

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made this 23rd day of December, 2009 among JULIUS BRIGGS ("Plaintiff"), the PLAINTIFF CLASS (the "Class," as defined below), and the UNITED STATES OF AMERICA ("UNITED STATES").

This Settlement Agreement is made in light of the following facts:

A. On November 13, 2007, Plaintiff filed an action in the United States District Court for the Northern District of California (the "Court") entitled *Julius Briggs*, on behalf of himself and those persons similarly situated, Plaintiff v. *United States of America*, Defendant, Case No. CV-07-5760 WHA (the "Action").

B. Plaintiff filed the Action, alleging, among other things, that UNITED STATES had been unlawfully offsetting debts allegedly owed to the Army and Air Force Exchange Service ("AAFES") against tax refunds and other payments due members of the Class more than 10 years after the debt for which the offset was made became due.

C. On February 14, 2008, the UNITED STATES filed its Answer and Counterclaim to the First Amended Complaint.

D. The parties have conducted substantial discovery and investigation and have researched and briefed the legal and factual issues relating to the claims and defenses of the Action.

E. The parties intend to settle, and dispose of, fully and completely, any and all claims and defenses asserted in the Action, including but not limited to requests for legal or equitable relief, requests for damages, and requests for injunctive relief, that have been asserted, or could have been asserted in the Action.

F. The Court has certified a Class defined as follows:

All natural persons (1) who have been subjected to Treasury Offset Program (TOP) collection of an AAFES type E1 or E2 debt claim, after November 13, 2001; (2) from whom a portion of that TOP collection was for debt that became delinquent more than ten years before the offset; and (3) whose amount of net offset payments was less than \$10,000, or who are willing to waive their claim with respect to offsets that would bring their refund claim above \$10,000.

G. The UNITED STATES, using its best efforts, has identified the Class members and the net amount of relevant offsets from each Class member ("Net Offset"), as indicated on Exhibit 6 hereto, which has been accepted by Class Counsel.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. COOPERATION BY THE PARTIES.

Plaintiff, the Class (as defined above), and UNITED STATES, and their respective counsel, agree to cooperate fully with each other to execute promptly all documents and take all steps necessary to effectuate the terms and conditions of this settlement.

2. ESTABLISHMENT OF THE CLASS FUND.

UNITED STATES agrees to do the following for the Class, subject to Court approval and to the other terms and conditions of this Settlement Agreement:

(a) Pay or cause the ARMY AND AIR FORCE EXCHANGE SERVICE (AAFES) to pay to the *Briggs v. United States* Class Fund ("Class Fund") by deposit into a settlement account established by the Class Administrator ("*Briggs v. United States* Settlement Class Account") a total Net Offset Payment of SEVEN MILLION FOUR HUNDRED AND FOUR THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS AND NINETEEN CENTS (\$7,404,944.19), with the final amount of the Net Offset Payment due and payable to be subject to reduction depending on the following: (a) the dollar amount of Net Offset(s) for every class member who hereafter executes a request to be excluded from the class plus (b) \$10,000 for every class member who has a claim in this case of more than \$10,000 who does not waive his or her claim for the Net Offset in excess of \$10,000.

(b) As further consideration for this Settlement Agreement, AAFES shall, subject to Court approval and to the other terms and conditions of this Settlement Agreement, pay to the Class Fund by deposit into the *Briggs v. United States* Settlement Class Account a total sum of SIX HUNDRED THIRTY-TWO THOUSAND DOLLARS (\$632,000), or such lower amount as approved by the Court, representing a payment to the Class of agreed amounts for attorneys fees and other expenses that would be awardable pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (EAJA). The total agreed to by the parties represents \$500,000 in fees and \$132,000 in expenses, which shall be paid in two installments as follows:

(1) An initial payment of EIGHTY THOUSAND DOLLARS (\$80,000) for expenses of class notice and administration, to be paid to the Class Fund within 10 days, or as soon as practicable thereafter, of entry of an order by the Court that grants preliminary approval of this Settlement Agreement and orders issuance of notice to the class, followed by

(2) A final payment of the balance of the total sum approved by the Court, up to a maximum of FIVE HUNDRED FIFTY-TWO THOUSAND DOLLARS (\$552,000).

(c) Strive in good faith to obtain necessary court approvals, including final approval of the settlement, in a time frame that will permit the mailing of payments to the Class by March 1, 2010, or within twenty business days of the Effective Date (as defined below), whichever is later.

(d) Warrant that neither the entry of the parties into the Settlement Agreement nor the payment of any consideration under the Settlement Agreement shall increase or otherwise affect

the amount, if any, of any Class member's debt to AAFES. That is, UNITED STATES waives any right it otherwise would have had to re-collect the unlawfully collected amounts that it proposes to refund in this Settlement Agreement.

3. AGREED FEES AND EXPENSES, INCENTIVE AWARD TO PLAINTIFF.

(a) Agreed EAJA Fees and Expenses.

(1) UNITED STATES agrees not to oppose or negatively comment on a request by Class Counsel for Fifty Two Thousand Dollars (\$52,000) in expenses in this action of Class Counsel of the type normally charged to clients, or such lesser amount as approved by the Court. These expenses, together with the money advanced by AAFES (\$80,000) toward the expenses of class notice and claims administration, to the extent approved by the Court, shall be treated as a payment pursuant to EAJA and shall be paid by AAFES into the Class Fund.

(2) UNITED STATES further agrees not to oppose or negatively comment on a request by Class Counsel for \$500,000 in reasonable attorneys fees in this action, or such lesser amount as approved by the Court. These fees, to the extent approved by the Court, shall be treated as a payment pursuant to EAJA and shall be paid by AAFES into the Class Fund.

(3) The parties hereby agree that the UNITED STATES shall have no liability whatsoever for any attorney's fees, expenses, or costs other than the payments expressly agreed to in paragraph 3(a)(1) and (2) above.

(b) Agreed Attorney Fees from Class Fund.

UNITED STATES agrees not to oppose or negatively comment on a request by Class Counsel that the Court order up to Two Million Dollars (\$2,000,000) in attorney fees be paid from the Class Fund. If attorney fees from the Class Fund are approved by the Court, they will be deducted on a pro rata basis from the sums that Class members would otherwise receive.

(c) UNITED STATES also agrees that it will not oppose or negatively comment on a request by Class Counsel to confer an incentive award upon the class representative Briggs of up to Five Thousand Dollars (\$5,000) payable from the Class Fund.

4. DISTRIBUTION OF CLASS FUND RESIDUE.

Within 45 days after the last day on which checks to Class members may validly be cashed, the Class Administrator shall complete all attorney fees, expense, and other payments provided for herein and shall designate the amount of a necessary reserve to complete any remaining administrative duties. All funds remaining in the *Briggs v. United States* Settlement Class Account after such payments and reserve are the Class Fund Residue. The Class Administrator shall report to the parties promptly the amount, if any, of the Class Fund Residue. Within 45 days of service of the report, the parties, or either of them, shall apply to the Court for an order directing how the Class Fund Residue, if any exists, shall be disbursed. No further notice to the class shall be required before the Court can enter a decision as to how the Class Fund Residue, if any, shall be disbursed.

5. PRELIMINARY APPROVAL.

The plaintiff shall move the Court for an order preliminarily approving the settlement of the Action in accordance with the terms of this Settlement Agreement in the form of the Order Preliminarily Approving Class Action Settlement and Notice to the Class, attached hereto as Exhibit 4 (the "Preliminary Approval Order"), including the form of notice and the method of notice. Plaintiff may represent that the United States does not oppose the motion.

Upon the preliminary approval of this Settlement Agreement by the Court, as evidenced by entry of the Preliminary Approval Order, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Settlement Agreement or to comply with or effectuate the terms of the Agreement.

6. CLASS NOTICE.

(a) UNITED STATES will use its best efforts to provide to the Class Administrator the most current address for each Class member, using the most current records that are available to AAFES by law. The addresses shall be provided in Microsoft Excel or other agreed upon computer readable format. The parties will jointly ask the Court, upon preliminary approval of this Settlement Agreement, to order such disclosure pursuant to 5 U.S.C. §552a(b)(11). Upon execution of a suitable confidentiality agreement by the Class Administrator following entry of an appropriate order, UNITED STATES will supply the Class Administrator with the Class members' social security numbers to assist in finding addresses of Class members.

(b) The Class Administrator shall give notice to the Class as follows:

(i) To persons listed on Exhibit 6 with a Net Offset amount not more than \$10,000, a notice in the form attached hereto as Exhibit 1 or as approved by the Court;

(ii) To persons who previously received notice herein that they were members of the Class but are not included in Exhibit 6 because it has since been determined that they are not members of the Class, a notice in the form attached hereto as Exhibit 2, or as approved by the Court; and,

(iii) To persons listed in Exhibit 6 with a Net Offset amount more than \$10,000, a notice in the form attached hereto as Exhibit 3, or as approved by the Court.

(c) The Class Administrator will update Class member addresses through use of the National Change of Address database before mailing notices and will make reasonable efforts (such as through use of the Accurant database) to locate members of the Class whose mailing is returned as undeliverable. Efforts that cost up to \$25 per address search are reasonable. All such expenses shall be charged to the Class Fund to the extent the amount exceeds the Claims Administrator's budgeted fees and costs.

7. FINAL APPROVAL.

The Notices to the Class of this Settlement Agreement shall contain a date, time, and location for a “Final Approval Hearing” to be conducted by the Court on a date no more than 20 days following the Objection Deadline Date, as defined below, that is convenient to the parties and the Court. The parties, in advance of the Final Approval Hearing, will jointly move for entry of a Judgment substantially in the form attached hereto as Exhibit 5.

The Judgment shall provide that Class members who have timely opted out of the Class shall not have any rights under this Settlement Agreement. Persons listed on Exhibit 6 who had Net Offsets of more than \$10,000 shall not be entitled to benefits under this Settlement Agreement and shall not be members of the Class unless they have timely filed a waiver of their claims above \$10,000.

Persons who were given notice of the pendency of this Action in approximately February 2009 who have now been determined not to be members of the Class shall receive the notice specified in Exhibit 2 hereto but shall not be members of the Class, shall have no rights under the Settlement Agreement, and shall not be bound by the Judgment.

8. PROCEDURE FOR OBJECTIONS TO SETTLEMENT.

The Notices to the Class of this settlement shall provide that Class members who wish to object to the settlement should file with the Court and serve on counsel for the parties a written statement objecting to the settlement and explaining the basis of the objection. Such written statement should be filed with the Court and served on counsel for the parties no later than a date set by the Court before the date set for the Final Approval Hearing (the “Objection Deadline Date”). An objection that is mailed to the Clerk of the Court is deemed timely filed if it is postmarked on or before the Objection Deadline Date. Notwithstanding the foregoing, any Class member may appear in person at the Final Approval Hearing and be heard on any objections to the settlement. Class members who neither appear at the Final Approval Hearing nor file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any later objection (whether by appeal or otherwise) to the settlement.

9. ADMINISTRATION OF SETTLEMENT.

(a) Unless inconsistent with the Preliminary Approval Order, the Class Administrator (Rosenthal & Co., or other class administration company designated by Class Counsel if approved by UNITED STATES), shall cause the class notices as set forth above to be mailed by First Class mail.

(b) The Class Administrator shall act under the direction of Class Counsel and shall mail checks to the Class by First Class mail. Sixty days after Class payment checks are mailed, the Class Administrator shall attempt to contact Class members who have not cashed their checks to ensure that the checks were received. Thereafter, additional efforts, including the hiring of investigators on a contingent basis at the rate of up to \$300 per found class member, may be used to locate Class members whose address was not previously located or to verify addresses of persons who did not cash their settlement check, if, in the opinion of the Class

Administrator, sufficient funds derived from payments due to class members who have not been located are available for that purpose.

(c) The expenses of the Class Administrator and administration of the *Briggs v. United States* Settlement Class Account will be borne by the Class Fund, and the UNITED STATES shall have no further funding or reimbursement obligation whatsoever beyond that expressly set forth in this Settlement Agreement. The Class Administrator shall establish the *Briggs v. United States* Settlement Account and be responsible for tax and fiscal accounting of the *Briggs v. United States* Settlement Fund.

(d) Class Counsel shall strive in good faith to ensure that the Class Administrator mails checks to all Class members within twenty business days of the Effective Date.

(e) UNITED STATES will make or shall cause AAFES to make, as provided in paragraph 2 above, payments under this Settlement Agreement, by funds transfer, into the *Briggs v. United States* Settlement Class Account as follows:

(i) Within 10 business days after the entry of the Preliminary Approval Order or as soon as practicable thereafter, the amount agreed upon as the expense for the Class Administrator as set forth in paragraph 2(b)(1) above.

(ii) Within 15 business days after the Effective Date or as soon as practicable thereafter, the amount of the Net Offset Payment referred to in paragraph 2(a);

(iii) Within 15 business days after the Effective Date or as soon as practicable thereafter, remaining EAJA fees and expenses described in paragraph 2(b)(2), as approved by the Court.

(a) Payments from the *Briggs v. United States* Settlement Class Account shall be as follows:

(i) Checks payable to all Class members, except those who have requested to be excluded or have who failed to file a required waiver, for whom the Class Administrator believes it has a current address, in the portion of the Net Offset for the Class member listed in Exhibit 6 used to calculate the Net Offset Payment, less the portion thereof approved as attorney fees, plus a proportionate share of the EAJA fees, shall be mailed as funds are available in the account sufficient to cover the payments and as soon as practicable after the Effective Date. All checks issued to members of the Class shall bear the notation "invalid if not cashed by January 15, 2011." However, the date that shall be used as the final day for cashing such checks if the Effective Date is less than 200 days before January 15, 2011, or is on or after January 15, 2011, shall be a banking day approximately 200 days after the Effective Date.

(ii) Payments of attorney fees to Class Counsel and costs of administration by funds transfer or other method as requested by Class Counsel, as funds are available in the account sufficient to cover the payments, but limited to 75% of the approved reasonable attorney fees in the calendar year in which the Effective Date falls; and the

balance of attorney fees due in the calendar year after the year in which the Effective Date falls.

(iii) Payments for expenses of litigation to Class Counsel as provided in paragraph 3(a), by funds transfer or other method as requested by Class Counsel, as funds are available in the account sufficient to cover payment.

(iv) Payment of the incentive award to plaintiff as approved by the Court, by funds transfer or other method as requested by Class Counsel, as funds are available in the account sufficient to cover the payments and as soon as practicable after the Effective Date.

(v) Within 10 days after the last day on which checks to Class members may validly be cashed, the balance of the approved attorney fees, together with any interest that has accrued on account of such fees, shall be distributed as directed by Class Counsel. Provided, however, that the Class Administrator shall ensure that sufficient funds shall remain in the account to complete any remaining administrative duties.

(vi) Within 45 days after the last day on which checks to members of the Class may validly be cashed, the Class Administrator shall report to the parties on the Class Fund Residue as set forth above.

10. EFFECTIVE DATE; ENTRY OF FINAL JUDGMENT OF DISMISSAL.

As used in this settlement, "Effective Date" means the date on which the Settlement Agreement is finally approved and the Court's Judgment, substantially in the form attached hereto as Exhibit 5, has become final. For purposes of the Settlement Agreement, the Settlement Agreement and the Judgment "become final" on the later of 60 days after the entry of Judgment or the date when the affirmation of the Judgment by an appellate court becomes final.

11. RELEASES IN FAVOR OF UNITED STATES.

As of the Effective Date, Plaintiff and each member of the Class shall be deemed to have jointly and severally released and discharged UNITED STATES, from any and all actions, causes of action, suits, obligations, costs, expenses, attorney's fees, damages, losses, claims, rights, liabilities, and demands, of whatever character, to the date hereof, arising out of, relating to, or in connection with the Action ("Released Claims").

12. WAIVER BY THE UNITED STATES OF FURTHER RIGHT TO COLLECTION.

UNITED STATES hereby agrees to and does forever waive, up to the dollar amount of the Class member's Net Offset as listed in Exhibit 6, or \$10,000, whichever is less, any right to revive a Class member's debt that had been previously credited by reason of the Net Offsets now to be refunded pursuant to this Agreement.

13. REPRESENTATIONS AND WARRANTIES.

Each of the parties to this Settlement Agreement represents, warrants, and agrees as to itself/himself/herself as follows:

(a) Each party has received independent legal advice from its/his/her attorneys with respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Settlement Agreement.

(b) No party (nor any officer, agent, employee, representative or attorney of or for any party) has made any statement or representation to any other party regarding any fact relied upon in entering into this Settlement Agreement, and each party does not rely on any statement, representation or promise of any other party (or of any officer, agent, employee, representative or attorney for any such other party), in executing this Settlement Agreement or in making the settlement provided for herein, except as expressly stated in this Settlement Agreement.

(c) Each party to this Settlement Agreement has made such investigation of the facts pertaining to this settlement and this Settlement Agreement, and of all the matters pertaining thereto, as it/he/she deems necessary.

(d) Each party has read this Settlement Agreement and understands the contents hereof. Each of the persons executing this Settlement Agreement on behalf of their respective parties is empowered to do so and thereby binds his or her respective party.

(e) The parties will execute all additional documents that are necessary or desirable to carry out this Settlement Agreement.

14. NULLIFICATION OF SETTLEMENT AGREEMENT.

In the event (i) the Court does not enter the Preliminary Approval Order in substantially the form agreed by the parties hereto; (ii) the Court does not finally approve the settlement as provided herein and enter a Judgment substantially in the form attached hereto; (iii) the Effective Date does not occur; or (iv) the settlement does not become final for any other reason, this Settlement Agreement shall be null and void, except insofar as it provides for the return of any monies paid UNITED STATES in furtherance of the settlement.

15. FUND TRANSFERS AND NOTICES.

(a) Wherever this Settlement Agreement refers to a funds transfer, such transfer shall be executed in the following manner:

(i) If a transfer to the Class Fund, the transfer shall be directed to an account established by the Class Administrator and identified to counsel for the United States by Class Counsel.

(ii) If a transfer to AAFES, the transfer shall be directed to an account as identified to the Class Administrator by counsel for the UNITED STATES.

(b) When this Settlement Agreement provides for or requires written notice or the provision of written information or stored data to a party, the notice or provision of information or data shall be deemed to be complete if transmitted by overnight courier, prepaid, for next business day delivery and addressed as follows:

(i) If to plaintiff or class counsel: Class Counsel at the address provided in the Class Notice attached hereto.

(ii) If to the UNITED STATES or AAFES: Michael J. Quinn, U.S. Department of Justice, Civil Division, Room 10028, 1100 L Street, N.W., Washington, DC 20005.

16. MISCELLANEOUS.

(a) The rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the United States without reference to the common law or statutes of any state.

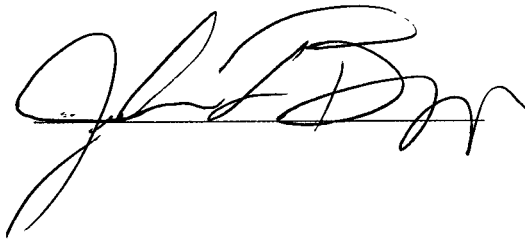
(b) This Settlement Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Settlement Agreement may be amended or modified only by an agreement in writing signed by counsel for all parties. Amendments and modifications may be made without additional notice to the Class unless notice is required by the Court.

(c) Each party has cooperated in the drafting and preparation of this Settlement Agreement. Hence, the Settlement Agreement shall not be construed against any party.

(d) This Settlement Agreement may be executed by facsimile or PDF signatures and in counterparts, each of which shall constitute an original.

WHEREFORE, Plaintiff, on his behalf and on behalf of the Class, and UNITED STATES, by their duly authorized agents or counsel, have executed this Settlement Agreement as of the date set forth above.

JULIUS BRIGGS, Plaintiff

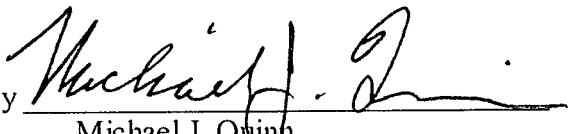


UNITED STATES OF AMERICA,
Defendant

TONY WEST
Assistant Attorney General

J. CHRISTOPHER KOHN
Director


Ruth A. Harvey
Assistant Director

By 
Michael J. Quinn
Trial Attorney

U.S. DEPARTMENT OF JUSTICE

APPROVED AND RECOMMENDED:

LAW OFFICES OF S. CHANDLER VISHER
CONSUMER LAW OFFICE OF MARIE NOEL APPEL
PUBLIC CITIZEN LITIGATION GROUP


By _____
Class Counsel

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Name & address of Class Member & sequence no]

Refund Amount before Attorney Fees: \$ [Net Offset]

You Are Entitled to a Refund of Debt Offsets by the Army & Air Force Exchange Service (AAFES).

The Federal Court authorized this notice. This is not a solicitation from a lawyer.

- A class action lawsuit filed on behalf of people who were subjected to offset of their tax refunds and other federal payments to pay debt to the Army & Air Force Exchange Service (AAFES) that was more than 10 years old has been settled, subject to final court approval.
- Unless you exclude yourself from the lawsuit, you will be entitled to a refund of the total amount offset more than 10 years after the AAFES debt became delinquent. The amount of your Offset was \$[Net Offset]. Court-awarded attorney fees will be deducted from this amount. **Under the terms of the settlement you will pay about 20% of the Offset in attorney fees and receive a check, if the settlement is approved, for about 80% of the Offset.**
- This notice summarizes the lawsuit, your rights, and additional information you need to know. At this point, you have several options:

YOUR LEGAL RIGHTS AND OPTIONS

DO NOTHING.	Stay in this Lawsuit. Receive payment of at least the Offset amount less attorney fees. By doing nothing, you will receive payment at the address to which this notice was sent if the court grants final approval. But you give up the right to bring a lawsuit on your own.
ASK TO BE EXCLUDED.	Get Out of this Lawsuit. Get No Refunds. If you ask to be excluded, you will keep your right to sue the government on your own. But you will NOT receive the payment described above.
Object	Write to the Court about why you don't like the settlement.
Go to A Hearing	Ask to speak in Court about the fairness of the settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and appeals, if any, are resolved. Please be patient.

Briggs v. United States, NDCA No. CV-07-5760 WHA Class Notice Page 1

Why Did I Get This Notice?

The Court has allowed a class action lawsuit on behalf of people whose tax refunds or other government payments were offset to pay debt owed to the Army and Air Force Exchange Service (AAFES) that was more than 10 years old. You have been sent this notice because it has been determined that you are a member of the Class. AAFES's records show that the amount offset from you, less any amount previously refunded, for debt more than 10 years old was \$[Net Offset].

The lawsuit, known as *Briggs v. United States*, No. CV-07-5760, is now before the United States District Court for the Northern District of California. The Court authorized this notice. The purpose of this notice is to provide you with information about the lawsuit to help you decide whether to participate. Your participation in this lawsuit is voluntary.

What Is A Class Action and Who Is Involved?

In a class action lawsuit, one or more people called Class Representatives (in this case, Julius Briggs) sue on behalf of other people who have similar claims. The people together are called a "Class" or "Class Members." The people who sued—and all the Class Members like them—are called the Plaintiffs. The person they sue (in this case, the government of the United States) is called the Defendant. One court resolves the issues for everyone in the Class—except for people who exclude themselves from the Class.

What Is This Lawsuit About?

This lawsuit is brought on behalf of a Class of people whose tax refunds or other federal payments were offset by the Army and Air Force Exchange Service (AAFES) to collect debts arising from uniform or merchandise purchases. The lawsuit claims that some offsets occurred more than 10 years after the debt became outstanding and that the offsets made after that time violated the law that was then in effect. (Congress repealed the 10-year limit in 2008.) The lawsuit seeks a court order refunding the offsets to the Class Members.

Why is there a settlement?

The Court determined that offsets taken from you more than 10 years after the debt became due were not legal and must be refunded, but that the government could prove it is entitled to keep the money taken because you actually owed the debt for which the offset was taken. The government has now abandoned its effort to prove that the amount offset was actually due and has agreed to refund the amount taken.

Will the refund amount be added to my AAFES debt ?

No. The United States has agreed that even though it is refunding you the amount offset, your debt will stay the same as it was after the offset was first taken. This means that the amount of the debt owed to the United States will not be affected by this refund. However, any amount that you still owed on AAFES debt even after the offsets listed above were credited to your account may still be due and possibly subject to future collection. For example, if you still owed AAFES \$1,000 after the offsets listed above were deducted from your debt, you may still owe AAFES the \$1,000 even after you receive the refund in this case, but you will not have the \$1,000 increased by the amount of the refund.

What does the settlement provide?

The settlement provides that you will be paid the amount that was offset from you, as listed above, less attorney fees. Further, the amount of your AAFES debt that remained after the offset will stay the same; the amount refunded to you will not be added back to the amount, if any, you may owe AAFES. The settlement also provides for an incentive payment to the named class plaintiff, Julius Briggs, of \$5,000.

Who Is a Member of the Class?

The Court's Class Certification Order defines the Class as including all people who purchased merchandise or uniforms from AAFES and from whom the government offset tax refunds or other federal payments to collect debt after November 13, 2001, where (1) the debt became delinquent more than 10 years before the offset, and (2) the amount of net offset payments was \$10,000 or less, or who are willing to waive their claim with respect to offsets that would bring their refund claim above \$10,000. (Note: This is a summary of the Class definition as approved by the Court. For the exact definition, please contact Class Counsel.)

What Do I Need To Do To Stay In The Class?

If you want to be included as a class member and be paid the refund described above, **you don't have to do anything**. You will automatically remain a Class member unless you request exclusion discussed below. As a member of the Class, you will be bound by the Court's rulings.

If you remain in the Class, you do not need to hire a lawyer. The Class Counsel listed at the end of the notice will represent you. You have the right to hire your own lawyer at your own expense, but you do not need to do so. You may also seek to intervene individually and may advise the Court if at any time you consider that you are not being fairly represented by the Plaintiff and his lawyer.

You should notify the lawyer at the address and phone number listed at the end of this notice if you have any correction or change in your name or address.

What Do I Need To Do If I Want To Be Excluded?

If you wish, you can exclude yourself from the Class. This process is also known as “opting out.” To be excluded, you must sign a letter written to Class Counsel at the address listed below stating the name of this case and that you do not wish to receive the refund provided for in the settlement, and including your printed name as on this notice and the address to which the notice was sent, together with your correct address if the notice was sent to the wrong address. The letter must be postmarked no later than [DEADLINE DATE].

What Happens If I Exclude Myself From The Class?

If you exclude yourself from the Class, you will lose the right to the Net Refund provided by the settlement. You will also not be able to participate in hearings or object to the terms of any settlement. If you exclude yourself, you will have the right to bring an individual lawsuit, if you bring it within the time allowed by law. If you do not exclude yourself by [DEADLINE DATE], you will remain a member of the Class, and you will be bound by any judgment of the Court. If the settlement is approved by the Court, you will be sent a payment based on your offset amount less approved attorney fees.

If I Stay In The Class, Will I Have to Pay Any Legal Fees?

If you stay in the Class, the Class Counsel will represent you. You will **not** be required to pay any legal fees or costs out of your pocket. The Court may award attorney fees and costs to Class counsel if the Class prevails in this action, and the Court may allow fees to be paid from your recovery in this action. Class counsel will ask the Court to award a total of \$2 million in attorney fees from the total amount of offset refunds of \$7.4 million. AAFES has agreed to reimburse the Class for up to \$500,000 of the attorney fees. This means that, after fees are deducted, if the settlement is approved, you will receive a check for approximately [.7974*Net Offset], which is nearly 80% of your Offset as listed above.

How do I tell the Court I don't like the settlement?

If you're a Class Member, you can object to the settlement if there is any part of it you don't like. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Briggs v. United States* No. CV-07-5760 WHA. Be sure to include your name, address, telephone number, your

signature, and the reasons you object to the settlement. Mail the objection to these three different places postmarked no later than **[DEADLINE DATE]**:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court for the Northern District	S. Chandler Visher 44 Montgomery St. #3830	Michael Quinn U.S. Dept. of Justice
District of California 450 Golden Gate Ave. San Francisco, CA 94102	San Francisco, CA 94104	P.O. Box 875 Ben Franklin Station Washington, D.C. 20044-0875

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. You can also appear in person, at your own expense, and be heard on an objection. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. The hearing date and location are stated in the next paragraph.

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

The Court will hold a Fairness Hearing at 8:00 a.m. on _____, at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California in Courtroom 9, 19th Floor. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. You are not required to attend this hearing, but may attend at your own expense.

How Do I Get More Information About This Lawsuit?

This Notice provides only a summary of the litigation. You may discuss this with your own lawyer or, for more detailed information, you may examine the court's file regarding this matter from the hours of 9:00 a.m. to 1:00 p.m. at the Office of the Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102.

The court file can also be obtained online or through a copy service. For more information on these options, see "Getting Docket Info" under the heading "Court Information" at <http://www.cand.uscourts.gov>. PLEASE DO NOT CALL OR WRITE TO THE CLERK OF

THE COURT. ALL INQUIRIES SHOULD BE DIRECTED TO CLASS COUNSEL LISTED IN THE NEXT SECTION OF THIS NOTICE.

How Do I Contact Class Counsel If I Have Questions?

If you have questions concerning this Notice, you may contact Class Counsel listed below by mail, telephone, or e-mail:

S. Chandler Visher, attorney
Law Offices of S. Chandler Visher
44 Montgomery Street, Suite 3830
San Francisco, California 94104
chandler@visherlaw.com
Telephone: (415) 901-0500 / Facsimile: (415) 901-0504

Law Offices of S. Chandler Visher

44 Montgomery Street, Suite 3830
San Francisco, California 94104

Telephone: (415) 901-0500
Facsimile: (415) 901-0504
December 3, 2009

[class member name
Class member address
Control no.]

Re: *Briggs v. United States*, case no. CV-07-5760 WHA

Dear [first name last name]:

Earlier this year, I sent you a notice advising you that you were a member of a class certified in this case. Since that time, the Army and Air Force Exchange Service (AAFES) has conducted an audit of its records to confirm class membership. To be a member of the class in this case, you must have had an AAFES debt that was collected, through offset of your tax refunds or other governmental payments, more than 10 years after the debt became delinquent.

Based upon further review, AAFES' records indicate that although you may have had an offset taken to satisfy a debt owed to AAFES, the offsets taken on your account did not exceed the 10-year limitation that was then in effect. I regret to inform you that, although you were misidentified by AAFES as a class member and received a class notice, you are not actually a member of the class and not subject to the judgment in this action. Please disregard the notice you received.

If you have evidence that an offset made against you was in fact for a debt to AAFES that had been delinquent for more than 10 years, please contact me. I apologize for any expectations the notice may have raised.

Very truly yours,

S. Chandler Visher
Class Counsel

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Name & address of Class Member & sequence no]

Refund Amount before Attorney Fees: \$10,000

You Are Entitled to a Refund of Debt Offsets by the Army & Air Force Exchange Service (AAFES).

The Federal Court authorized this notice. This is not a solicitation from a lawyer.

- A class action lawsuit filed on behalf of people who were subjected to offset of their tax refunds and other federal payments to pay debt to the Army & Air Force Exchange Service (AAFES) that was more than 10 years old has been settled, subject to final court approval.
- **You must mail in the attached "Request to Participate and Waiver of Claim Over \$10,000" form before February ___, 2010 if you want to join this lawsuit.** If you join the lawsuit, your refund will be mailed to you at this address. If you have moved or plan to have a new address and wish to receive that money, you should list your new address on the attached form.
- **If you do not respond and submit a completed waiver by the deadline, you cannot participate in this lawsuit and will not receive any refund from this settlement.**
- If you send in the attached Waiver, your total refund will be \$10,000. Court-awarded attorneys' fees will be deducted from this amount. **Under the terms of the settlement, you will pay about 20% of the \$10,000 refund in attorney fees and receive a check, if the settlement is approved, for the other 80%.**
- This notice summarizes the lawsuit, your rights, and additional information you need to know. At this point, you have several options:

YOUR LEGAL RIGHTS AND OPTIONS

JOIN THE LAWSUIT BY MAILING IN THE ATTACHED FORM.

Receive a refund of \$7,974.32 after fees. Waive Any Claim Above \$10,000.

If you mail in a form by February ___, 2010, you will receive money if the court grants final approval of the settlement. But you will waive your right to seek more than \$10,000 or bring your own lawsuit.

DO NOTHING.	Do <u>NOT</u> receive the refund from this Settlement but keep the Right to Sue on Your Own.
Object	Write to the Court about why you don't like the settlement. You must also submit the waiver to object.
Go to A Hearing	Ask to speak in Court about the fairness of the settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and appeals, if any, are resolved. Please be patient.

Why Did I Get This Notice?

The Court has allowed a class action lawsuit on behalf of people whose tax refunds or other government payments were offset to pay debt owed to the Army and Air Force Exchange Service (AAFES) that was more than 10 years old. You have been sent this notice because it has been determined that you are a member of the Class. AAFES's records show that the amount offset from you, less any amount previously refunded, for debt more than 10 years old was **[\$[net offset]. However, the court only has authority to award money for claims not exceeding \$10,000.**

The lawsuit, known as *Briggs v. United States*, No. CV-07-5760, is now before the United States District Court for the Northern District of California. The Court authorized this notice. The purpose of this notice is to provide you with information about the lawsuit to help you decide whether to participate. Your participation in this lawsuit is voluntary.

What Is A Class Action and Who Is Involved?

In a class action lawsuit, one or more people called Class Representatives (in this case, Julius Briggs) sue on behalf of other people who have similar claims. The people together are called a "Class" or "Class Members." The people who sued—and all the Class Members like them—are called the Plaintiffs. The person they sue (in this case, the government of the United States) is called the Defendant. One court resolves the issues for everyone in the Class—except for people who exclude themselves from the Class.

What Is This Lawsuit About?

This lawsuit is brought on behalf of a Class of people whose tax refunds or other federal payments were offset by the Army and Air Force Exchange Service (AAFES) to collect debts arising from uniform or merchandise purchases. The lawsuit claims that some offsets occurred more than 10 years after the debt became outstanding and that the offsets made after that time violated the law that was then in effect. (Congress repealed the 10-year limit in 2008.) The lawsuit seeks a court order refunding the offsets to the Class Members.

Why is there a settlement?

The Court determined that offsets taken from you more than 10 years after the debt became due were not legal and must be refunded, but that the government could prove it is entitled to keep the money taken because you actually owed the debt for which the offset was taken. The government has now abandoned its effort to prove that the amount offset was actually due and has agreed to refund the amount taken.

Will the refund amount be added to my AAFES debt ?

No. The United States has agreed that even though it is refunding you \$10,000 of the amount offset, your debt will stay the same as it was after the offset was first taken. This means that the amount of the debt owed to the United States will not be affected by this refund. However, any amount that you still owed on AAFES debt even after the offsets listed above were credited to your account may still be due and possibly subject to future collection. For example, if you still owed AAFES \$1,000 after the offsets listed above were deducted from your debt, you may still owe AAFES the \$1,000 even after you receive the refund in this case, but you will not have the \$1,000 increased by the amount of the refund.

What does the settlement provide?

The settlement provides that you will be paid \$10,000 of the amount that was offset from you, as listed above, less attorney fees. Further, the amount of your AAFES debt that remained after the offset will stay the same; the amount refunded to you will not be added back to the amount, if any, you may owe AAFES. The settlement also provides for a payment to the named class plaintiff, Julius Briggs, of \$5,000, in addition to what he would get for being a member of the class. This payment is intended, in part, to compensate Mr. Briggs for the time and trouble of representing the class, having his deposition taken, and assisting Class Counsel with the prosecution of the case.

Who Is a Member of the Class?

The Court's Class Certification Order defines the Class as including all people who purchased merchandise or uniforms from AAFES and from whom the government offset tax refunds or other federal payments to collect debt after November 13, 2001, where (1) the debt became delinquent more than 10 years before the offset, and (2) the amount of net offset payments was \$10,000 or less, or who are willing to waive their claim with respect to offsets that would bring their refund claim above \$10,000. You have been identified as one of the class

members whose refund claim is above \$10,000, and so you must waive the amount of your claim that is more than \$10,000 to obtain a refund under the settlement. (Note: This is a summary of the Class definition as approved by the Court. For the exact definition, please contact Class Counsel.)

What Is the Maximum Claim In This Lawsuit?

The maximum claim in this lawsuit is \$10,000. The Court's authority to award money in this case to any individual Class Member is limited to a maximum of \$10,000. A claim exceeding \$10,000 must be brought in the Court of Federal Claims located in Washington, D.C. If you choose to be a Class Member, you must be willing to forgo a claim to recover any dollar amount above \$10,000. If you decide to participate in this class action, you must waive your right to recover more than \$10,000.

If you do not file the attached form by the deadline, you will be excluded from the class and will not receive any money in this action, even for the first \$10,000 of your claim. But you would remain free to file your own lawsuit in the Court of Federal Claims.

If you have any questions concerning the \$10,000 limit on an award in this class action, you should contact the lawyer for the Class listed at the end of this notice.

What If I Want To Waive That Part Of My Claim Over \$10,000?

If you wish to participate as a member of the Class, you **MUST SEND IN THE ATTACHED FORM**. If you mail in the form by the deadline, you will be a member of the Class. As a member of the Class, you will be bound by the Court's rulings.

If you join the Class, you do not need to hire a lawyer. The Class Counsel listed at the end of the notice will represent you. You have the right to hire your own lawyer at your own expense, but you do not need to do so. You may also seek to intervene individually and may advise the Court if at any time you consider that you are not being fairly represented by the Plaintiff and his lawyer.

You should notify the lawyer at the address and phone number listed at the end of this notice if you have any correction or change in your name or address.

YOU MUST MAIL THE FORM SO THAT IT IS POSTMARKED NO LATER THAN February __, 2010.

If I Stay In The Class, Will I Have to Pay Any Legal Fees?

If you stay in the Class, the Class Counsel will represent you. You will **not** be required to pay any legal fees or costs out of your pocket. The Court may award attorney fees and costs to Class counsel if the Class prevails in this action, and the Court may allow fees to be paid from your recovery in this action. Class counsel will ask the Court to award a total of \$2 million in attorney fees from the total amount of offset refunds of \$7.4 million. AAFES has agreed to reimburse the Class for up to \$500,000 of the attorney fees. Under the terms of the settlement

you will pay \$2,025.67 in attorney fees and **receive a check, if the settlement is approved, for \$7,974.32.**

How do I tell the Court I don't like the settlement?

If you're a Class Member, you can object to the settlement if there is any part of it you don't like. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you should send a letter saying that you object to *Briggs v. United States* No. CV-07-5760 WHA. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection to these three different places postmarked no later than **[DEADLINE DATE]**:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court for the Northern District District of California 450 Golden Gate Ave. San Francisco, CA 94102	S. Chandler Visser 44 Montgomery St. #3830 San Francisco, CA 94104	Michael Quinn U.S. Dept. of Justice P.O. Box 875 Ben Franklin Station Washington, D.C. 20044-0875

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you complete and return the Waiver form so you can stay in the Class. Even if you do not object in writing, you can also appear in person, at your own expense, and be heard on an objection at the Fairness Hearing described in the next paragraph. The hearing date and location are stated in the next paragraph.

You can also appear in person, at your own expense, and be heard on an objection, if you choose to remain in the case and file the waiver on time. The hearing date and location appear in the next paragraph.

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

The Court will hold a Fairness Hearing at 8:00 a.m. on _____, at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California in Courtroom 9, 19th Floor. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide

whether to approve the settlement. We do not know how long these decisions will take. You are not required to attend this hearing, but may attend at your own expense.

How Do I Get More Information About This Lawsuit?

This Notice provides only a summary of the litigation. You may discuss this with your own lawyer or, for more detailed information, you may examine the court's file regarding this matter from the hours of 9:00 a.m. to 1:00 p.m. at the Office of the Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102

The court file can also be obtained online or through a copy service. For more information on these options, see "Getting Docket Info" under the heading "Court Information" at <http://www.cand.uscourts.gov>. PLEASE DO NOT CALL OR WRITE TO THE CLERK OF THE COURT. ALL INQUIRIES SHOULD BE DIRECTED TO CLASS COUNSEL LISTED IN THE NEXT SECTION OF THIS NOTICE.

How Do I Contact Class Counsel If I Have Questions?

If you have questions concerning this Notice, you may contact Class Counsel listed below by mail, telephone, or e-mail:

S. Chandler Visher, attorney
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chandler@visherlaw.com
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marie@consumerlaw.ws

PUBLIC CITIZEN LITIGATION GROUP
Deepak Gupta (pro hac vice)
Brian Wolfman (pro hac vice)
1600 20th Street, NW
Washington, DC 20009
Telephone: (202) 588-7739; Facsimile: (202) 588-7795
dgupta@citizen.org; wolfmanb@law.georgetown.edu

Attorneys for Plaintiff Julius Briggs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JULIUS BRIGGS, on behalf of himself
and all others similarly situated,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. CV – 07 – 5760 WHA

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT AND NOTICE TO THE
CLASS**

1 The Court has received the Settlement Agreement entered among (i) Plaintiff Briggs, on
 2 behalf of himself and each Class member (hereinafter collectively "Plaintiff") and (ii) Defendant
 3 United States (hereinafter "Defendant"). The Court has reviewed the Settlement Agreement and
 4 its attached exhibits, and finding it fair, reasonable, and adequate on a preliminary basis, subject
 5 to final review as provided herein, ORDERS as follows:

- 6 1. For purposes of this Order, the Court adopts all defined terms set forth in the Settlement
 7 Agreement.
- 8 2. The form of Class notice attached as Exhibit 1 to the Settlement Agreement shall be
 9 mailed to all members of the Class with a Net Offset of not more than \$10,000 as listed
 10 on Exhibit 6 to the Settlement Agreement, no later than _____, 2010. By the
 11 same date, the form of notice in Exhibit 3 of the Settlement Agreement shall be mailed to
 12 persons listed on Exhibit 6 with a Net Offset of more than \$10,000, and the form of
 13 notice in Exhibit 2 to the Settlement Agreement shall be mailed to persons who are not
 14 listed on Exhibit 6 but who had been sent the class notice previously ordered to be sent in
 15 this action. Only the persons in Exhibit 6 to the Settlement Agreement are members of
 16 the Class and only such persons may be bound by the Settlement Agreement and any
 17 Judgment herein. The Court finds that mailing of the forms of notice in Exhibit 1 and 3
 18 to the Settlement Agreement (collectively, Exhibits 1 and 3 are the "Class Notice"), by
 19 first class mail, with address updates as provided for in the Settlement Agreement, is the
 20 best practicable notice to the Class under the circumstances, gives adequate notice to the
 21 Class of the settlement, and complies with all requirements of due process and Rule 23 of
 22 the Federal Rules of Civil Procedure.
- 23 3. Rosenthal & Co. is appointed as the Class Administrator and shall perform the functions
 24 described in the Settlement Agreement for the Class Administrator under the supervision
 25 of Class Counsel.
- 26 4. The United States is ordered to fund the Briggs v. United States Class Fund ("Class
 27 Fund") by causing the Army and Air Force Exchange Service (AAFES) to deposit into a
 28 settlement account established by the Class Administrator ("*Briggs v. United States*

1 Settlement Class Account”), via funds transfer, the \$80,000 agreed as the costs of
2 administration to be paid by the United States, within ten business days of this Order, or
3 as soon as practicable thereafter. The United States is ordered to provide the Class
4 Administrator with the most current address it has available for each Class member. The
5 United States is further ordered, upon execution of an appropriate confidentiality
6 agreement, to provide to the Class Administrator the full Social Security number of each
7 Class member. The Class Administrator shall update Class addresses using the National
8 Change of Address database before mailing notice, and shall use the Accurint database to
9 update addresses for persons whose Class Notice is returned.

- 10 5. Any Class member who receives the notice in the form as in Exhibit 1 to the Settlement
11 Agreement may, upon request, be excluded from the settlement. A Class member who
12 decides to be excluded must send a letter so stating to the address of the Class Counsel, as
13 set forth on the Class Notice, and include in the letter the Class member’s printed name,
14 signature, and the case name. The letter must be postmarked no later than [DEADLINE
15 DATE] and must be signed by the member(s) to whom the Notice was addressed. All
16 Class members who timely submit properly completed requests for exclusion in the
17 manner set forth in this paragraph shall have no rights under the Settlement Agreement,
18 shall not share in the benefits of the Settlement Agreement, and shall not be bound by the
19 Settlement Agreement or the Judgment. At least five (5) days before the Final Approval
20 Hearing, Class Counsel and Defendant’s Counsel shall exchange copies of any and all
21 requests for exclusion received.
- 22 6. Class members with claims over \$10,000, who receive the form of notice as in Exhibit 3
23 to the Settlement Agreement, shall only be included as Class members for purpose of the
24 Settlement Agreement if they sign and return the Waiver form included with that notice
25 postmarked on or before February ___, 2010.
- 26 7. Any Class member who objects to the proposed settlement set forth in the Settlement
27 Agreement shall have a right to appear and be heard at the Final Approval Hearing. Any
28 Class member who wishes to object by mail to all or any part of the proposed settlement

1 must serve written objections on Class Counsel postmarked no later than [DEADLINE
2 DATE] and file such objection with the clerk of the court.

- 3 8. The Final Approval Hearing will be held on _____, at _____ a.m., to
4 determine whether the proposed settlement of the Action, as set forth in the Settlement
5 Agreement, should be approved as fair, reasonable, and adequate to the Class, whether
6 the Fee Application should be approved, and whether the Judgment approving the
7 settlement should be entered. The Court may adjourn or continue the Final Approval
8 Hearing without further notice to Class.
- 9 9. Pending determination of final approval of the settlement, Class members who do not
10 request exclusion are enjoined from bringing or asserting any claim or action that was or
11 could have been asserted in the Action and arising out of the Released Claims.
- 12 10. The Court may, for good cause, extend any of the deadlines set forth in this order without
13 further notice to the Class.

14 Dated: _____

15 _____
16 Judge, United States District Court

17
18 Approved as to form:

19 _____
20 Attorney for United States
21
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26
27
28

LAW OFFICES OF S. CHANDLER VISHER
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dgupta@citizen.org; wolfmanb@law.georgetown.edu

Attorneys for Plaintiff Julius Briggs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JULIUS BRIGGS, on behalf of himself
and all others similarly situated,
Plaintiff,
v.

UNITED STATES OF AMERICA,
Defendant.

No. CV – 07 – 5760 WHA

JUDGMENT

Date: _____, 2010

Time: 8:00 A.M.

Location: Courtroom 9, 19th Floor

1 Plaintiff individually and on behalf of the Class (collectively “Plaintiffs”) and the United
2 States (“Defendant”) entered into a Settlement Agreement, attached as Exhibit A to the Motion
3 for Preliminary Approval of Settlement (Dkt. No. ____).

4 On the date set forth above the Court held a hearing for Final Approval of Settlement
5 Agreement. It is hereby ORDERED that:

- 6 1. The terms of the Settlement Agreement are fair, reasonable, and adequate with respect to
7 the Class, and the Settlement Agreement is finally approved.
- 8 2. All preliminary approvals and findings in the Preliminary Approval Order are hereby
9 ordered final.
- 10 3. This Court has jurisdiction over the subject matter of the Action and over all parties to the
11 Action, including all members of the Class.
- 12 4. The Settlement Agreement is hereby incorporated with and made part of this Judgment.
- 13 5. The Notice given to the Class set forth in the Settlement Agreement was the best notice
14 practicable under the circumstances, and it satisfied the requirements of Federal Rule of
15 Civil Procedure 23 and of due process.
- 16 6. All persons who filed timely requests for exclusion from the Class are excluded from the
17 operation of any part of the Settlement Agreement and shall not be bound by its terms or
18 receive its benefits. Class members who had Offsets of more than \$10,000 shall not be
19 entitled to benefits under this Settlement Agreement and shall not be members of the
20 Class unless they have filed a waiver of their claims above \$10,000.
- 21 7. The parties shall effectuate the Settlement Agreement in accordance with all of its terms
22 and conditions.
- 23 8. The Settlement Agreement provides that the UNITED STATES will not object to
24 reasonable attorney fees for Class Counsel of up to \$2 million, to be paid from the Class
25 Fund. The Court finds that the hours listed in the Fee Application filed by Class Counsel
26 were reasonably spent in the pursuit of this litigation and that the hourly rates requested
27 therein are reasonable and commensurate with the background and experience of the
28 attorneys and others performing the work and the nature of the work performed. The

1 hourly rates in the fee application are those of the Updated Laffey Matrix adjusted, for
2 Class Counsel located in the San Francisco Bay Area, based on the federal court
3 personnel differential between Washington D.C. and the Bay Area. Using these hours
4 and hourly rates, the lodestar attorney fees are more than \$1 million. As a result, the
5 agreed attorney fees for Class Counsel of \$2 million provides a fee multiplier of less than
6 2 and is reasonable.

7 9. The United States has agreed in the Settlement Agreement to cause the Army and Air
8 Force Exchange Service (AAFES) to pay up to \$500,000 in attorney fees and \$132,000 in
9 expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d). AAFES has
10 already paid to plaintiff \$80,000 for the expense of class notice and claims
11 administration. The United States is ordered to cause AAFES to pay the balance of
12 \$552,000 into the Class Fund as provided in the Settlement Agreement.

13 10. The United States is ordered to complete funding of the *Briggs v. United States* Class
14 Fund by deposit using funds transfer into the settlement account established by the Class
15 Administrator ("*Briggs v. United States* Settlement Class Account") in accordance with
16 the terms of the Settlement Agreement. The United States shall have no obligation to
17 provide funds for class administration beyond those provided in the Settlement
18 Agreement. Any costs of administration beyond those provided by the government shall
19 be borne by the Class Fund.

20 11. Checks payable to all Class members, except those who have requested to be excluded or
21 have who failed to file a required waiver, for whom the Class Administrator believes it
22 has a current address, shall be mailed as soon as practicable after the Effective Date.
23 These checks shall be equal to the portion of the Net Offset for the Class member listed
24 in Exhibit 6 to the Settlement Agreement used to calculate the Net Offset Payment, less
25 the Class member's proportionate share of the \$2 million attorney fees, plus a
26 proportionate share of the \$500,000 EAJA fees.

27 12. The Settlement Agreement provides that the Class Administrator shall take extensive
28 measures to locate Class members during the administration process, including hiring of

1 private investigators to the extent that funds are available for that purpose in the Class
2 Fund as provided in the Settlement Agreement. These provisions of the Settlement
3 Agreement are approved as appropriate.

4 13. The Settlement Agreement provides that the appropriate distribution of the Class Fund
5 Residue shall be decided by the Court after expiration of the time within which the Class
6 has to cash settlement checks. Upon motion by either party, with briefing thereon, the
7 Court will thereafter consider the appropriate distribution of any Class Fund Residue.

8 14. All Released Claims are hereby fully and finally extinguished, released, relinquished and
9 discharged against Defendant, plaintiff and the Class.

10 15. Plaintiff and each and every remaining Class Member (those who have not been excluded
11 from the Class by filing a request for exclusion or, if required, have not signed a Waiver
12 of his or her claim above \$10,000) is hereby permanently barred and enjoined from
13 asserting the Released Claims against the Defendant.

14 16. The United States is permanently barred and enjoined from asserting the Released Claims
15 against members of the Class.

16 17. The incentive award to plaintiff Julius Briggs of \$5,000 as provided for in the Settlement
17 Agreement is fair and reasonable and is approved, and that award shall be paid from the
18 Class Fund as provided in the Settlement Agreement.

19 18. The Court shall retain continuing jurisdiction over all matters relating to the
20 administration, consummation, and enforcement of the Settlement Agreement.

21 Dated: _____

22 _____
23 Judge, United States District Court

24
25 Approved as to form:

26 _____
27 Attorney for United States
28