

# NOTICE OF CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, EASTERN DIVISION

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

**If you purchased Fresh Potatoes directly from Defendants, or certain potato growers, packers, or marketers you may be a Class Member in a proposed class action settlement.**

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

- Plaintiffs, who purchased certain Fresh Potatoes directly from Defendants (as listed below), brought a class action suit alleging that Defendants violated antitrust laws by engaging in a number of anticompetitive actions to control and restrict the supply of potatoes. Plaintiffs argued that these acts caused prices for potatoes in the United States to be higher than they would have otherwise been.
- The parties (Plaintiffs and Defendants) have agreed to settle this case, instead of going to trial. The purpose of this notice is to inform you about the settlement and explain your legal rights to you. If you fall within the “Settlement Classes” as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.
- This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement and of your rights with respect to it, including, but not limited to, the right to remain a member of these Settlement Classes or to exclude yourself from them.
- Your rights and options, and the deadlines to exercise them, are explained in this notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS REGARDING THIS SETTLEMENT:</b>	
<b>FILE A CLAIM BY OCTOBER 16, 2015</b>	This is the only way to get money from the Settlement.
<b>DO NOTHING</b>	You will receive the non-monetary benefits of the Settlement (as described below in Section 10) and give up the right to sue the Defendants and certain other entities in the potato industry for the conduct at issue in this case.
<b>EXCLUDE YOURSELF FROM SETTLEMENT CLASS BY OCTOBER 16, 2015</b>	This is the only way you can be part of any other lawsuit against Defendants and certain other entities in the potato industry for conduct at issue in this case. You will not get payment from this settlement and you must follow the instructions detailed below in order to exclude yourself.
<b>OBJECT TO THE SETTLEMENT BY OCTOBER 16, 2015</b>	If you do not agree with all or any part of this settlement- you may: <input type="checkbox"/> Write to the court to say why, or <input type="checkbox"/> Ask to speak during the Court hearing about the fairness of this settlement, <input type="checkbox"/> Or both. Even if you object you will remain a member of the Settlement Classes. You must follow the instructions detailed below in order to object.

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION</b> .....	PAGE 2
1. Why did I get this notice?	
2. What is this lawsuit about?	
3. Who are the Plaintiffs?	
4. Who are the Defendants?	
5. Other than purchases of Fresh Potatoes from Defendants, are purchases of Fresh Potatoes from other sellers covered by the Settlement?	
6. Why is this a class action?	
7. Why is there a settlement?	
8. Am I part of this settlement?	
<b>SETTLEMENT BENEFITS FROM THE LAWSUIT</b> .....	PAGE 4
9. How much money will be available from this settlement?	
10. Are there other benefits from the settlement?	
11. How do I file a claim?	
12. Am I giving up anything by filing a claim or not filing a claim?	
<b>YOUR RIGHTS AND OPTIONS</b> .....	PAGE 5
13. What happens if I do nothing at all?	
14. What happens if I want to object to the settlement?	
15. How do I object to the settlement?	
16. What happens if I want to be excluded from the settlement?	
17. How do I exclude myself from the settlement??	
<b>THE LAWYERS REPRESENTING YOU</b> .....	PAGE 7
18. Do I have a lawyer in this case?	
19. How will the lawyers be paid?	
20. Where can I get more information?	
<b>THE COURT'S FAIRNESS HEARING</b> .....	PAGE 7
21. When and where will the Court decide whether to approve the settlement?	
22. Do I have to come to the hearing to get my money?	
23. What if I want to speak at the hearing?	

## BASIC INFORMATION

### 1. Why did I receive this notice?

This legal notice is to inform you of the Settlement that has been reached in the class action lawsuit, *IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION*, Civil Case No. 4:10-md-02186 *BLW* pending in the United States District Court for the District of Idaho, Eastern Division. You are being sent this notice because you have been identified as a potential customer of one or more of the Defendants in the lawsuit. The settlement agreement can be viewed at [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com)

## 2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that, beginning in 2004, Defendants and others engaged in a conspiracy to fix, raise, maintain and/or stabilize the prices at which potatoes were sold in the United States by controlling and restricting the supply of potatoes. Plaintiffs claimed that Defendants and others implemented this price-fixing and supply-management conspiracy by agreeing to take several coordinated actions including, among other methods, 1) agreeing to limit the number of acres planted to potatoes; 2) agreeing to destroy existing Fresh Potato stocks or divert Fresh Potatoes into processing; 3) and agreeing to limit the flow of Fresh Potatoes into the fresh market to stabilize or raise potato prices. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal law that prohibits any agreement that unreasonably restrains competition. Defendants have denied all of Plaintiffs' claims and have asserted other defenses.

## 3. Who are the Plaintiffs?

Plaintiffs represent both themselves (the named plaintiffs Brigiotta's Farmland Produce and Garden Center, Inc. and J.R. Mazzola, Inc.) and the two Classes of individuals or entities that purchased Fresh Potatoes grown in the United States directly from Defendants, certain producers, and certain packers and marketers in the United States. The classes are defined as:

### *Direct Purchaser Plaintiff Monetary Relief Class:*

All persons and entities who, between June 18, 2006 and June 17, 2015, directly purchased Fresh Potatoes grown in the United States, other than Specialty Potatoes, from: (1) any Defendant or any parent, subsidiary, or affiliate thereof; (2) any member of the cooperative members of United Potato Growers of America, or any parent, subsidiary, or affiliate thereof; any member of the United Potato Growers of Idaho, Inc., or any parent, subsidiary, or affiliate thereof; and (3) any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., or by any member of the cooperative members of United Potato Growers of America, Inc.

### *Direct Purchaser Plaintiff Injunctive Relief Class:*

All persons and entities who, between June 18, 2006 and June 17, 2015, directly purchased Fresh Potatoes grown in the United States, other than Specialty Potatoes, from: (1) any Defendant or any parent, subsidiary, or affiliate thereof; (2) any member of the cooperative members of United Potato Growers of America, or any parent, subsidiary, or affiliate thereof; any member of the United Potato Growers of Idaho, Inc., or any parent, subsidiary, or affiliate thereof; and (3) any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., or by any member of the cooperative members of United Potato Growers of America, Inc.

Excluded from the Classes are Defendants and their Co-Conspirators, including, but not limited to, any member of United Potato Growers of Idaho, Inc. and United II, the members of the United Potato Growers of America, Inc., and any member of the cooperative members of United Potato Growers of America, Inc., and their respective subsidiaries, affiliates and members; any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., any member of United II Potato Growers of Idaho, Inc., and by any member of the cooperative members of United Potato Growers of America, Inc., and their respective parents, subsidiaries, affiliates and members; and any governmental entities.

Fresh Potatoes are potatoes that are grown in the U.S. and sold for fresh consumption. Fresh Potatoes do not include potatoes that are sold for further processing (dehydrating, freezing, canning, chipping, slicing, chopping and packaging).

For purposes of the Settlement, Fresh Potatoes do not include Specialty Potatoes, defined as organic, fingerling, blue, long white, and purple potatoes.

## 4. Who are the Defendants?

Defendants are Albert T. Wada; Wada Farms, Inc.; Wada Family, LLC; Wada Farms Potatoes, Inc.; Wada Farms Marketing Group, LLC; Wada-Van Orden Potatoes, Inc., Pro Fresh LLC; Cedar Farms, LLC, Blaine Larsen Farms, Inc.; Cornelison Farms, Inc.; Michael Cranney d/b/a/ Cranney Farms; Driscoll Potatoes, Inc.; Idahoan Foods LLC; Kim Wahlen; KCW Farms, Inc.; Lance Funk d/b/a Lance Funk Farms; Pleasant Valley Potato, Inc.; Potandon Produce L.L.C.; Raybould Brothers Farms, LLC; Ronald D. Offutt Jr.; RD Offutt, Co.; Rigby Produce, Inc.; Snake River Plains Potatoes, Inc.; United Potato Growers of America, Inc.; United Potato Growers of Idaho, Inc.; and United II Potato Growers of Idaho, Inc., together with their past and present parents, subsidiaries and affiliates.

**5. Other than purchases of Fresh Potatoes from Defendants, are purchases of Fresh Potatoes from other sellers covered by the Settlement?**

Yes. The Settlement Classes defined above include purchases from:

- The members of the United Potato Growers of Idaho, identified in Exhibit D to the Settlement Agreement, as well as purchases from those who packed or marketed potatoes grown by those members;
- The members of the certain other potato membership organizations, identified in Exhibits B, C, and E to the Settlement Agreement, as well as purchases from those who packed or marketed potatoes grown by those members.

**6. Why is this a class action?**

Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases in which each plaintiff's recovery would be too small to justify the costs of bringing an individual case, and that the claims of each member of the class present and share common questions of law and fact.

**7. Why is there a settlement?**

The Court has not decided which side was wrong or if any laws were violated. Instead, both sides agreed to settle the case and avoid the cost and risk of trial and appeals that would follow a trial. In this case, the settlement is the product of extensive negotiations. Settling this case allows class members to receive payments and other benefits now. The Class Plaintiffs and their lawyers believe the settlement is best for all class members.

**8. Am I part of this settlement?**

If this notice was mailed to you, the Defendants' records show that you are probably a member of the Settlement Classes. If you are not sure whether you are part of this settlement, you may contact the Class Administrator at:

Call the toll-free number: 1-866-985-7589  
Visit: [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com)  
Write to: Potatoes Antitrust Case Claims Administrator  
c/o KCC Class Action Services  
P.O. Box 40007  
College Station, TX 77842-4007  
Email: [info@PotatoesAntitrustSettlement.com](mailto:info@PotatoesAntitrustSettlement.com)

**SETTLEMENT BENEFITS FROM THE LAWSUIT**

**9. How much money will be available from this settlement?**

The parties agreed to settle the case against all Defendants for \$19,500,000. The money in this fund will be used to pay Settlement Class members that submit timely and valid Claim Forms, and will also be used to pay the cost of settlement administration and notice, as approved by the Court, any attorneys' fees, not to exceed 40 percent of the settlement amount, and litigation expenses, that may be approved by the Court, and incentive awards for the two named plaintiffs of up to \$25,000, if approved by the Court.

The settlement will be distributed on a *pro rata* basis among the members of the Class who timely and properly submit a valid Claim Form. Your *pro rata* share of the Settlement Amount will be based on the dollar amount of your direct purchases of potatoes in the United States from Defendants and certain other entities compared to the total purchases of potatoes by all Class Members submitting timely and valid Claim Forms. The Court retains the power to approve or reject, in part or in full, any individual claim of a Class Member based on equitable grounds.

**10. Are there other benefits from the settlement?**

Yes, In addition to monetary benefits, the defendants have agreed to entry of a "consent order" by the Court. If the Court approves the consent order, Defendants who are producers of potatoes and their cooperatives are prohibited from entering into any agreement setting the number of acres that any producer of potatoes

will plant to Fresh Potatoes or otherwise setting the volume or amount of potatoes that any producer of Fresh Potatoes will plant or grow. Among other provisions, the consent order also requires that certain defendants that are membership organizations representing potato producers ensure that their members agree to the consent order, and requires Defendants will work with antitrust compliance counsel to review policies and procedures to make sure they are complying with antitrust laws.

#### **11. How do I file a claim?**

The Claim Form and instructions for filing a proof of claim are provided with this Notice. Claim Forms must be sent by first-class mail postmarked by October 16, 2015 in order to be considered for a payment from the Settlement Fund.

You should carefully read the descriptions of the respective classes set forth earlier in this notice to verify that you are a Class Member. Next, you should review your records and confirm that you purchased the relevant product(s) during the relevant time period. ***Any Class Member who does not complete and timely return the Claim Form will not be entitled to share in the Settlement.***

If you have records available to calculate and document the dollar amount of your relevant purchases, you must use those records to complete the Claim Form.

Where adequate records are not available to calculate your purchases to be listed on the Claim Form, you may submit purchase information based on verifiable estimates as directed in the Claim Form.

**NOTE:** The Defendants have also agreed to settle claims with a different class of potatoes purchasers consisting of all individuals and entities who purchased fresh potatoes from retailers in Arizona, California, Florida, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nevada, New York, North Carolina, South Dakota, Tennessee, Vermont, and Wisconsin for end use and not for resale, between October 14, 2004 and April 10, 2015. To determine whether you are a member of the indirect purchaser class **go to [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com) and review the information related to the Indirect Purchaser Plaintiffs**

#### **12. Am I giving up anything by filing a claim or not filing a claim?**

If you do not exclude yourself, the Settlement will be binding upon you and all other members of the Settlement Classes if the Court grants final approval of the Settlement Agreement. By remaining part of the Settlement, if approved, you will give up any claims against Defendants and certain other entities, identified in exhibits B - E of the Settlement Agreement, relating to the claims made or which could have been made in this lawsuit, whether or not you file a claim. If you do file a claim, you will receive monetary benefits from the settlement as detailed above.

**Important! If you want to keep your right to be part of any other lawsuit that asks for money based on similar claims, you must opt-out (exclude yourself) from the Settlement Classes.**

### **YOUR RIGHTS AND OPTIONS**

#### **13. What happens if I do nothing at all?**

If you do nothing at all, you will still be bound by the Settlement as detailed in Question 11. If you do nothing at all, you will not receive any money from the settlement. A Claim Form must be timely submitted in order to receive monetary settlement benefits.

#### **14. What happens if I want to object to the settlement?**

You may tell the Court you object to (disagree with) all or part of the Settlement. The Court will consider your objection(s) when it decides whether or not to finally approve the Settlement. You will still be part of the Class if you do not exclude yourself, even if you object. Objecting means you tell the Court which part(s) of the settlement you disagree with. This is different from “excluding” yourself from the Settlement. Excluding yourself (also called “opting-out”) means you do not want to be, and are not, a member of the Settlement Class.

## 15. How do I object to the settlement?

You must file a Statement of Objections with the Court at this address:

United States District Court for the District of Idaho  
James A. McClure Federal Building and United States Courthouse  
Office of the Clerk of Court  
550 W. Fort Street, Suite 400, Boise, Idaho 83724

You must also send a copy of your Statement of Objections to Class Counsel and Counsel for the Defendants at the following addresses:

### Counsel for Plaintiffs

James J. Pizzirusso  
HAUSFELD LLP  
1700 K Street, N.W., Suite 650, Washington, D.C., 20006

### Counsel for Defendants

Robert A. Rosenfeld ORRICK HERRINGTON & SUTCLIFFE LLP The Orrick Building, 405 Howard Street, San Francisco, CA 94105	Steven B. Andersen ANDERSEN BANDUCCI PLLC 101 S. Capitol Blvd. Suite 1600 Boise, ID 83702	James A. Wilson VORYS, SATER, SEYMOUR & PEASE LLP 52 East Gay Street, P.O. Box 1008, Columbus, OH 43216
Christopher Ondeck PROSKAUER ROSE LLP 1001 Pennsylvania Ave NW, Suite 600 South Washington, DC 20004	Brian McGovern MCCARTHY, LEONARD & KAEMMERER, L.C. 825 Maryville Centre Drive, Suite 300 Town & Country, MO 63017	

You must send your Statement of Objections postmarked no later than **October 16, 2015**

Your Statement of Objections must contain the following information:

United States District Court for the District of Idaho, Eastern Division

*IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION*, Civil Case No. 4:10-md-02186 BLW

---

### Statement of Objections

I am a member of the Settlement Classes in the case called *IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION*, Civil Case No. 4:10-md-02186 BLW

I am a Class member because [List information that will prove you are a class member, such as your business name and address, and information that you purchased potatoes directly from defendants]. I object to the settlement in this lawsuit. I object to [list what part(s) of the Settlement you disagree with, e.g. the settlement amount, notice procedures, other features.] [Note that you may also object to any requests for attorneys' fees and expenses as part of the same objection, or as part of a separate objection described below].

My reasons for objecting are: [list reasons]

The laws and evidence that support each of my objections are: [list applicable materials]

My personal information is:

Name (first, middle, last):

Address:

Phone No.:

The contact information for my lawyer (if any) is:

## 16. What happens if I want to be excluded from the settlement?

If you want to be excluded from the Settlement, this means that you will not be bound by the Settlement and may bring your own case against the Defendants or other parties released from future litigation related to these claims as provided by the Settlement Agreement and explained in paragraph 10. However, if you exclude yourself, you will not be entitled to any money from this settlement.

## 17. How do I exclude myself from the class?

To opt-out (exclude yourself) from the Class, send a letter to:

In re *IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION* Settlement  
Potatoes Antitrust Case Claims Administrator EXCLUSIONS  
c/o KCC Class Action Services, 75 Rowland Way, Suite 250, Novato, CA 94945

Your letter must be postmarked by **October 16, 2015**. You cannot exclude yourself by phone, fax, email or online. Send your letter by first-class mail and pay for the postage. Keep a copy for your records. Your letter must be signed by a person authorized to do so and state as follows:

I want to exclude [name of class member] from the Settlement Class of the settlement in the case *IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION*.

My personal information is:

Name (first, middle, last):

Position:

Name of Company:

Address:

Phone No.:

My position at the business that gives me the authority to exclude it from the Settlement Class is as follows:

**Warning!** If your letter is sent after the deadline it will be considered invalid. If this happens, you won't be excluded from the Settlement Class, and you will still be part of the settlement and will be bound by all of its terms.

## THE LAWYERS REPRESENTING YOU

### 18. Do I have a lawyer in this case?

Yes. The Court has appointed the law firm listed below to represent you in this Settlement. This law firm is called Settlement Class Counsel. Many other lawyers have also worked with Class Counsel to represent you in this case. Because you are a class member, you do not have to pay any of these lawyers. They will be paid from the settlement funds.

James J. Pizzirusso  
HAUSFELD LLP  
1700 K Street, N.W., Suite 650  
Washington, D.C., 20006

If you want to be represented by your own lawyer, you may hire one at your own expense.

### 19. How will the lawyers be paid?

Settlement Class Counsel and other attorneys representing the plaintiffs in this case, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award, from the Settlement Fund, of attorneys' fees in an amount not to exceed 40 percent of the cash settlement, as well as the costs and expenses incurred (the "Fee Petition"), including fees and costs expended to provide Notice to the Class and administer the Settlement Fund (including the plan of allocation) as well as requesting incentive awards for the named plaintiffs of no more than \$25,000 as compensation for their efforts to represent the class.

Class Counsel will file their Fee Petition on or before **August 28, 2015**. The Fee Petition, which will identify the specific amount of fees requested and the expenses to be reimbursed, will be available on the settlement website, [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com), on that date. Any attorneys' fees, reimbursement of litigation costs, and incentive awards will be awarded only as approved by the Court in amounts it determines to be fair and reasonable.

If you are a Class Member and you wish to object to the Fee Petition, you may file with the Court an objection to the Petition in writing no later than October 16, 2015. In order for the Court to consider your objection, your objection must be sent according the instructions provided under Question No. 14 above.

## 20. Where can I get more information?

For more detailed information concerning matters relating to the Settlement, you may wish to review the “SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS (signed April 10, 2015) available at [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com).

You may also wish to visit the settlement website, [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com), which also contains answers to “Frequently Asked Questions,” as well as more information about and documents relating to the case, including court documents. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 15. You may also obtain more information by calling the toll-free helpline at 1-866-985-7589 or sending an email to: [info@PotatoesAntitrustSettlement.com](mailto:info@PotatoesAntitrustSettlement.com).

## THE COURT’S FAIRNESS HEARING

### 21. When and where will the Court decide whether to approve the settlement?

The Court has scheduled a “Fairness Hearing” at 3:30 p.m. on December 3, 2015 at the following address:

United States District Court for the District of Idaho  
James A. McClure Federal Building and United States Courthouse  
Office of the Clerk of Court  
550 W. Fort Street, Suite 400 Boise, Idaho 83724

The purpose of the Fairness Hearing is to determine whether the Settlement is fair, reasonable, and adequate and whether the Court should enter judgment granting final approval of it.

### 22. Do I need to come to the hearing to get my money?

You do not need to attend this hearing to get settlement benefits, although you must file a claim form to get benefits. You or your own lawyer may attend the hearing if you wish, at your own expense.

Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Class Members are advised to check [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com) for any updates.

### 23. What if I want to speak at the hearing?

You must file a Notice of Intention to Appear with the Court at the address listed in Question 21:

Your Notice of Intention to Appear must be filed by October 16, 2015. You must also mail a copy of your letter to Class Counsel and Counsel for the Defendants at the addresses listed in Question 15.

Your Notice of Intention to Appear must be signed and contain the following information:

United States District Court for the District of Idaho, Eastern Division

---

*IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION, Civil Case No. 4:10-md-02186 BLW:*

---

Notice of Intention to Appear

I want to speak at the Fairness Hearing for the case called *IN RE FRESH AND PROCESS POTATOES ANTITRUST LITIGATION*,

My personal information is:

Name (first, middle, last):

Address:

Phone No.:

Personal information for other people (including lawyers) who want to speak at the hearing:

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.**

Questions? Call 1-866-985-7589 or visit [www.PotatoesAntitrustSettlement.com](http://www.PotatoesAntitrustSettlement.com)