

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DONALD D. MARTIN, JR., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 13-834C
)	(Judge Patricia Campbell-Smith)
THE UNITED STATES,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s order dated March 10, 2017, the parties respectfully submit this status report regarding the parties’ efforts to calculate the amount of liquidated damages that may be due each collective action member pursuant to the Court’s prior decisions.

The parties’ previous status report was submitted on October 24, 2019. Dkt. No. 201. The parties’ counsel met with defendant’s consultant in September 2019, and the consultant has provided updated data to the parties. To date, defendant’s consultant has determined that 3,271 opt-in plaintiffs are ineligible for damages, based upon verified data by the consultant or upon information provided by the various agencies that the consultant verified by what he considers to be a statistically significant sampling. This number includes 2,222 individuals whom the agencies confirmed were not employees, do not meet the definition of a collective action member because they were FLSA exempt, did not work during October 1-5, 2013, or were paid on their regularly scheduled paydays. This number also includes 1,049 individuals who submitted duplicate claims. In addition, there are 187 individuals for whom (1) the agencies could not confirm employment or (2) could not otherwise identify from the information provided by plaintiffs. To date, plaintiffs’ counsel has not provided defendant with additional information for any of those 187 individuals, although plaintiffs’ counsel states that they are continuing to attempt to locate additional information for them. Further, there remain 12 individuals for whom

their respective agencies are unable to provide requested data, and the parties are working on a methodology for determining damages calculations for those 12 individuals.

The remaining 21,781 individuals are eligible for damages, and the parties continue to finalize the methodology and damages for these individuals. Particularly, although the parties have likely agreed to the methodology for calculating liquidated damages for individuals who did not work overtime between October 1-5, 2013, they are still finalizing the methodology and damages for the approximately 2,617 individuals who worked some measure of overtime during that time. Further, the parties are in the process of reaching agreement on how to resolve the issue of the amount of reasonable attorney fees to which plaintiffs' may be entitled pursuant to the Fair Labor Standards Act.

During the week of December 16, 2019, counsel for defendant tentatively intends to request dismissal or summary judgment regarding the 187 plaintiffs that counsel for plaintiff cannot identify, the 2,222 plaintiffs that are ineligible for damages, and the duplicate claims of the 1,049 plaintiffs that plaintiffs' counsel previously agreed submitted duplicative opt-in forms. Counsel for plaintiff intends to object to any motion to dismiss.

Due to the upcoming holidays, the parties respectfully request permission to submit their next joint status report on January 8, 2020, to further update the Court on the parties' damages calculation efforts for the 21,781 individuals who, at this time, the consultants have determined remain eligible for damages.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

s/Heidi R. Burakiewicz
HEIDI R. BURAKIEWICZ
Kalijarvi, Chuzi, Newman
& Fitch, P.C.
818 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20006
(202) 331-9260

Steven A. Skalet
Michael Lieder

Mehri & Skalet PLLC
1250 Connecticut Avenue NW
Suite 300
Washington, DC 20036
(202) 822-5100
Attorneys for Plaintiffs

s/ Reginald T. Blades, Jr.
REGINALD T. BLADES, JR.
Assistant Director

s/Erin K. Murdock-Park
ERIN K. MURDOCK-PARK
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
(202) 616-3753
erin.k.murdock-park@usdoj.gov
Attorneys for Defendant

November 25, 2019