

IN THE 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, on behalf of themselves and
all others similarly situated, et al,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 1:15-cv-00938-LAS

Judge Loren A. Smith

**PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

Pursuant to RCFC 23(h) and RCFC 54(d)(2), Plaintiffs respectfully submit this motion for an award from the Settlement Amount (\$85 million) and the Supplemental Settlement Amount (\$0.00-\$3 million)¹ (together, the "Common Fund") of attorneys' fees equal to 25% of the Common Fund, or \$21.25 million, plus 25% of the Supplemental Settlement Amount of 0.00 up to \$750,000,² and \$275,166.72 in reimbursable expenses. Plaintiffs also request that the Court approve payment from the Common Fund of \$428,855.54 to the Settlement Administrator, KCC Class Action Services LLC ("KCC"), for Notice and Administration Costs incurred by KCC, which includes all potential future expenses for implementation of the settlement and claims administration.

¹ All capitalized terms not otherwise defined herein shall have the same meaning as those as set forth in the Settlement Agreement.

² The exact amount is unknowable until the period to assent to the Settlement Agreement for Deemed Settlement Class Members closes on September 2, 2019. Plaintiffs will calculate the exact amount and provide it to the Court by September 9, 2019.

This motion is supported by the accompanying memorandum of law, and the declarations of Edward M. Ruckert, M. Miller Baker, and Christopher M. Murphy of McDermott Will & Emery LLP, Lead Counsel for Plaintiffs, and Noah M. Schubert of Schubert Jonckheer & Kolbe LLP, Co-Counsel for Plaintiffs.

Pursuant to the Settlement Agreement dated July 15, 2019, the Parties reached a settlement consisting of (a) a payment by Defendant, the United States, of the Settlement Amount of \$85 million, to be disbursed to the Opt-In Class Members, and (b) payment by Defendant of the Supplemental Settlement Amount of between \$0.00 and \$3 million, to be disbursed to Deemed Settlement Class Members, inclusive of all attorneys' fees and reimbursable expenses. Pursuant to the Settlement Agreement, Defendant agreed not to object to Class Counsel's application for 25% of the Common Fund as a fee award.

In addition, Defendant agreed not to object to Plaintiffs' petition for reimbursement of reasonable, documented, actual expenses in connection with Plaintiffs' litigation and settlement of this action, as well as Notice and Administration costs, all to be paid out of the Common Fund. Defendant has not previously reviewed this application and has taken no position regarding the reasonableness of the expenses sought by this motion. Plaintiffs understand that Defendant will review Plaintiffs' motion papers and respond in due course.

By order dated July 18, 2019, this Court preliminarily approved the Settlement Agreement, and ordered that notice be sent to the Class, in accordance with the terms of the Settlement Agreement. Notice was timely issued. Class members have been advised that Class Counsel will seek 25% percent of the Common Fund as an their Fee and Expense Award and recovery of their reasonable litigation expenses, including the Notice and Administration Costs, to be paid from the Common Fund.

Pursuant to RCFC 23(h), "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." For the reasons set forth in the accompanying memorandum, Plaintiffs submit that their motion for an award of attorneys' fees and reimbursement of expenses is fair and reasonable.

Class Counsel have achieved an excellent result for the Class, and an award of 25% of the recovery is well-supported by precedent in this Court and other Federal Courts governing contingent fee awards in common fund cases. Class Counsel's expenses incurred in connection with the prosecution of this litigation, including the Notice and Administration Costs, are reasonable, and set forth by itemized accounting in the accompanying declarations of counsel.

Wherefore, Plaintiffs respectfully request that the Court approve Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses in full.

Dated: August 26, 2019

Respectfully submitted,

/s/ M. Miller Baker

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THE UNITED STATES OF AMERICA,

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[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

The Court has considered Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and orders as follows:

The Court approves Class Counsel's request, pursuant to RCFC 23(h) and 54(d)(2), for an award of attorneys' fees and reimbursement of expenses, including payment of Notice and Administration Costs to the Settlement Administrator, from the Settlement Amount and the Supplemental Settlement Amount¹ (together, the "Common Fund"), as follows.

The Settlement Agreement provides that Class Counsel shall apply to the Court for an award of attorneys' fees of up to 25% of the Common Fund. The Settlement Agreement further provides that Defendant, the United States, agrees not to object to attorney-fee compensation paid from the Common Fund of up to 25% of the Common Fund. Defendant further agrees not to object to Plaintiffs' petition for reimbursement of reasonable, documented, actual expenses in

¹ All capitalized terms not otherwise defined herein shall have the same meaning as those as set forth in the Settlement Agreement.

connection with Plaintiffs' litigation and settlement of this action, as well as Notice and Administration Costs, to be paid out of the Common Fund.

Attorneys' fees are authorized by law "on the equitable notion that lawyers are entitled to reasonable compensation for their professional services from those who accept the fruits of their labors." *Moore v. United States*, 63 Fed. Cl. 781, 786 (Fed. Cl. 2005). The Settlement Notice advised the Class that Class Counsel would ask the Court to award Class Counsel attorneys' fees equal to 25% of the Common Fund to compensate them for their efforts in investigating the facts, litigating the claims, negotiating the settlement, and implementing the settlement on behalf of the Settlement Class, and for their risk in undertaking this representation on a contingent basis, and advised them of their right to object to the requested attorneys' fees and expenses.

The Court finds and determines that the payment to Class Counsel from the Common Fund in the amount of \$21.25 million plus 25% of the Supplemental Settlement Amount [\$0.00 up to \$750,000, which will be calculated and provided to the Court by September 9, 2019], representing 25% of the Common Fund, is fair and reasonable. The Court finds that the reasonableness of the fees is supported by the following factors: (a) the quality of counsel; (b) the complexity and duration of the litigation; (c) the risk of nonrecovery; (d) the fee that likely would have been negotiated between private parties in similar cases; (e) lack of any Class member objections to the fees requested by Class Counsel; (f) the percentage applied in other class actions; and (g) the size of the award. *Moore*, 63 Fed. Cl. at 786.

The Court approves Class Counsel's request for reimbursement from the Common Fund of reasonable expenses incurred by Class Counsel in connection with the litigation. Class Counsel have expended \$275,166.72 in reimbursable expenses, including costs of conference call services, PACER fees, copy charges, Class Counsel travel costs, some past expenses of the Settlement Administrator, and certain charges by consultants. Such expenses typically billed to paying clients may be recovered by Class Counsel. *Brown v. Pro Football*, 839 F. Supp. 905, 916 (D.D.C. 1993), *rev'd on other grounds*, 50 F.3d 1041 (D.C. Cir. 1995). Class Counsel have provided an itemized accounting of the litigation expenses incurred. The Court finds and

determines that payment to Class Counsel in the amount of \$275,166.72 in expense reimbursement is fair and reasonable.

The Court approves Class Counsel's request for payment from the Common Fund of Notice and Administration Costs to the Settlement Administrator. The Settlement Administrator disseminated and processed opt-in notices to potential member of the Class and was approved by this Court to administer the settlement notice and claims process. The Settlement Administrator will continue to administer the claims, issue settlement checks to Settlement Class Members, respond to inquiries from Class members, administer the website for the Settlement, and perform other claims administration services for months after the Fairness Hearing. Class Counsel have provided an itemized accounting of the Notice and Administration Costs, including a fixed fee for all unreimbursed past services and future services of the Settlement Administrator. The Court finds and determines that the payment of the Notice and Administration Costs from the Common Fund to the Settlement Administrator in the amount of \$428,855.54 is fair and reasonable.

For these reasons, the Court grants Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses in full, in the amounts set forth herein.

Loren A. Smith
Senior Judge