

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

DONALD MARTIN, JR., et al.	:	
	:	Civil Action No.: 13-834C
Plaintiffs,	:	
v.	:	Judge Patricia E. Campbell-Smith
	:	
THE UNITED STATES OF AMERICA	:	Collective Action
	:	
Defendant.	:	
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**PLAINTIFFS' MOTION TO CONDITIONALLY CERTIFY COLLECTIVE ACTION,  
APPROVE LANGUAGE OF PROPOSED NOTICE AND CONSENT FORMS,  
DIRECT ISSUANCE OF NOTICE PRIMARILY VIA EMAIL,  
PERMIT ELECTRONIC SIGNATURES ON CONSENT FORMS AND  
PERMIT PLAINTIFFS TO FILE CONSENT FORMS ON CD-ROMS**

Plaintiffs, by their undersigned counsel, move the Court for entry of an order (“Order”) granting the following relief:

1. Conditionally certifying the following collective action pursuant to 29 U.S.C. § 216(b):  
  
all United States Government employees who (a) were classified by Defendant as “Essential Employees” for purposes of the October 2013 partial government shutdown; (b) performed work for Defendant at any time during the period from October 1 through October 5, 2013; and (c) were not paid for such work between October 1 and October 5 on their regularly scheduled payday for biweekly pay period 19, which covered the period from September 22, 2013 through October 5, 2013;
2. Approving the form of Notice of Lawsuit Against United States attached as Exhibit A hereto (“Notice”) and the form of Consent to Join Collective Action attached as Exhibit B hereto (“Consent”);
3. Directing the Defendant to send by email within 30 days after entry of the Order a copy of the Notice to the work email addresses of all members of the collective

action (“Members”) who are still employed by the Defendant on the date of the Order. The Notice shall be attached to an email entitled “Notice of Your Rights in a Collective Action Lawsuit Arising Out of the Government Shutdown.” The Notice shall come from the entity that administers payroll for each agency. The text of the email shall state:

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

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4. Directing the Defendant to serve within 45 days after entry of the Order a certificate stating, for each agency, the number of persons to whom email notice was sent and the number, if any, for whom the Notice bounced back as undeliverable. For any such persons, Defendant shall provide Plaintiffs’ counsel with the same information as required pursuant to paragraph 5.

5. Directing the Defendant to provide an electronic spreadsheet to Plaintiffs’ counsel in a mutually agreeable format within 21 days after entry of the Order displaying the names, last known email address (if known), and last known mailing address for all Members who were no longer employed by the Defendant on the date of entry of the Order.

6. Directing Plaintiffs, within 42 days after entry of the Order, to send a copy of the Notice by email or United States first class mail to all persons listed on that spreadsheet at the address listed on that spreadsheet.

7. Directing Plaintiffs, within five business days after receipt of notice that delivery was not made to any Member identified on the spreadsheet identified in paragraph 4, to (a) send the Notice to the Member at any other address that had been provided by Defendant in the spreadsheet, and (b) identify that Member to Defendant. Defendant shall conduct a reasonable search for updated contact information for any such Member and provide Plaintiffs with such updated information within ten business days after receipt of the identifying information from Plaintiffs. Plaintiffs shall send the Notice to the Member at any new contact information provided by Defendant within five business days after receipt of the updated information from Defendant.

8. Giving Members 120 days after entry of this Order to submit to Plaintiffs' counsel a signed Consent form in order to participate in this lawsuit. Any Members who do not timely submit the form to Plaintiffs shall not be allowed to participate in the lawsuit unless they demonstrate excusable neglect for failing to submit the form in a timely manner.

9. Giving Plaintiffs 150 days after entry of this Order to file all Consents with the Court, along with an alphabetical list of the persons submitting these Consents.

10. Permitting Members who complete the Consent form, or the previous Consent to Become Party Plaintiff form used by Plaintiffs prior to the date of this Order, to 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.

11. Permitting Plaintiffs to file and serve 100 or more Consents with the Court on a CD-ROM instead of using the ECF filing system, provided that Plaintiffs also file using the ECF system an alphabetical list of those opt-ins. The list(s) shall contain the last name, first name, middle initial, home street address, city, state, zip code, federal agency, job location, duty assignment, job title and last four digits of social security number for each such person, as that information has been provided by such persons.

Legal arguments in support of the Motion are contained in the accompanying Memorandum. Factual support is contained in the accompanying declarations of Heidi R. Burakiewicz, David Anderson, Valerie Baham, Kamilah Ballard, George Clapper, Richard Chamberlain II, Jody Cook, Martina Copeland, Kevin Jennings, Lewis Jones, Shawn Melvin, Stephen Plank, Jeff Roberts, Jeremiah Rowell and Lessie Torrain. Additional factual support is contained in a variety of cited documents available on the Internet, relevant portions of which are quoted in Appendix A to the Memorandum.

Plaintiffs' counsel have consulted with Defendant's counsel about the requests in the Motion. Defendant has advised that it does not consent to any of the requests, but takes no position as to the request in paragraph 11. Plaintiffs request that the Court issue an Order as to that request in advance of its Order as to the other issues to facilitate subsequent submission of Consent to Join forms.

Plaintiffs request oral argument on their Motion.

Dated: January 28, 2014

Respectfully submitted,

/s/ Heidi R. Burakiewicz  
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Additional Counsel for Plaintiffs

