

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**Notice of Proposed Final Settlement of Class Action
Against the United States**

A federal court authorized this Notice. This is not a solicitation from a lawyer.

I. WHY ARE YOU RECEIVING THIS NOTICE?

You are receiving this Notice because our records show (1) that you are a raisin grower or producer whose natural seedless raisins were acquired by handlers and placed in reserves for the account of the Raisin Administrative Committee in one or more of the 2002–2003 through 2009–2010 crop years, but (2) that you did not previously join (or “opt in” to) the class-action lawsuit, *Ciapessoni, et al. v. United States*, Case No. 1:15-cv-00938 (Fed. Cl.), and are not a member of either Sun-Maid Growers of California (“Sun-Maid”) or the Raisin Bargaining Association (“RBA”), both of which are raisin-producer cooperatives that previously submitted opt-in forms on behalf of their members. The purpose of this Notice is to inform you of a proposed settlement of this class-action litigation and of your legal rights with respect to the settlement. Capitalized terms in this Notice are defined in the parties’ Settlement Agreement. A copy of the Settlement Agreement, with its exhibits, is available at www.reserveraisinsclassaction.com.

Your legal rights are affected whether you act or do not act. Read this Notice carefully.

To the extent that this Notice conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

Background

The lawsuit, *Ciapessoni, et al. v. United States*, was commenced by a group of plaintiffs in 2015 (“Plaintiffs” or “Class Representatives”). In the lawsuit, Plaintiffs sought just compensation from the United States Government for raisins produced by Class Members and subsequently ordered by the USDA to be set aside in “reserve pools” pursuant to the California Raisin Handling Order (the “Marketing Order”). The Plaintiffs allege that this “reserving” of raisins constituted a taking of private property for public use, which requires compensation under the Fifth Amendment to the United States Constitution.

This lawsuit’s defendant, *i.e.*, the Government of the United States of America, denies that the raisin reserve requirement caused any unconstitutional taking requiring compensation and denies that the Class is entitled to any compensation for any such taking. The United States Government further contends that the lawsuit is barred, except as to claims concerning the 2009–2010 raisin crop year, by the applicable statutes of limitations. The Court determined that the only raisin crop years not barred by the statute of limitations are the 2002–2003, 2003–2004, 2005–2006, 2006–2007, 2007–2008, 2008–2009, and 2009–2010 crop years (the “Crop Years”). These seven Crop Years are the only crop years still at issue in this lawsuit. The United States Government has expressly reserved its right to appeal the Court’s denial of its statute-of-limitations defenses, as to all the Crop Years other than the 2009–2010 Crop Year, if this lawsuit is not resolved by the proposed settlement.

In 2017, the Court certified this litigation as a class action and stated that only the following could “opt in” to or join this litigation as members of its “Class”:

All producers as defined in 7 C.F.R. § 989.11 and other persons as defined in 7 C.F.R. § 989.3 (collectively, “Producers”) whose Natural Seedless raisins were acquired by handlers pursuant to 7 C.F.R. § 989.17 and set aside for the account of the Raisin Administrative Committee pursuant to 7 C.F.R. § 989.66(a) in the [Crop Years]; however, notwithstanding anything in this order to the contrary, this class shall exclude all Producers named as plaintiffs in *Evans v. United States*, No. 06-439 (Fed. Cl.), from any claim concerning a crop year prior to the 2007–2008 crop year. For clarity: any Class claim(s) shall not concern a crop year other than the [Crop Years].

Plaintiffs subsequently sent notice of this certified class-action litigation by U.S. mail to 6,397 potential Class members identified by the parties and informed those potential Class members of their ability to “opt in” to the Class and that, unless they opted in, they would not be members of the Class. Plaintiffs also notified potential Class members of the litigation, and the need to opt in to be members of the Class, through radio and newspaper advertisement campaigns. In response, Plaintiffs received 4,182 completed opt-in forms. In addition, Sun-Maid Growers of California (“Sun-Maid”) and the Raisin Bargaining Association (“RBA”), two raisin-producer cooperatives, submitted opt-in forms on behalf of their members.¹ (All potential Class members that submitted opt-in forms in 2017, or on whose behalf Sun-Maid or the RBA submitted opt-in forms in 2017, are collectively referred to in the Settlement Agreement and in this notice as the “Opt-In Class Members.”)

To settle this lawsuit, Plaintiffs, on behalf of all Class members, and the United States Government have negotiated and signed a Settlement Agreement, which has already been preliminarily approved by the Court. Under the terms of this Settlement Agreement, the United States Government will pay \$85,000,000.00 (the “Settlement Amount”) to settle all the claims of all the Opt-In Class Members and to pay Plaintiffs’ attorney fees and other fees and expenses associated with the litigation and settlement, as stated in the Settlement Agreement. All Opt-In Class Members are already bound to, and will obtain the benefits of, the Settlement Agreement if it is finally approved by the Court and not subject to further appeal—and, as explained below, all Opt-In Class Members also have a set period of time to submit a written objection to any of the Settlement Agreement’s terms.²

The Settlement Agreement, if finally approved by the Court and not subject to further appeal, also requires the United States Government to pay between \$0.00 and \$3,000,000.00 (the “Supplemental Settlement Amount”) to settle all the potential claims of raisin producers that were potential Class members but are not the litigation’s Plaintiffs, are not Opt-In Class Members, and are not parties to the related litigation, *Lion Farms, LLC v. United States*, (Fed. Cl. No. 1:15-cv-00915-LAS), and that, during a 30-day period allowed for by the Settlement Agreement, agree to

¹ Sun-Maid’s group opt-in excludes 13 raisin producers who are members of Sun-Maid but who affirmatively requested not to be included in Sun-Maid’s group opt-in.

² Sun-Maid and RBA members who did not submit individual opt-in forms will also have an opportunity to withdraw from the Settlement Class during the period for objecting to the Settlement Agreement.

be bound by the agreement (“Deemed Settlement Class Members”). The Settlement Agreement requires the precise value of the Supplemental Settlement Amount to be determined based upon the calculation explained in the Settlement Agreement’s Exhibit B, paragraph 1. However, because the Supplemental Settlement Amount, used to pay any Deemed Settlement Class Members, is distinct from the Settlement Amount used to pay Opt-In Settlement Class Members, any payment to Deemed Settlement Class Members will not reduce at all any Opt-In Class Member’s share of the Settlement Amount. Thus, the agreement of any producer to be bound to the Settlement Agreement as a Deemed Settlement Class Member will in no way affect any amount to be received by any Opt-In Class Member. Deemed Settlement Class Members’ shares of the Supplemental Settlement Amount are also smaller, per ton of reserved raisins, than Opt-in Class Members’ shares of the Settlement Amount, per ton of reserved raisins, in part because Deemed Settlement Class Members did not opt into the Class, can no longer opt into the Class, and are not Opt-In Class Members, but are being allowed to join in the settlement, if they agree to do so, to make the settlement more comprehensive. (Solely for convenience, all Opt-In Class Members, along with any and all Deemed Settlement Class Members, are collectively referred to in the Settlement Agreement and in this notice as the “Settlement Class Members.”) In exchange for the United States Government’s agreement to the Settlement Agreement, all Settlement Class Members release, waive, abandon, and permanently discharge the United States Government from all “Released Claims,” as defined by the Settlement Agreement (at Paragraph 1.EE). Released Claims include all claims asserted by, arising under, or otherwise relating to the complaint in this class-action litigation and/or any amended version of that complaint.

The Settlement Agreement’s terms described here were reached through extensive negotiations between Plaintiffs and the United States over a period of more than one year. The Plaintiffs and Class Counsel believe that the Settlement Agreement is fair, reasonable, and the best result for all Settlement Class Members. Class Counsel also retained the services of retired federal judge Oliver W. Wanger to review the dollar amount and other principal terms of the settlement. (Oliver Wanger served as a United States District Judge for the Eastern District of California in Fresno for over 20 years, from 1991 until his retirement in 2011.) Judge Wanger agrees that the Settlement Agreement is fair, just, reasonable, and in the best interest of all Settlement Class Members in light of the challenges and costs of ongoing litigation against the Federal Government.

II. WHAT ARE THE FINANCIAL TERMS OF THIS SETTLEMENT?

A. How much money will you receive?

If you agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member, then, under its terms, your share of the Supplemental Settlement Amount will be determined based upon dividing the Settlement Agreement’s assessed value of all your reserved raisins for the Crop Years (*i.e.*, all the reserved raisins that you delivered during the Crop Years) by the Settlement Agreement’s assessed value of all the reserved raisins delivered by all the Deemed Settlement Class Members during the Crop Years—with the resulting fraction expressed as a percentage that is then multiplied by the Supplemental Settlement Amount already net of a portion of the attorney fees and other fees and expenses associated with this litigation and settlement (*i.e.*, with a portion such fees and expenses already deducted from the Supplemental Settlement Amount), as stated in the Settlement Agreement. Also, if you have a debt to the Federal Government, that debt might be deducted from what you would otherwise recover from the settlement. The Settlement Administrator will then send to you, by check (see below), any positive amount resulting from the calculations just described. Further explanations of the calculations of

the Deemed Settlement Class Members' shares of the net Supplemental Settlement Amount are in Exhibit B to the Settlement Agreement, available at www.reserveraisinsclassaction.com.

B. How will you be paid?

If you agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member, then any amount due to you pursuant to the Settlement Agreement would be paid to you by a check sent from the Settlement Administrator. Under the Settlement Agreement, any such check not cashed within 365 days from the date that it is issued will become void and the amount of the check will be returned to, and be the property of, the United States.

C. Who will pay attorneys' fees and other expenses?

You will have no out-of-pocket obligation to pay any attorney fees or other fees and expenses associated with this lawsuit and settlement. Instead, the Settlement Amount and the Supplemental Settlement Amount (collectively, the "Common Fund") will pay for all those fees and costs. Class Counsel has proposed that the Court approve payment of attorney fees totaling up to 25% of the Common Fund amount. Class Counsel will also seek reimbursement from the Common Fund of reasonable and allowable litigation expenses, and will request payment from the Common Fund to compensate the Settlement Administrator, which handles administrative tasks related to the Settlement Agreement and payments from the Common Fund. In addition, this litigation's seven named Plaintiffs, who initiated this litigation and have served as its Class Representatives, will request a time-and-effort award of \$12,500.00 each, totaling \$87,500.00, for their assistance in this litigation, which will also be paid from the Common Fund. All these fees and expenses—including attorney fees, Settlement Administrator fees and expenses, and the time-and-effort award paid to Class Representatives—will be paid from the Common Fund, before any settlement shares are distributed to any Settlement Class Members. The funds for paying all such fees and expenses will be drawn, on a proportional basis, from the Settlement Amount and the Supplemental Settlement Amount that together make up the Common Fund, as explained in the Settlement Agreement's Exhibit A, paragraphs 1–2.

III. WHAT ARE YOUR RIGHTS?

You have the right for a limited period of time—until September 2, 2019—to agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member. To agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member, you must complete an Agreement to Be Bound form, which is attached to this notice, and submit the completed form as explained in the table below.

Your legal rights and options are summarized in the table below. Please note that your legal rights are affected whether you act or do not act.

Read this Notice carefully. Please do not contact the Court directly.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION	DUE DATE
DO NOTHING AND RECEIVE NOTHING	You are not currently a Settlement Class Member and will receive no benefits from the lawsuit. Keep your rights, if any, to sue the United States separately.
ASK TO BE INCLUDED (BECOME A DEEMED SETTLEMENT CLASS MEMBER) AND RECEIVE MONEY	<p>If you agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member, and if the Court approves the settlement, the settlement’s terms will bind you and you will receive any share of the Supplemental Settlement Amount due to you under the Settlement Agreement.</p> <p>To agree to be bound to this Settlement Agreement so as to be a Deemed Settlement Class Member, you must submit a completed Agreement to Be Bound—a copy of which is attached to this notice—electronically, by facsimile, by first-class mail, or by pre-paid delivery service. The Agreement to Be Bound must be submitted, faxed, postmarked, or delivered by September 2, 2019. The various locations and methods by which you may submit an Agreement to Be Bound are as follows:</p> <p>By Internet: You can complete and submit the Agreement to Be Bound form online, using the bar code number provided at the top of this notice, at the following internet site with the following internet URL: www.reserveraisinsclassaction.com.</p> <p>By Mail: You can mail your completed Agreement to Be Bound form to the Settlement Administrator at the following address:</p> <p style="text-align: center;">Reserve Raisins Class Action c/o KCC Class Action Services P.O. Box 404011 Louisville, KY 40233-4011</p> <p>By Facsimile: You can send your completed Agreement to Be Bound form by sending a facsimile copy using the following facsimile number:</p> <p style="text-align: center;">1-866-763-9933</p>

CONTACT US	<p>If you have questions, you may contact Class Counsel at any mailing address, or by using any email address, below.</p> <p>Noah M. Schubert, Esq. (Co-Counsel) Schubert Jonckheer & Kolbe LLP 3 Embarcadero Center, Suite 1650 San Francisco, CA 94111 (415) 788-4220 nschubert@sjk.law</p> <p>Christopher M. Murphy, Esq. (Lead Counsel) McDermott Will & Emery LLP 444 W. Lake Street, Suite 4000 Chicago, IL 60606-0029 (312) 372-2000 cmurphy@mwe.com</p> <p>Please direct all inquiries to Class Counsel.</p> <p>Do NOT contact the Court directly.</p>	
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