

# In the United States Court of Federal Claims

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GERALD K. KANDEL, *et al.*,

*Plaintiff,*

v.

THE UNITED STATES,

*Defendant.*

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Case Number 06-872 C

Senior Judge Loren A. Smith

Filed: April 19, 2012

## ORDER APPROVING CLASS CERTIFICATION

The Court hereby **GRANTS** Plaintiffs' Motion for Class Certification, Notice to the Class, Appointment of Class Counsel, and Appointment of Class Administrator. The Court concludes that, pursuant to Rule 23 of the Rules of the Court of Federal Claims ("RCFC"), the potential Class in this matter is so numerous that joinder of all members is impracticable, that the class action is manageable; that the Plaintiffs' claims are typical of the claims of the rest of the Class; that the questions of law or fact common to the members of the class predominate over any question affecting only individual members, that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; that the Plaintiffs, and the lawyers representing the Class, will fairly and adequately represent the interests of the Class; and that the prerequisites to the certification of a class action and the maintainability of the class action have been satisfied pursuant to RCFC 23 (a) and (b).

### NOTICE:

The Court further finds that the proposed form of notice by mail constitutes the best notice practicable and complies in all respects with such rule and the requirements of due

process, and such notice by mail which refers to the Court's Official Notice to be included on the website, "[www.fedlumpsum.com](http://www.fedlumpsum.com)," is hereby approved. Such notice refers potential members of the class to the website to file their claim online or to call a toll-free telephone number to receive by mail an "opt-in claim form" together with the Court's Official Notice to potential members of the *Kandel* Class as required by RCFC 23(c)(2).

**DEFINITION OF THE CLASS:**

The Court hereby **DEFINES** the Kandel Class as those qualified, eligible individuals who file their "opt-in claim form" in a timely manner as specified by the Court and who are identified as follows:

All civilian employees who retired, died, or separated under conditions enumerated in 5 U.S.C. §§ 5551 from October 14, 1993 and before September 7, 1999 from employment by all agencies, boards, commissions, and any other federal establishment or instrumentality of the United States other than the agencies, boards, commissions, and other federal entities identified in Exhibit A attached hereto and the following: Department of Agriculture, Department of Commerce, Department of Defense and its component agencies (including the Corps of Engineers), Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, General Services Administration, Environmental Protection Agency, National Aeronautics Space Administration, Social Security Administration, Office of Personnel Management, General Accountability Office, Central Intelligence Agency, and the Department of Veterans Affairs; and

(a) who received a lump-sum payment for unused annual leave upon retirement, death or separation, and who did not receive a supplemental lump-sum payment as a result of the settlement of *Archuleta v. United States*; and/or

(b) whose pay rate would have increased as a result of any across-the-board annual adjustment and locality pay adjustment or general system-wide pay increase that would have become effective for that employee had the employee remained in service for the period of his or her unused annual leave, but such increased rate was not included in a supplemental lump-sum payment for unused annual leave or in the calculation of his or her initial lump-sum payment for unused annual leave; and/or,

(c) who regularly received twenty-five percent (25%) of his or her rate of basic pay or work performed during a regularly scheduled, basic eight-hour tour of duty pursuant to 5 U.S.C. § 5546(a) during the period from October 14, 1993 to September 30, 1997 as evidenced by payment of Sunday pay pursuant to 5 U.S.C. § 5546(a) in the pay period immediately before he or she retired, or separated, or died, and whose lump-sum payment did not include such Sunday pay for the period of his or her unused annual leave; and/or

(d) who received a foreign post allowance under 5 U.S.C. 5924(1) as authorized by the U.S. Department of State's Standardized Regulations (Government Civilians, Foreign Areas) immediately prior to retirement, death, or separation in the foreign area but such allowance was not included in the calculation of the lump-sum payment for unused annual leave.

### **APPOINTMENT OF CLASS COUNSEL**

The Court hereby **ORDERS** that Mr. Ira M. Lechner, Esq. is certified and appointed as Class Counsel and Mr. Steven W. Winton of Winton Law Corp. is certified and appointed as Co-Class Counsel.

### **APPOINTMENT OF CLASS ADMINISTRATOR:**

The Court hereby **ORDERS** that Epiq Systems Inc. is certified and appointed as Class Action Administrator.

The Administrator shall provide either summary notice of the certification of the class by postcard or by mailing the Court's Official Notice and an "opt-in claim form" to the potential class members, where last known addresses are available, paid for by Class Counsel. All notices will refer to a website that will provide specific details of the terms of the class certification as contained in the Court's Official Notice, as well as "opt-in claim forms" which the potential members of the *Kandel* Class may file directly by the Internet, or by mail obtained by calling a toll free telephone number, no later than sixty days after initial mailing of the notice by the Administrator, or no later than ninety days after initial mailing of any notices which are returned by the Post Office to the Administrator as undeliverable. The Administrator and Defendant shall use their best efforts to identify a current address for any undeliverable mail. Defendant shall supply the Administrator, in electronic form, the names, addresses, and social security numbers of all potential class members identified by Plaintiffs who retired, separated, or died from October 14, 1993 to September 6, 1999 to the extent such information is reasonably known and available after confirming the last-known home address of all such former employees with the United States Office of Personnel Management, subject to a Protective Order approved by the Court. Defendant shall supply to the Administrator the names, last known home addresses, and social security numbers of all potential class members identified by the Plaintiffs as soon as is practicable and the Administrator shall mail the approved appropriate notice as soon as possible thereafter.

It is so **ORDERED**.

s/ Loren A. Smith  
LOREN A. SMITH,  
Senior Judge

**EXHIBIT A Excluded Agencies**

1. African Development Foundation
2. American Battle Monuments Commission
3. Appalachian Regional Commission
4. Architectural and Transportation Barrier Compliance Board
5. Arctic Research Commission
6. Armed Forces Retirement Home
7. Broadcasting Board of Governors
8. Bureau of Transportation Statistics – DOT
9. Central Intelligence Agency
10. Committee for Purchase from People Who Are Blind or Severely Disabled
11. Coordinating Council on Juvenile Justice and Delinquency Prevention
12. Court of Appeals for the Armed Forces
13. Defense Nuclear Facilities Safety Board
14. Delaware River Basin Commission
15. Farm Credit Administration/ Insurance Corporation
16. Federal Election Commission
17. Federal Housing Finance Agency (Board)
18. Federal Judicial Center
19. Federal Law Enforcement Training Center
20. Federal Maritime Commission
21. Federal Mine Safety and Health Review Commission

22. Federal Reserve System [Board of Governors]
23. Federal Retirement Thrift Savings Board
24. Government Printing Office
25. Institute of Museum and Library Services
26. International Boundary and Water Commission
27. International Joint Commission: United States & Canada
28. Japan-United States Friendship Commission
29. John F. Kennedy Center for the Performing Arts
30. Legal Services Corporation
31. Library of Congress
32. Medicare Payment Advisory Commission
33. Merit Systems Protection Board
34. National Bipartisan Commission on the Future of Medicare
35. National Council on Disability
36. National Credit Union Administration
37. National Gallery of Art
38. National Indian Gaming Commission
39. National Transportation Safety Board
40. Northwest Power Planning Council
41. Occupational Safety and Health Review Commission
42. Offices of the Executive Office of the President
43. Office of Compliance
44. Office of Government Ethics
45. Office of Special Counsel

46. Peace Corps
47. Pension Benefit Guaranty Corporation
48. Presidio Trust
49. Resolution Trust Corporation
50. Social Security Advisory Board
51. Susquehanna River Basin Commission
52. Tennessee Valley Authority
53. U.S. Centennial of Flight Commission
54. U.S. General Accountability Office
55. U.S. Holocaust Memorial Museum
56. U.S. International Trade Commission
57. U.S. Surface Transportation Board
58. U.S. Trade and Development Agency
59. Utah Reclamation Mitigation and Conservation Commission
60. U.S. Access Board