

In the United States Court of Federal Claims

No. 13-834C

(E-Filed: October 16, 2014)

_____)
DONALD MARTIN, JR., et al.,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ORDER

On October 10, 2014, the parties filed a stipulation as to conditional certification of this case as a collective action, accompanied by a proposed order with the agreed upon terms concerning the class definition and manner of giving notice, two proposed notice forms, and a proposed consent to join form. See ECF Nos. 45, 45-1–45-4.

Conditional Certification as Collective Action

In light of the parties’ conditional certification filings and resolution of any outstanding disputes with respect to the same, see Order at 2, Sept. 23, 2014, ECF No. 44, pursuant to Rule 23 of the Rules of the Court of Federal Claims (“RCFC”), the court hereby **GRANTS** pending plaintiffs’ motion to conditionally certify this case as a collective action, see Pls.’ Mot. to Certify, Jan. 28, 2014, ECF No. 14. As noted by the parties, such conditional certification is subject to defendant’s right to move to decertify the collective action in part or full after discovery. See Proposed Order ¶ 1, ECF No. 45-1.

In their stipulation, the parties request that the court enter the proposed order, which presents the terms agreed upon by the parties, including the class definition and manner of giving notice, as well as which approves the language of the two proposed notice forms and the consent to join form. The parties’ request is hereby **GRANTED**, and the terms of the proposed order—with some minor modifications as construed by the court for purposes of accuracy and clarity—are recapitulated below.

Class Definition

The court hereby **APPROVES** the class definition for the collective action, as agreed upon by the parties and as set forth in paragraph 1 of the parties' proposed order. The class is hereby **DEFINED** as:

Federal employees (a) identified as of October 1, 2013 for purposes of the Fair Labor Standards Act ("FLSA") as employees, pursuant to 29 U.S.C. § 203(e)(2)(A); (b) classified as "non-exempt" under the FLSA as of October 1, 2013; (c) declared "Excepted Employees" during the October 2013 partial government shutdown; (d) worked at some time between October 1 and October 5, 2013, other than to assist with the orderly shutdown of their office; and (e) not paid on their regularly scheduled payday for that work between October 1 and October 5, 2013.

Proposed Order ¶ 1.

Notice Forms and Consent to Join Form

The parties have worked together to prepare two proposed forms of notice regarding the rights of potential collective action members to opt-in—the "Primary Notice" and "Secondary Notice," see ECF Nos. 45-2 & 45-3—as well as a proposed "Consent to Join Collective Action" form ("Consent"), see ECF No. 45-4.

According to the proposed "Primary Notice," the "Primary Notice" shall be sent to agencies other than the Department of Homeland Security for which "excepted" employees are not identified. See ECF No. 45-2.

Further to paragraph 2 of the parties' proposed order, the court hereby **APPROVES** the language of the two proposed forms of notice and the proposed Consent form. The "Primary Notice," "Secondary Notice," and Consent, as filed by the parties, are appended to this order as Exhibits A–C.

Manner of Giving Notice

The court hereby **APPROVES** the proposed manner of giving notice, as agreed upon and as set forth in paragraphs 3 through 14 of the parties' proposed order. The terms—with some minor modifications as construed by the court for purposes of accuracy and clarity—are presented below:

3. Except as set forth in paragraphs 4 and 5 (regarding certain disputes concerning provision of notice), and paragraphs 8 and 9 (regarding provision of notice to persons no longer employed by defendant as of the issuance date of this order), below, defendant shall send by email:

- A copy of the “Primary Notice” to the work email addresses of all persons:
 - (a) Whom defendant believes may meet all five conditions of the class definition; and
 - (b) Who are still employed by defendant on the date that defendant identifies the employees of an agency or component whom may meet that definition.
- A copy of the “Secondary Notice” to the work email addresses of all persons who worked on or about the Notice Date (defined in paragraph 6) for an agency or component that is unable to identify employees who may meet the conditions of the class definition.

Regardless of the form of Notice, it shall be attached to an email entitled “Notice of Your Rights in a Collective Action Lawsuit Arising Out of the Government Shutdown.” The text of the email shall state:

The Court of Federal Claims has ordered that the attached notice be sent to you. If you have questions, do not contact your manager or the Court. You may contact plaintiffs’ lawyers as follows:

Heidi R. Burakiewicz
Steven A. Skalet
Michael D. Lieder
Mehri & Skalet PLLC
1250 Connecticut Avenue N.W., Suite 300
Washington, DC 20036
shutdownlawsuit@findjustice.com
Telephone: (202) 822–5100
Fax: (202) 822–4997

4. **Within thirty (30) days of the issuance of this order**, or on or before **Monday, November 17, 2014**, defendant shall file a status report that:

- (a) Informs the court of the status of the defendant’s efforts to identify the FLSA non-exempt, excepted Federal employees who worked during the

period October 1–5, 2013, but were not paid on their regularly scheduled paydays for that work;

- (b) Identifies agencies or components that have not yet completed their identification of collective action members;
- (c) Identifies agencies or components that contend its employees need not be sent Notice either because:
 - (i) They paid all FLSA non-exempt, excepted Federal employees who worked during the period October 1–5, 2013 on their regularly scheduled payday; or
 - (ii) They did not have any FLSA non-exempt, excepted Federal employees who worked during the period October 1–5, 2013;
- (d) Identifies agencies or components that contend that emailing Notice to its employees would be too burdensome, states each agency’s or component’s explanation for such alleged undue burden, and provides the best estimate of the number of potential collective action members who worked in that agency or component as of October 1, 2013; and
- (e) States how much longer defendant will need to complete the effort of identifying collective action members, which shall not be later than **sixty (60) days of the issuance of this order**, or on or before **Monday, December 15, 2014**.

5. **Within ten (10) days of the filing of defendant’s status report**, plaintiffs may challenge, through the filing of a response memorandum, defendant’s contention(s), if any, made under:

- Paragraph 4(c), that Notice need not be sent to the employees of any agency or component; and/or
- Paragraph 4(d), that it would be unduly burdensome to email Notice to employees of an agency or component; except that plaintiffs shall not challenge the burdensomeness contention if it affects fewer than 500 collective action members of the agency or component.

Thereafter, defendant shall have **ten (10) days** to file a reply memorandum, and the court shall decide the dispute, if possible, prior to the Notice Date (defined in paragraph 6).

With respect to disputes arising out of any burdensome contention(s) made by defendant pursuant to paragraph 4(d), if the court decides that email Notice would indeed be too burdensome for the agency or component at issue, defendant shall promptly provide plaintiffs' counsel with a list of the United States Postal Service mailing addresses to which the Notice should be provided, along with the appropriate form of Notice that should be sent. By the later of either the Notice Date or ten (10) days from plaintiffs' receipt of the list of mailing addresses from defendant, plaintiffs shall send the appropriate form of Notice, attached to a letter with the same title and contents as the email described in paragraph 3, by United States Postal Service First-Class mail.

6. Within a reasonable time after the filing of defendant's status report described in paragraph 4, the parties shall confer and establish a date certain by which all "Primary Notices" or "Secondary Notices" will be emailed to the work email addresses of the persons that have been identified pursuant to paragraph 3. That date will be referred to as the "Notice Date." The parties recognize that all Notices may not be emailed on the same date.

7. **Within fifteen (15) days of the Notice Date**, defendant shall serve a certificate that states, for each agency or component: (1) the number of persons to whom email Notice was sent, and (2) the number of persons, if any, for whom the email Notice bounced back as undeliverable. In the event of any email Notice bouncebacks, the parties shall promptly meet and confer about the steps, if any, that will be taken to address such bouncebacks. If the parties are unable to agree regarding such steps, the parties shall bring the issue to the court for resolution.

8. With respect to collective action members who are no longer employed by defendant as of the date of the issuance of this order, **October 16, 2014**, defendant shall, **within fifteen (15) days of the Notice Date**, provide Notice by email, to the extent an email address is known, and/or by United States Postal Service First-Class mail. If Notice is mailed by the United States Postal Service, the Notice shall be attached to a letter with the same title and contents as the email described in paragraph 3.

Thereafter, defendant shall either: (1) provide plaintiffs' counsel with one or more lists of employees, as applicable, to whom any mailed Notices were returned as undeliverable, or (2) collect the returned envelopes in a central location in Washington, D.C. and make them available for pickup by plaintiffs' counsel.

9. Upon receipt of the returned Notices referenced in paragraph 8, plaintiffs shall conduct a reasonable search for a more current mailing address for those persons for whom mailed Notice was returned as undeliverable, and if such an address is found, plaintiffs shall send the appropriate Notice to that person at that address as soon as possible.

10. Persons who receive either forms of Notice, in accordance with the methods outlined above, shall have **105 days from the Notice Date** to submit to plaintiffs' counsel a signed Consent form in order to participate in this lawsuit, and such date shall be inserted in the appropriate places in the Notice.

11. Plaintiffs shall have **165 days from the Notice Date** to file with the court, through the electronic filing (ECF) system, all properly executed Consents on one or more CD-ROM disks, along with an alphabetical list, of the persons submitting these Consents. The list shall also contain each opt-in's agency, component, location, job title, last four digits of his or her social security number, and disk on which a copy of his or her Consent is located. Plaintiffs may request an extension of this deadline from the court as reasonably required.

12. **Within ten (10) days of the parties' establishment of the Notice Date** pursuant to paragraph 6, the parties shall submit a stipulation to the court that sets forth the Notice Date and the resultant dates under paragraphs 7, 8, 10 and 11.

13. Collective action members who provide the information requested in the Consent form, or in the Consent to Join form used by Plaintiffs prior to the date of this Order, may sign the form electronically through a process in which they can manipulate a computer mouse to create a signature and then affirmatively indicate that the result is intended as their signature. Such electronic signature shall have the same effect as if they had signed the form in writing.

14. At least until the deadline for collective action members to join the lawsuit expires, the "Join the Case" page on the website maintained by Plaintiffs' Counsel about this case, www.shutdownlawsuit.com, shall contain language concerning the manual submission of Consent forms substantially similar to the following:

MANUAL SUBMISSION

If you are unable to submit the Consent electronically, you may submit the form by completing the steps below. We cannot guarantee delivery. Again, the best means of submission is electronic.

If you elect manual submission, complete the following steps:

1. Print, complete and sign the Consent form.
2. Send the signature page and the page containing your contact information to us using one of the methods below:

- a. Scan the pages, attach to an email, and send to shutdownlawsuit@findjustice.com with “Forms” in the subject line; or
 - b. Mail the pages to us at Shutdownlawsuit, 1250 Connecticut Avenue NW, Suite 300, Washington DC 20036.
3. If you do not submit your consent electronically through the website, your Consent form will not be considered received by us and you will not be a plaintiff in the case until you have received a confirmation to your personal email address when we have finished processing your contact information, but that confirmation may be several weeks or longer after you have sent the information to us.

IT IS SO ORDERED.

s/ Patricia E. Campbell-Smith
PATRICIA E. CAMPBELL-SMITH
Chief Judge

Exhibit A

DO NOT CONTACT THE COURT OR YOUR AGENCY ABOUT THIS NOTICE

NOTICE OF LAWSUIT AGAINST UNITED STATES
(agencies other than Homeland Security for which excepted employees are not identified)

1. INTRODUCTION

Federal employees who were declared “excepted” employees (sometimes referred to in the media as “essential” employees) during the partial government shutdown in October 2013 have sued the United States in the United States Court of Federal Claims. They contend that the Fair Labor Standards Act (“FLSA”) required the Government to pay them and other excepted employees a minimum wage and overtime compensation on their regularly scheduled paydays for work performed during the shutdown. They claim that the Government violated the FLSA by not paying many FLSA non-exempt employees minimum or overtime wages for work performed October 1-5, 2013 on their regularly scheduled paydays.

You were sent this Notice because the parties believe that you may meet all five conditions to participate in this lawsuit. You are eligible if, between October 1 and October 5, 2013:

- a. you were a federal employee; and
- b. you were classified as “non-exempt” under the FLSA; and
- c. you were deemed an “excepted” employee;¹ and
- d. you worked for any amount of time between October 1 and October 5, 2013; and
- e. you were not paid for work performed October 1-5, 2013 on your regularly scheduled payday.

However, if you are disqualified under one of these conditions, then you are not eligible to participate.

This notice informs you how your rights under the FLSA may be affected by this lawsuit and of the procedure for participating in this lawsuit, if you are eligible to participate and choose to do so.

2. THE COURT’S DECISION ON THE GOVERNMENT’S MOTION TO DISMISS

The Court issued a decision on July 31, 2014 that addresses several of the issues in this case. In summary, the Court concluded:

- The Government violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid the minimum wage for all hours worked during the week of September 29, 2013 through October 5, 2013 on

¹ If you were required to come into the office on October 1, 2013, only to assist in the orderly shutdown of your office, you are not eligible to participate in the lawsuit because you were not an “excepted” employee.

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their regularly scheduled paydays. The minimum wage is \$7.25 per hour. [For example, a violation occurred if an employee worked 40 hours that week and received less than \$290 ($\7.25×40 hours) on the scheduled payday for the work performed during the week. Any money paid for work performed on Sunday, September 29, or Monday, September 30, would count toward the \$290, but any money paid for work performed during the previous week (September 22-28, 2013) would not count toward the \$290 even though it was paid in the same paycheck];

- The Government also violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid for overtime worked during the week of September 29, 2013 through October 5, 2013 on their regularly scheduled paydays; and
- The Government did not violate the FLSA as to excepted employees who were classified as exempt under the FLSA.

The Court has not yet ruled on whether the Government is liable to pay excepted employees “liquidated damages” over and above their regular pay. If awarded, liquidated damages double the amount of minimum wages and overtime wages that should have been paid for work performed during the week of September 29, 2013 through October 5, 2013. Under the FLSA, an employer that violates the FLSA is liable for liquidated damages unless the employer proves that it acted in good faith and had reasonable grounds for believing that its act or omission was not a violation of the FLSA.

If you wish to download or print a copy of the decision, you may visit www.shutdownlawsuit.com, the website that Plaintiffs’ lawyers have created concerning the litigation, and click on the “significant filings & orders” page. You can find other documents that have been filed in the case on that page as well. Neither the Court nor the Government has reviewed or endorses the accuracy of any of the information on that website.

3. PLAINTIFFS’ LAWYERS

Plaintiffs’ lawyers in this case are:

Heidi R. Burakiewicz
Steven A. Skalet
Michael D. Lieder
Mehri & Skalet, PLLC
1250 Connecticut Avenue N.W., Suite 300
Washington, D.C. 20036
shutdownlawsuit@findjustice.com
Telephone: (202) 822-5100
Fax: (202) 822-4997

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4. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

Your rights and participation in any recovery will depend on the decision described in Section 2 above and upon future rulings by the Court. In addition, if the Government paid you more than the minimum wage on your regularly scheduled payday for work performed during the week of September 29-October 5, 2013, and if you did not work overtime that week, you may not be entitled to any recovery.

5. EFFECT OF JOINING THIS LAWSUIT

If you join the lawsuit, you will be bound by the judgment, whether it is favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the employees who have joined this lawsuit.

By joining this lawsuit, you designate the representative plaintiffs, Donald Martin, Jr., Patricia A. Manbeck, Jeff Roberts, and Randall L. Sumner, as your agents to make decisions on your behalf concerning the lawsuit by majority vote. These decisions will bind you if you join this lawsuit.

You also will be subject to a contingency fee agreement with plaintiffs' lawyers. Under that agreement if there is no recovery you will not have to pay any attorneys' fees or costs. If there is a recovery, plaintiffs' lawyers are entitled to reimbursement of all costs reasonably incurred in the litigation and to fees equal to 20% of the recovery. A copy of the fee agreement entered by plaintiffs' lawyers and the representative plaintiffs is available at the website, www.shutdownlawsuit.com, maintained by plaintiffs' lawyers. If you join the lawsuit, plaintiffs' lawyers will represent you in this lawsuit. You may communicate with them, provide input, and receive advice from them about this lawsuit. You may also seek advice from another lawyer if you choose to retain one in addition to plaintiffs' lawyers, but you will be required to pay your lawyer yourself in addition to plaintiffs' lawyers.

6. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement in this case, whether favorable or unfavorable. You will not be entitled to share in any monetary recovery in this case. You will retain the right to pursue these claims on your own behalf with a lawyer of your choosing at your expense. Claims under the FLSA must be brought within two years of when the claim accrues, unless the Government's violation of the FLSA is found to be "willful," in which case your claim could be brought up to three years after the date when it accrued. The pendency of this lawsuit will not extend the time to file your claims.

DO NOT CONTACT THE COURT OR YOUR AGENCY ABOUT THIS NOTICE

7. HOW TO PARTICIPATE IN THIS LAWSUIT

To join the litigation, go to the “Join the Case” page of www.shutdownlawsuit.com. It describes how to fill out the “Consent to Join” form online and sign it electronically. Due to the large number of persons eligible to participate, it is essential that these forms be completed and submitted online if at all possible. If you are truly unable to fill out the “Consent to Join” form online, you should follow the directions on the “Join the Case” page for further instructions.

Your signed consent form must be returned to plaintiffs’ lawyers on or before 11:59 p.m. on **[insert in bold date from court order.]** If your signed consent form is not returned by then, you will be treated as someone who has not joined the lawsuit and you will not participate in any recovery obtained against the United States in this lawsuit.

If you have questions about filling out or sending the “Consent to Join” form, you may contact plaintiffs’ lawyers identified in section 3 above or you may consult your own lawyer at your own expense.

8. NO RETALIATION PERMITTED

The Government may not discharge or otherwise discriminate or retaliate against you because you decide to take part in this case or to exercise your rights under the FLSA.

9. FURTHER INFORMATION

Further information about this notice or the lawsuit may be obtained from plaintiffs’ lawyers at the email address, mailing address, telephone number or facsimile number set out in section 3 above or by consulting www.shutdownlawsuit.com. Please do not contact the Court or your agency with questions or requests for information.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES COURT OF FEDERAL CLAIMS.

EXCEPT IN THE DECISION DESCRIBED IN SECTION 2 ABOVE, THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF PLAINTIFFS’ CLAIMS OR DEFENDANT’S DEFENSES.

NEITHER THE COURT NOR THE GOVERNMENT HAS REVIEWED OR ENDORSES THE ACCURACY OF ANY OF THE INFORMATION ON THE WEBSITE MAINTAINED BY PLAINTIFFS’ LAWYERS, WWW.SHUTDOWNLAWSUIT.COM.

Exhibit B

NOTICE OF LAWSUIT AGAINST UNITED STATES - 2

1. INTRODUCTION

Federal employees who were declared “excepted” employees (sometimes referred to in the media as “essential” employees) during the partial government shutdown in October 2013 have sued the United States in the United States Court of Federal Claims. They contend that the Fair Labor Standards Act (“FLSA”) required the Government to pay them and other excepted employees a minimum wage and overtime compensation on their regularly scheduled paydays for work performed during the shutdown. They claim that the Government violated the FLSA by not paying many FLSA non-exempt employees minimum or overtime wages for work performed October 1-5, 2013 on their regularly scheduled paydays.

You were sent this Notice because the parties believe that you may meet several of the conditions to participate in this lawsuit. You are eligible if, between October 1 and October 5, 2013:

- a. you were a federal employee; and
- b. you were classified as “non-exempt” under the FLSA; and
- c. you were deemed an “excepted” employee;¹ and
- d. you worked for any amount of time between October 1 and October 5, 2013; and
- e. you were not paid for work performed October 1-5, 2013 on your regularly scheduled payday.

However, the parties have not yet determined whether you meet all of the conditions. If you are disqualified under even one of these conditions, then you are not eligible to participate.

This notice informs you how your rights under the FLSA may be affected by this lawsuit and of the procedure for participating in this lawsuit, if you are eligible to participate and choose to do so.

2. THE COURT’S DECISION ON THE GOVERNMENT’S MOTION TO DISMISS

The Court issued a decision on July 31, 2014 that addresses several of the issues in this case. In summary, the Court concluded:

- The Government violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid the minimum wage for all

¹ If you were required to come into the office on October 1, 2013, only to assist in the orderly shutdown of your office, you are not eligible to participate in the lawsuit because you were not an “excepted” employee.

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hours worked during the week of September 29, 2013 through October 5, 2013 on their regularly scheduled paydays. The minimum wage is \$7.25 per hour. [For example, a violation occurred if an employee worked 40 hours that week and received less than \$290 ($\7.25×40 hours) on the scheduled payday for the work performed during the week. Any money paid for work performed on Sunday, September 29, or Monday, September 30, would count toward the \$290, but any money paid for work performed during the previous week (September 22-28, 2013) would not count toward the \$290 even though it was paid in the same paycheck];

- The Government also violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid for overtime worked during the week of September 29, 2013 through October 5, 2013 on their regularly scheduled paydays; and
- The Government did not violate the FLSA as to excepted employees who were classified as exempt under the FLSA.

The Court has not yet ruled on whether the Government is liable to pay excepted employees “liquidated damages” over and above their regular pay. If awarded, liquidated damages double the amount of minimum wages and overtime wages that should have been paid for work performed during the week of September 29, 2013 through October 5, 2013. Under the FLSA, an employer that violates the FLSA is liable for liquidated damages unless the employer proves that it acted in good faith and had reasonable grounds for believing that its act or omission was not a violation of the FLSA.

If you wish to download or print a copy of the decision, you may visit www.shutdownlawsuit.com, the website that Plaintiffs’ lawyers have created concerning the litigation, and click on the “significant filings & orders” page. You can find other documents that have been filed in the case on that page as well. Neither the Court nor the Government has reviewed or endorses the accuracy of any of the information on that website.

3. PLAINTIFFS’ LAWYERS

Plaintiffs’ lawyers in this case are:

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4. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

Your rights and participation in any recovery will depend on the decision described in Section 2 above and upon future rulings by the Court. In addition, if the Government paid you more than the minimum wage on your regularly scheduled payday for work performed during the week of September 29-October 5, 2013, and if you did not work overtime that week, you may not be entitled to any recovery.

5. EFFECT OF JOINING THIS LAWSUIT

If you join the lawsuit, you will be bound by the judgment, whether it is favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the employees who have joined this lawsuit.

By joining this lawsuit, you designate the representative plaintiffs, Donald Martin, Jr., Patricia A. Manbeck, Jeff Roberts, and Randall L. Sumner, as your agents to make decisions on your behalf concerning the lawsuit by majority vote. These decisions will bind you if you join this lawsuit.

You also will be subject to a contingency fee agreement with plaintiffs' lawyers. Under that agreement if there is no recovery you will not have to pay any attorneys' fees or costs. If there is a recovery, plaintiffs' lawyers are entitled to reimbursement of all costs reasonably incurred in the litigation and to fees equal to 20% of the recovery. A copy of the fee agreement entered by plaintiffs' lawyers and the representative plaintiffs is available at the website, www.shutdownlawsuit.com, maintained by plaintiffs' lawyers. If you join the lawsuit, plaintiffs' lawyers will represent you in this lawsuit. You may communicate with them, provide input, and receive advice from them about this lawsuit. You may also seek advice from another lawyer if you choose to retain one in addition to plaintiffs' lawyers, but you will be required to pay your lawyer yourself in addition to plaintiffs' lawyers.

6. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement in this case, whether favorable or unfavorable. You will not be entitled to share in any monetary recovery in this case. You will retain the right to pursue these claims on your own behalf with a lawyer of your choosing at your expense. Claims under the FLSA must be brought within two years of when the claim accrues, unless the Government's violation of the FLSA is found to be "willful," in which case your claim could be brought up to three years after the date when it accrued. The pendency of this lawsuit will not extend the time to file your claims.

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7. HOW TO PARTICIPATE IN THIS LAWSUIT

To join the litigation, go to the “Join the Case” page of www.shutdownlawsuit.com. It describes how to fill out the “Consent to Join” form online and sign it electronically. Due to the large number of persons eligible to participate, it is essential that these forms be completed and submitted online if at all possible. If you are truly unable to fill out the “Consent to Join” form online, you should follow the directions on the “Join the Case” page for further instructions.

Your signed consent form must be returned to plaintiffs’ lawyers on or before 11:59 p.m. on **[insert in bold date from court order.]** If your signed consent form is not returned by then, you will be treated as someone who has not joined the lawsuit and you will not participate in any recovery obtained against the United States in this lawsuit.

If you have questions about filling out or sending the “Consent to Join” form, you may contact plaintiffs’ lawyers identified in section 3 above or you may consult your own lawyer at your own expense.

8. NO RETALIATION PERMITTED

The Government may not discharge or otherwise discriminate or retaliate against you because you decide to take part in this case or to exercise your rights under the FLSA.

9. FURTHER INFORMATION

Further information about this notice or the lawsuit may be obtained from plaintiffs’ lawyers at the email address, mailing address, telephone number or facsimile number set out in section 3 above or by consulting www.shutdownlawsuit.com. Please do not contact the Court or your agency with questions or requests for information.

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NEITHER THE COURT NOR THE GOVERNMENT HAS REVIEWED OR ENDORSES THE ACCURACY OF ANY OF THE INFORMATION ON THE WEBSITE MAINTAINED BY PLAINTIFFS’ LAWYERS, WWW.SHUTDOWNLAWSUIT.COM.

Exhibit C

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act, 29 U.S.C. § 216(b)

1. I, the undersigned, agree to pursue my minimum wage and overtime claims arising out of work performed as an employee of the United States between October 1 and October 5, 2013 in the lawsuit captioned *Martin et al. v. United States*, No. 13-834C in the United States Court of Federal Claims.

2. I was designated as an “excepted employee.” I performed work for the United States between October 1 and October 5, 2013, but was not paid for that work on my regularly scheduled payday.

3. I understand that this lawsuit is brought under the Fair Labor Standards Act (“FLSA”), as amended, 29 U.S.C. §§ 201-219. To the best of my knowledge, as of October 1, 2013, I was classified as “non-exempt” under the FLSA.

4. I consent, agree and opt in to become a plaintiff and to be bound to any judgment by the Court or any settlement of this action.

5. I designate the law firm of Mehri & Skalet PLLC to represent me for all purposes in this action pursuant to the terms of the Retainer Agreement found at www.shutdownlawsuit.com.

6. I also designate the representative plaintiffs identified in the Notice as my agents to make decisions by majority vote on my behalf concerning the litigation, including as to any settlement agreements.

Date: _____

Signature

First Name M.I. Last Name

Home Street Address

City State Zip Code

Federal Agency Component¹ Job Location (City, State)

¹ The component is the major division of the agency for which you work. Examples are Department of Homeland Security (agency) and U.S. Customs and Border Protection (component) or Department of Justice (agency) and Bureau of Prisons (component).

Duty Assignment

Job Title

Personal Email Address²

Home Phone Number³

Cell Phone Number

XXX-XX-
Social Security Number (last four digits only for identification)

² Do not provide your government email address. If you do not have a personal email address, please provide us with the email address of a trusted family member or friend.

³ If you have only a home phone or only a cell phone, please put the same phone number in each box.