

SAMPLE (SEE INSTRUCTIONS ON BACK)

UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF AGRICULTURE
P.A.C.A. DOCKET NO. _____ (Do Not Fill In)

(Correct Trade Name))
Complainant)
)
v.) COMPLAINT
)
(Correct Trade Name))
Respondent)

Complainant above-named respectfully alleges:

- 1. That complainant is (use one of a-e):
(a) an individual
(b) an individual, (name), doing business as _____
(c) a partnership, composed of (give names of partners), doing business as _____
(d) a corporation
(e) a limited liability company
whose address is _____.
- 2. That complainant is informed and believes that respondent is (use one of a-e):
(a) an individual
(b) an individual, (name), doing business as _____
(c) a partnership, composed of (give names of partners), doing business as _____
(d) a corporation
(e) a limited liability company
whose address is _____.
- 3. That respondent, at the time of the transaction(s) involved herein, was licensed, or was subject to license, under the Perishable Agricultural Commodities Act of 1930, as a dealer, commission merchant, and/or broker.
- 4. That on or about the ____ day of ____, 20__, in the course of interstate (or foreign) commerce, complainant, by oral contract (or by written contract) sold to the respondent ____ truckload(s) (or carload(s)) of _____ (kind of commodity), being a perishable agricultural commodity, at the agreed price of \$ _____ (if interest is noted on your invoices and you wish to pursue it, please report the interest rate noted on the invoice. Example: "at the agreed price of \$ ____ plus xx % interest per annum.
- 5. That said commodity was inspected at point of shipment on or about the ____ day of ____, 20__, the report on which inspection is set forth in certificate attached hereto as Exhibit No. _____. (This paragraph may be omitted if no inspection was involved.)
- 6. That said contract was negotiated by _____, a broker, located at _____, who acted in negotiating such sale as agent for both complainant and respondent. (This language should be modified, if necessary, to conform to the facts in each individual case, or omitted entirely if no broker is involved.)
- 7. That complainant shipped on _____ (date(s)) from loading point(s) in the State (or Country) of _____, in interstate (or foreign) commerce, to respondent at _____ in the State of _____, the kind, quality, grade, and size of commodity called for in said contract of sale and in the manner agreed upon. (Modify this language, if necessary, to conform to the facts.)
- 8. That upon arrival of said _____ at destination, respondent accepted the commodity(ies) in compliance with said contract of sale but has since failed, neglected, and refused to pay complainant the agreed purchase price thereof (or has paid complainant only \$ _____, leaving a balance due of \$ _____, which it has since failed, neglected, and refused to pay.) (Modify to fit the nature of the contract, if other than a purchase and sale.)
- 9. That the matters and actions set forth herein constitute a violation by respondent of Section 2 of the Perishable Agricultural Commodities Act.
- 10. That there is now due and owing complainant from respondent the sum of \$ _____ (if applicable, "...plus XX% interest"), no part of which has been paid.
- 11. Complainant's exhibits, numbered 1 to _____, inclusive, are original, or true copies of original papers relating to the matters involved herein and are attached hereto as part of this complaint.

WHEREFORE, complainant prays that a copy of this complaint be served upon the above-named respondent and that he (it) be required to answer the charges herein stated in writing with such time as the Secretary may require; that, upon the record made, either with or without formal hearing, as provided in the Act or in the regulations, and by appropriate order, the complainant be awarded such amount of damages as he (it) may be entitled to receive according to the facts established, and that the Secretary also make such other and further orders and take such disciplinary action contemplated by Section 8 of the Act as may be deemed fit and proper in the premises.

Dated this ____ day of _____, 20__.

(Correct Trade Name)
Complainant

(Signature)
Title: (Owner), (Partner), (President), etc.

(Name of person signing complaint), being first duly sworn, says that he (she) has read the foregoing complaint and knows the contents thereof and that the same is true, except as to matters therein stated on information and belief, and as to such matters he (she) believes it to be true, and that he (she) is duly authorized to sign the complaint on behalf of the complainant.

(Signature of Person Signing Complaint)

Subscribed and sworn to before me this ____ day of _____, 20__.

(Signature of Notary Public)

(Notary Stamp or Seal)

**SUGGESTIONS FOR PREPARING FORMAL COMPLAINTS UNDER THE PACA
INVOLVING FAILURE TO MAKE PAYMENT**

1. ***THE SAMPLE OUTLINE SHOULD NOT BE FILLED IN.*** It is intended merely as a guide. Choose only the wording that applies to your particular case. Paragraphs 3 and 9 may be copied as they appear on the outline. You do not need to use Paragraphs 5 and 6 unless a broker or inspection was involved, respectively. For reference, number each paragraph of your formal complaint.
2. An **original and 2 copies** of the formal complaint are needed. If more than one respondent is involved, an extra copy of the complaint must be submitted for each additional respondent.
3. The caption or heading of the complaint must show the correct trade name of both complainant and respondent.
4. Paragraphs 1 and 2 of the complaint must accurately describe your and respondent's legal makeup. For example, if a partnership, the name of each partner must be shown. The information on respondent appears in the accompanying letter from the Department. Copy this information into the heading and paragraph 2 of the complaint.
5. The complaint must contain the following basic allegations:
 - a. That the commodity in question is a fresh or frozen fruit or vegetable within the jurisdiction of the PACA (see outline, paragraph 4) as a perishable agricultural commodity.
 - b. That the transaction(s) involved interstate or foreign commerce (see outline, paragraph 4).
 - c. That you complied with the contract requirements (see outline, paragraph 7).
 - d. That respondent has violated Section 2 of the Act by failing to live up to its responsibilities (see outline, paragraph 9).
 - e. The amount of damages you claim and how you computed this amount (see outline, paragraphs 8 and 10).
6. You can show interstate commerce by listing the point of shipment and the intended or contract destination. You can show foreign commerce by establishing the country of origin of the product. **It must be shown that the goods were either received or shipped in interstate and/or foreign commerce or that the contract was made with the understanding that the shipment would move in interstate or foreign commerce.**
7. Original or true copies of pertinent papers relating to the transaction should accompany the complaint as exhibits. Attach **A COMPLETE SET OF NUMBERED EXHIBITS TO EACH COPY** of the formal complaint.
8. Exhibits must be numbered and referred to, either individually or together, in a separate paragraph (see outline, paragraph 11).
9. The original and all copies of the formal complaint should be signed by a principal of the complaining firm, preferably the owner, a partner, or an officer. Persons other than those mentioned above may sign the complaint if they are duly authorized by the complainant to act on its behalf. However, the person signing the complaint should have firsthand knowledge of the transactions involved.
10. The original of the complaint should be **signed and sworn** to before a notary public. The name of the person who signed the complaint should appear in the verification statement. The notary's signature, seal (in those states requiring a seal) and commission expiration date should appear on ALL copies of the complaint.
11. In complaints involving \$30,000 or less, the Hearing Officer will consider the contentions submitted by complainant and respondent in the complaint and answer, sworn statements of fact and any report of investigation prepared by the Department. Consequently, it is important that all papers relating the transaction(s) be made part of the file, either by attachment to sworn statements and depositions or as separate exhibits.
12. Complaints involving more than \$30,000 will be decided without oral hearing unless requested by one of the parties.
13. Each party to the dispute is responsible for proving facts it claims to be true but which are in dispute.
14. Any payment received from respondent while the complaint is pending, or after decision by the Secretary, should be reported at once in writing.
15. If you wish to pursue accrued interest noted on your invoices, this declaration must be made in your formal complaint to be awarded. Please state the total amount owed for your invoices, and add a statement such as, "plus 18% annum." Do not calculate the actual amount of the interest, since interest accrues until the decision and order has been issued.
16. The Sample Outline is only a guide. **DO NOT FILL IT IN!**