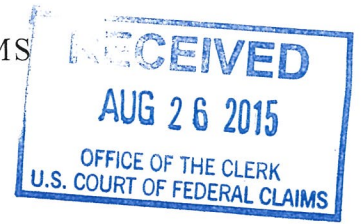


UNITED STATES COURT OF FEDERAL CLAIMS



Bruce Ciapessoni, Elisa Ciapessoni, Bob F. Hansen, Hansen Enterprises, R&H Agri-Enterprises, Eldora Rossi, Rossi & Ciapessoni Farms, and Rossi & Rossi,

Plaintiffs,

v.

The United States of America,

Defendant.

Case 1:15-cv-____ - ____

CLASS-ACTION COMPLAINT

Bruce Ciapessoni, Elisa Ciapessoni, Bob F. Hansen, Hansen Enterprises, R&H Agri-Enterprises, Eldora Rossi, Rossi & Ciapessoni Farms, and Rossi & Rossi hereby file this complaint against the United States of America, acting through its Department of Agriculture (USDA), and allege as follows:

NATURE OF THE ACTION

1. This action seeks just compensation under the Fifth Amendment’s Takings Clause for reserve-tonnage raisins taken from raisin growers by the USDA pursuant to the Order Regulating Handling of Raisins Produced from Grapes Grown in California (“California Raisin Handling Order”), 7 C.F.R. §§ 989.1–95 (2015).

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over and is a proper venue for Plaintiffs’ claims, which are against the United States and founded on the Constitution of the United States. 28 U.S.C. § 1491(a)(1) (2012); U.S. Const. amend. V.

PARTIES

3. Bruce Ciapessoni is an individual who grows raisins in California.

4. Elisa Ciapessoni is an individual who grows raisins in California.
5. Bob F. Hansen is an individual who grows raisins in California.
6. Hansen Enterprises is a Madera, Calif., general partnership that grows raisins in California.
7. R&H Agri-Enterprises is a Fresno, Calif., general partnership that grows raisins in California.
8. Eldora Rossi is an individual who grows raisins in California under her name, Eldora B. Rossi, and previously grew raisins under the names Carlo and Eldora Rossi.
9. Rossi & Ciapessoni Farms is a Fresno, Calif., general partnership that grows raisins in California.
10. Rossi & Rossi is a Fresno, Calif., general partnership that grew raisins in California prior to 2012.
11. The United States of America, acting through the USDA, is the defendant. Fed. Cl. R Civ. P. 10(a).

BACKGROUND

The Agricultural Marketing Agreement Act

12. The Agricultural Marketing Agreement Act (“AMAA”) directs the Secretary of Agriculture to issue “marketing orders” regulating the marketing and sale of agricultural commodities. 7 U.S.C. § 608c (2012).

13. When issuing a marketing order, the Secretary is authorized to “[e]stablish[] or provid[e] for the establishment of reserve pools” of a commodity. 7 U.S.C. § 608c(6)(E) (2012). Under this authority, the Secretary can regulate the supply of an agricultural commodity that reaches the commercial market in a given crop year. 7 U.S.C. § 602 (2012).

The California Raisin Industry

14. Approximately 3,000 persons and entities in California grow natural seedless grapes, which are picked and dried to produce raisins. California growers produce the entirety of the nation's raisin crop, which in turn represents approximately 40 percent of the world's raisin crop.

15. Growing raisins requires a substantial investment of time, energy, and money. Among other costs, growers must obtain labor to plant, monitor, harvest, and dry their grapes, and they must also provide for weed control, pest control, harvesting, storage, and transportation for their raisins.

16. Most growers sell their raisins to packers, known in the industry as "handlers," who stem, clean, process, and pack the raisins. Handlers in turn resell the processed raisins in commercial markets. Some growers, however, also handle their own raisins before selling the raisins directly in commercial markets.

The California Raisin Handling Order

17. In 1949, the Secretary used the AMAA's grant of authority to issue the California Raisin Handling Order. 14 Fed. Reg. 5136, 5136 (Aug. 18, 1949) (codified as amended at 7 C.F.R. pt. 989). The California Raisin Handling Order allows the Secretary to restrict the supply of raisins reaching the commercial market in a given crop year by ordering handlers of raisins to withhold a designated percentage of growers' yearly raisin crop in reserve. *See generally* 7 C.F.R. §§ 989.65–.71 (2015). The portion of the growers' crop so withheld is known as the "reserve pool." *Id.*

18. Under the California Raisin Handling Order, the size of a given crop year's reserve pool is designated by the Secretary, who considers recommendations from the Raisin Administrative Committee (the "Committee"). *Id.* §§ 989.54–.55 (2015). The Committee is

responsible for administering the California Raisin Handling Order, and acts on behalf of the USDA. *Id.* §§ 989.26, .29–.30, .35–.36 (2015).

19. If the Committee recommends a reserve pool, the USDA may, and usually does, implement the reserve by issuance of a final rule. *Id.* § 989.55. This rule designates the percentage of a given year’s crop that is considered “free tonnage” (which can be sold freely in commercial channels), and the portion that handlers must set aside as “reserve tonnage.” *Id.*

20. Handlers pay growers for the free-tonnage raisins but not for the reserve-tonnage raisins delivered by growers.

Operation of the Reserve Pool

21. From raisins delivered by growers, handlers must separate “reserve-tonnage” raisins and store them “for the account” of the Committee. 7 C.F.R. § 989.65(a). In the case of growers that also handle their own raisins, such growers must separate the designated reserve-tonnage percentage from their own crop and store it “for the account” of the Committee. *Id.* The Committee reimburses handlers for the cost of storing reserve-tonnage raisins. 7 C.F.R. § 989.66(f)

22. The Committee ultimately “acquires title to the reserve raisins that have been set aside, and decides how to dispose of them in its discretion.” *Horne v. Dep’t of Agriculture*, 135 S. Ct. 2419, 2424 (2015). The Committee can sell the reserve-tonnage raisins “in noncompetitive markets,” “donate[] them to charitable causes,” “release[] them to growers who agree to reduce their raisin production,” or “dispose[] of them by ‘any other means’ consistent with the purposes of the raisin program.” *Id.* (quoting 7 C.F.R. § 989.67(b)(5)).

23. Proceeds from the Committee’s disposition of reserve-tonnage raisins are first used to pay (a) the Committee’s administrative expenses and (b) export subsidies to certain

handlers. Any remaining proceeds are remitted to growers on a pro-rata basis. 7 C.F.R.

§ 989.53(a) (2015); *id.* § 989.66(h).

24. For example, the USDA issued its final rule establishing free- and reserve-tonnage percentages for the 2008–09 crop year on August 28, 2009, which became effective on September 28, 2009. Final Free and Reserve Percentages for 2008–09 Crop Natural (Sun-Dried) Seedless Raisins, 74 Fed. Reg. 44,269, 44,269–70 (Aug. 28, 2009). Pursuant to this final rule, the reserve-tonnage percentage was set at 13 percent. *Id.*

25. During the 2008–09 crop year, Plaintiffs and the putative class members delivered 364,268 tons of natural seedless raisins. Of these, 45,508.5 tons (or approximately 13 percent) were ultimately designated as reserve-tonnage raisins and separated by handlers for the account of the Committee. Pursuant to the California Raisin Handling Order, these handlers did not pay Plaintiffs or the putative class members for the reserve-tonnage raisins.

26. The market price, or “field price,” of natural seedless raisins for the 2008–09 crop year was \$1,310 per ton, and the “producer price” was \$1,139.70 per ton. Final Free and Reserve Percentages for 2009–10 Crop Natural (Sun-Dried) Seedless Raisins, 75 Fed. Reg. 35,959, 35,960 (June 24, 2010).

27. Nevertheless, the Committee paid Plaintiffs and the putative class members nothing for the reserve-tonnage raisins when the Committee took title to them. Nor were there any net proceeds from the Committee’s disposition of the 2008–09 reserve-pool raisins for the Committee to ultimately distribute *pro-rata* to Plaintiffs and the putative class members.

Plaintiffs’ Operations

28. Plaintiffs are individual farmers and partnerships between individual farmers that own or lease California vineyards, where they grow natural seedless grapes, which are then

picked and dried to produce raisins. Plaintiffs bring this suit solely in their capacity as “producers” under the AMAA.

29. In numerous crop years where USDA established a reserve pool, including but not limited to 2002–03, 2003–04, 2005–06, 2006–07, 2007–08, 2008–09, and 2009–10, Plaintiffs delivered their raisins to handlers. Pursuant to the California Raisin Handling Order, the handlers in turn separated Plaintiffs’ free-tonnage and reserve-tonnage raisins, and paid Plaintiffs only for their free-tonnage raisins. The Committee, acting on behalf of the USDA, physically appropriated Plaintiffs’ reserve-tonnage raisins, but provided no compensation to Plaintiffs when it did so.

Horne v. Department of Agriculture

30. On June 22, 2015, the Supreme Court of the United States held that the California Raisin Handling Order’s reserve-pool requirement effected “a clear physical taking” in violation of the Fifth Amendment’s Takings Clause for which just compensation was due. *Horne*, 135 S. Ct. at 2428. Prior to this decision, Plaintiffs’ and the putative class members’ claims were inherently unknowable.

31. Based on *Horne*, Plaintiffs and the putative class members bring this class action to recover just compensation for raisins produced by them and subsequently taken by the USDA pursuant to the California Raisin Handling Order’s reserve requirement.

CLASS-ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of a plaintiff class consisting of “all raisin growers whose raisins were set aside for the account of the Raisin Administrative Committee pursuant to the California Raisin Handling Order’s reserve-pool requirement.”

33. The plaintiff class consists of approximately 3,000 California raisin growers, rendering the class sufficiently “numerous that joinder of all members is impracticable.” Fed. Cl. R. Civ. P. 23(a)(1).

34. Plaintiffs’ claims present “questions of law or fact common to the class.” *Id.* R. 23(a)(2). For example: (a) whether raisins constitute private property under the Fifth Amendment’s Takings Clause; (b) whether the California Raisin Handling Order transferred title to class members’ reserve-tonnage raisins to the Committee; (c) whether such title transfer constituted a physical taking for which just compensation is due; (d) if it constitutes a taking, whether class members received just compensation for their reserve-tonnage raisins; and (e) if they did not receive just compensation, the amount of just compensation now due to them.

35. Plaintiffs’ claims “are typical of the claims . . . of the class.” *Id.* R. 23(a)(3). Class members have similar production processes, and all class members are affected by the reserve-tonnage restrictions. Accordingly, except for the amount of reserve-tonnage raisins taken by the United States from each class member, no material differences exist between Plaintiffs’ claims and the claims of class members.

36. Plaintiffs “will fairly and adequately protect the interests of the class.” *Id.* R. 23(a)(4). Plaintiffs suffer from no entanglements, conflicts, or disqualifications adversely affecting their ability to serve as class representatives. Further, Plaintiffs have carefully selected counsel uniquely experienced in class-action litigation, constitutional litigation, and regulatory compliance with the California Raisin Handling Order’s reserve-pool requirements.

37. Class certification is appropriate because “the United States has acted . . . on grounds generally applicable to the class.” *Id.* R. 23(b)(2). Specifically, the United States has

taken reserve-tonnage raisins from each class member and not provided the class member with just compensation.

38. Class certification is also appropriate because “the questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Id.* R. 23(b)(3). As noted, some individual questions exist (*i.e.*, the quantity of raisins taken by the United States from each class member), but the common questions (*see supra* ¶ 34) predominate over them. Further, a class action—which can resolve all class members’ claims in a single litigation—is more efficient and superior to thousands of individual lawsuits cluttering the Court’s docket. Finally, some class members’ claims may be sufficiently small in value that they may not pursue their claims in separate proceedings. Aggregated as a class, however, the claims in this case are worth hundreds of millions of dollars. A class action ensures that all class members receive the just compensation to which the Fifth Amendment entitles them.

39. This Court should therefore certify the requested class of raisin growers.

COUNT 1

Just Compensation for Taking of Private Property (U.S. Const. amend. V)

40. Plaintiffs reallege and incorporate by reference paragraphs 12 through 31 of their complaint.

41. Plaintiffs possessed full legal title to all raisins they produced prior to imposition of the reserve pool in all crop years for which a reserve pool was imposed.

42. Plaintiffs’ raisins were property protected by the Fifth Amendment’s Takings Clause.

43. Through operation of the applicable final rules issued by the USDA in numerous crop years designating a reserve pool, title to Plaintiffs' reserve-tonnage raisins passed to the Committee.

44. This title transfer deprived Plaintiffs of all property rights in their reserve-tonnage raisins.

45. The Committee acted at all relevant times on behalf of the USDA.

46. The Committee provided Plaintiffs no compensation when the Committee appropriated Plaintiffs' reserve-tonnage raisins.

47. The Committee's appropriation of Plaintiffs' reserve-tonnage raisins without payment constitutes a physical taking without just compensation and thereby violates the Fifth Amendment's Takings Clause.

48. Plaintiffs are therefore entitled to receive just compensation for any raisins grown by them but held for the account of the Committee based upon the reserve-tonnage requirement.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment:

- (a) Holding that USDA's physical appropriation of Plaintiffs' reserve-tonnage raisins without just compensation violates the Fifth Amendment's Takings Clause;
- (b) Awarding Plaintiffs just compensation for their reserve-tonnage raisins based upon such raisins' fair-market value at the time of the taking, as well as interest thereon;
- (c) Awarding Plaintiffs their reasonable attorneys' fees and costs; and

(d) Granting any and all additional relief as the Court deems necessary.

Dated: August 26, 2015

Respectfully submitted,



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