

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STEPHEN ADAMS, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 90-162C
)	and Consolidated Cases
THE UNITED STATES,)	(Judge Lynn J. Bush)
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s Order of March 25, 2011, defendant respectfully submits the following joint status report on behalf of all parties. Counsel for the parties have conferred regarding the filing of this document, and counsel for plaintiffs have authorized counsel for defendant to state that plaintiffs concur in the contents of this status report.

1. The parties have conferred and continue to confer with regard to various remaining matters in this litigation.
2. Authority has been granted to accept plaintiffs’ offer to settle all outstanding claims of 1612 plaintiffs, inclusive of claims for attorney fees, costs, and expenses, and to settle all claims of all other plaintiffs for attorney fees, costs, and expenses, except for fees and expenses incurred in connection with claims that have not yet been resolved. The parties expect to sign a settlement agreement and file an appropriate stipulation of partial dismissal in the near future. This settlement will resolve all outstanding Fair Labor Standards Act (“FLSA”) claims in these consolidated actions arising from plaintiffs’ employment as GS-9 through GS-13 criminal investigators, except for the claims of certain plaintiffs who also assert certain other claims that have not yet been resolved, and except for the claims of certain plaintiffs arising from employment at the Immigration and Naturalization Service and the Federal Law Enforcement Training Center. The settlement will also result in the stipulation to dismiss all but 713 plaintiffs in these consolidated actions.

3. As stated in previous joint status reports, plaintiffs' counsel provided Government counsel a list of GM-13 plaintiffs who they believe should not have been classified as FLSA-exempt, and Government counsel forwarded the list to the agencies involved to ascertain whether, despite these plaintiffs' GM designation, they were non-managerial and did not perform exempt duties. The Government believes, based upon the information developed thus far, that most if not all of these plaintiffs were properly treated as exempt while in GM-13 positions, based upon the duties of these positions. The Government had provided plaintiffs' counsel with an explanation and certain documents underlying this conclusion, including plaintiff-specific information as to all but one of the agencies involved. The Government anticipates providing plaintiff-specific information as to the remaining agency within the next few days. The parties continue to discuss this issue.

4. As previously reported, by letter dated April 28, 2010, plaintiffs' counsel proposed terms for settling claims for alleged underpayment of Administratively Uncontrollable Overtime ("AUO") by the Defense Criminal Investigative Service ("DCIS"), and the Government counsel responded to this proposal by letter dated June 3, 2010. With few exceptions, these claims have since been subsumed under the pending settlement described in paragraph 2, above. Since the filing of the parties' last Joint Status Report, the parties have not further discussed the few exceptions.

5. By letter dated October 13, 2010, plaintiffs' counsel presented a settlement proposal with respect to the claims of approximately 50 plaintiffs who worked for the Office of Personnel Management ("OPM") as Series 1810 background investigators. Since the filing of the parties' last Joint Status Report, counsel for the parties have further discussed various particulars of this proposal, and intend to continue discussing this matter.

6. On or about September 17, 2010, defendant served discovery requests concerning the claims asserted by approximately 60 plaintiffs arising from their transfer to Opa Locka Airport upon

the closing of Homestead Air Force Base following Hurricane Andrew. On or about January 31, 2011, plaintiffs served discovery requests concerning these claims. The parties have responded to these requests, except for 18 plaintiffs. Plaintiffs' counsel have informed Government counsel that, despite their best efforts, they were not able to obtain these plaintiffs' responses to defendants' discovery requests. Finally, by letter dated April 28, 2011, plaintiffs transmitted a settlement proposal concerning these claims. Defendant anticipates responding to this proposal in the near future.

7. Other claims and issues that are under discussion between the parties include the following:

- a. Technicians and other plaintiffs in non-1811 positions at the Department of Homeland Security and the Drug Enforcement Administration
- b. Sunday premium
- c. Michael Banas - Defense Security Service Background Investigator and Customs Import Specialist
- d. Erroneous withholdings from deceased plaintiffs
- e. USSS1802 (Randy Espinoza, Scott Curtis, and Tom Radtke).

Certain previous joint status reports indicated that the claims of another Series 1802 Secret Service plaintiff, John P. Connelly, were also under discussion. As stated in the parties' last Joint Status Report, however, defendant has concluded that all of the claims pleaded by plaintiff Connelly have been resolved. At all relevant times, plaintiff Connelly occupied position at grade GS-8, and, as such, was treated by the Government as covered by the FLSA. His complaint does not allege overtime claims for his time in this positions, except for a so-called *Lanehart* claims, which was

settled in November 1994. Plaintiffs contend that plaintiff Connelly is owed overtime for the period when he was a GS-8.

8. The parties propose that they submit a joint status report on or before July 27, 2011, to apprise the Court of the status of the resolution of the above-discussed matters.

Respectfully submitted,

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