shipper). FEIRS can send inspection data as well as digital photos across the country electronically within seconds to an e-mail address or fax number, or the certificate can be printed. Inspection certificates can be accessed from the Fresh Products Branch online services Web address, http://fpbinspections.ams.usda.gov with the use of a password provided on the certificate.

Electronic access to inspection certificates makes it easier than ever to receive assistance from the PACA Branch when you need to discuss whether or not the inspection establishes a breach of contract. You can contact any of the PACA Branch's regional offices listed in our Office Directory. Investigators with the PACA Branch have access to the electronic USDA inspection certificates and can quickly retrieve any certificate that you have a question about.

For more information about FEIRS, contact your local Federal Inspection Office for more details or call the Branch Field Operations Section at: 800-811-2373.

If you have any questions on this or any other fair trade issue, please visit the PACA Branch Web site at http://www.ams.usda.gov/fv/paca.htm or call our toll-free number: 800-495-7222.

Updating PACA License Information

Periodically, information that is shown on a PACA licensee's records changes. When this occurs, it is important to promptly advise the PACA Branch so that the information on your license is accurate. This is especially critical when there is a change in the mailing or business address, so that you will receive your renewal application and other Branch notices on a timely basis. An outdated address may cause delays in the receipt and processing of your renewal application, or may even result in the termination of your license, which will necessitate completing an entirely new application and the payment of additional fees. Other common changes to license information include the addition or deletion of corporate principals, changes in the percentage of stock held by a corporate principal, change in the number and/or addresses of branch locations, or change in the trade name. Reporting changes promptly will save both you and the PACA Branch time and money.

All licensees are also sent the *PACA Administrative Newsletter*. This quarterly publication contains informative and interesting articles about the latest PACA precedent cases, Web site features, program developments, and various aspects of the rules and regulations.

For further information about this topic, call our toll-free number: 800-495-7222.

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PACA On-Line Features

- PACA License Search Engine
  - Search for licensees by business name(s), principal(s), or branch/trade name
- Perishable Agricultural Commodities Act and Regulations in English and Spanish
- F.O.B. Good Delivery Guidelines
- Internet Training Program
- Damage Claims
- Protecting your Trust Rights
- PACA Publications
- Office Directory

Past issues of the "PACA Administrative Newsletter" may be found at: www.ams.usda.gov/fv/paca.htm

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To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PACA Branch Office Directory

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