

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

JOINT STATUS REPORT

Pursuant to the Court's Order of February 25, 2010, the parties respectfully advise the Court as follows:

1. The parties have conferred and continue to confer with regard to various remaining matters in this litigation.
2. Concerning criminal investigators whose claims have not yet been litigated or settled, settlement has not yet been achieved with regard to GS-9 through GS-13 criminal investigators at the following agencies:

Department of the Treasury, Social Security Administration, Small Business Administration, Resolution Trust Corporation, Railroad Retirement Board, National Aeronautics and Space Administration, General Services Administration, Federal Deposit Insurance Corporation, Department of Transportation, Federal Aviation Administration, Department of the Navy, Department of Labor, Department of Justice, Department of Defense, General Accounting Office, Federal Emergency Management Agency, Equal Employment Opportunity Commission, Department of Education, Naval Criminal Investigative Service, Defense Criminal Investigative Service, Federal

Bureau of Investigation, Department of Health and Human Service,
United States Marshals Service, and others.

Settlements have been achieved at the GS-9-12 levels but not at the GS-13 level
at the following agencies:

Department of Commerce (including National Oceanic Atmospheric
Administration, the Bureau of Export Administration, and the Office
of Export Enforcement), Department of the Interior (including the
Fish and Wildlife Service), Department of Veterans Affairs,
Environmental Protection Agency, Food and Drug Administration,
Immigration and Naturalization Service, and others.

3. As stated in the parties' joint status report of February 26, 2010, counsel for the parties have conducted further discussions in an effort to achieve a settlement that would resolve the majority of claims of the plaintiffs employed by the agencies above as well as plaintiffs employed by the Office of Inspector General ("OIG") of the Department of Health and Human Services ("HHS") and the OIG of the Department of Housing and Urban Development ("HUD"). Plaintiffs' counsel have reviewed spreadsheets prepared by the Government setting forth employment history data and proposed back pay amounts for almost all of the outstanding criminal investigator claims, and have forwarded the relevant calculations, as well as a draft of a proposed settlement agreement, to affected plaintiffs for their review. By letter of March 10, 2010, plaintiffs' counsel informed the Government that as of that date they had been authorized to settle the claims of 1,357 plaintiffs based upon the terms of the draft settlement agreement and the amounts specified in a list attached to the letter. The Government is in the process of reviewing plaintiffs' March 10, 2010 proposal. As part of this process, Government counsel has forwarded the letter to the various affected agencies,

together with the portion of the referenced list relevant to the agency in question. Some of the agencies have responded with comments, and responses from the other agencies are expected shortly.

4. Based upon the Government's review of its initial determination that certain plaintiffs were not eligible for back pay under the Partial Settlement Agreement covering the claims of Marine Enforcement Officers at the United States Customs and Border Protection within the Department of Homeland Security and/or its predecessor, the United States Customs Service, the Government has determined that some of these plaintiffs were eligible to be paid under this settlement, and has paid these plaintiffs accordingly. The Government has confirmed its position that five plaintiffs in another case covered by the same settlement agreement – Boyer v. United States, No. 00-641C (Fed. Cl.) – are not entitled to payment under the settlement agreement, because they were not treated as exempt from the FLSA during the times covered by the settlement. During these times, these plaintiffs were classified as non-exempt, and the Government has concluded that they in fact received FLSA overtime pay for various pay periods. Plaintiffs' counsel believe, however, that the amount of FLSA overtime pay received by these plaintiffs may not be correct. Counsel for the parties are continuing to review this matter.

5. 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 these plaintiffs were properly treated as exempt while in GM-13 positions, based upon the duties of these positions. The Government has provided plaintiffs' counsel with certain documents underlying this conclusion, and the parties continue to discuss this issue.

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

- a. Technicians and other plaintiffs in non-1811 positions at various agencies, including the Department of Homeland Security
- b. USCS Operational Enforcement Officers
- c. Sunday premium
- d. Opa Locka claim which was added by way of an amendment as a result of Hurricane Andrew
- e. Underpayment of AUO at certain agencies (principally DCIS)
- f. USSS1802 (Randy Espinoza, John P. Connelly, Scott Curtis, and Tom Radtke).
- g. Michael Banas - Defense Security Service Background Investigator and Customs Import Specialist
- h. Erroneous withholdings from deceased plaintiffs
- i. Attorneys' fees and expenses.

7. Insofar as the dismissal of any claims are concerned, because of the fact that there may be plaintiffs whose employment by defendant was with more than one agency, one of which has not yet been settled, and because plaintiffs' claims for attorneys' fees and expenses have not been resolved, plaintiffs believe it not to be practical or appropriate to dismiss any of the pending claims. Defendant believes that it is appropriate to dismiss all plaintiffs who do not possess any identifiable unadjudicated claims pending in this case.

8. The parties propose that they submit a joint status report on or before June 22, 2010, to apprise the Court of the status of the resolution of the above-discussed matters.

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Dated: April 20, 2010

Respectfully submitted,

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Dated: April 20, 2010

CERTIFICATE OF FILING

I hereby certify under penalty of perjury that on this 20th day of April 2010, a copy of the foregoing "JOINT STATUS REPORT" was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Jules Bernstein