

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DANUTA YSLA, HENRIETTA
HARGRESS DAVIS, GLORIYADI
ECHEVARRIA, ARLENE FRANCES
HOBBS, TIERRA L. KELLY, JULIA M.
MULDROW,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 18-1292 C

**CLASS ACTION COMPLAINT
FOR MONEY DAMAGES**

The named plaintiffs,¹ on behalf of themselves and all others similarly situated, allege as follow:

I. INTRODUCTION

1. This opt-in class action seeks the recovery of back pay and interest, pursuant to the Back Pay Act, 5 U.S.C. §5596, on behalf of the eligible opt-in class of present and former Registered Nurses (“RNs”), Physician Assistants (“PAs”), and Expanded Functions Dental Assistants (“EFDAs”) with respect to “weekend” premium pay (on tours of duty including Saturday hours but excluding any Sunday hours), night differential pay, and/or overtime premium pay (other than hours on a compressed schedule), that the Department of Veterans Affairs (“VA”) failed to include in the compensation (“pay”) of RNs, PAs, and EFDAs since August 23, 2012 for any of the following excused paid leaves of absence as enumerated in Title 5, Part III, Subpart E, Chapter 63, Subchapter II: (1) absence of veterans to attend funeral service leave pursuant to 5 U.S.C. §6321; (2) leave for jury or witness service pursuant to 5 U.S.C.

¹ A list of each Plaintiff’s name, home address, and the last four numbers of her or his redacted social security number is attached as Plaintiffs’ Exhibit 1.

§6322; (3) military training leave for Reserves and National Guard pursuant to 5 U.S.C. §6323; (4) absence in connection with funerals of immediate relatives in the Armed Forces pursuant to 5 U.S.C. §6326; (5) absence in connection with serving as a bone-marrow or organ donor pursuant to 5 U.S.C. §6327; (6) Disabled Veteran leave pursuant to 5 U.S.C. §6329; (7) administrative leave pursuant to 5 U.S.C. §6329a; (8) investigative and notice leave pursuant to 5 U.S.C. §6329b; and/or (9) weather and safety leave pursuant to 5 U.S.C. §6329c.

2. This action seeks to exclude the VA's application of its "eight-hour rule" in the recovery of back pay and interest pursuant to the Back Pay Act, 5 U.S.C. 5596, on behalf of the eligible opt-in class of present and former RNs, PAs, and EFDAs with respect to "night differential pay" that the VA failed to include in the compensation ("pay") of RNs, PAs, and EFDAs since August 23, 2012 for any of the following excused paid leaves of absence pursuant to Title 5, Part III, Subpart E, Chapter 63, Subchapter I: (1) authorized and accrued "annual leave with pay" pursuant to 5 U.S.C. 6303; and/or (2) authorized and accrued "sick leave with pay" pursuant to 5 U.S.C. 6307.

3. This action also seeks the recovery of back pay and interest since August 23, 2012 pursuant to the Back Pay Act, 5 U.S.C. 5596, on behalf of the eligible opt-in class of RNs, PAs, and EFDAs with respect to "weekend" premium pay on tours of duty including Saturday hours (but excluding any Sunday hours), and/or regularly scheduled overtime premium pay (other than hours on a compressed schedule) that the VA failed to include in the compensation/payments ("pay") of RNs, PAs, and EFDAs who were excused or prevented from work on holidays.

4. Unless the VA issues a "regulation" to the contrary, RNs, PAs, and EFDAs are entitled to same "pay" for authorized and accrued annual leave, sick leave, court leave, military leave, [and all other excused paid leaves of absence as enumerated in Title 5, Part III, Subpart E, Chapter 63, Subchapter II] equal to the "additional pay" pursuant to title 38 they would have received had they worked their regular scheduled hours until their authorized leave expired without application of the eight-hour rule because "[t]he Court holds that the eight-hour rule,

from 5 U.S.C. § 5545(a)(2), has no application to RNs.” *Curry v. United States*, 66 Fed. Cl. 599, 606-607 (Fed. Cl. 2005),

5. The eligible opt-in class of present and former RNs, PAs, and EFDAs consists of the following: (a) who are or were employed by the VA from and since August 23, 2012; (b) who regularly received any premium pay in the form of “additional pay” for the performance of work pursuant to 38 U.S.C. sections 7453(b), (c), and/or (e), and/or 7454(a); (c) who used any authorized and accrued paid leave enumerated in paragraphs 1 and 2, *supra*, instead of working tours of duty which included hours of scheduled work on Saturday between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours); and/or instead of working tours of duty which included hours of scheduled work at night between 6 p.m. and 6 a.m.; and/or instead of working tours of duty which included hours of scheduled daily or weekly overtime (other than hours on a compressed schedule); and/or (d) who were officially excused (or prevented) from performing regularly scheduled work on official paid holidays instead of working tours of duty which included hours of scheduled work on Saturday between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours); and/or instead of working tours of duty which included hours of scheduled work at night between 6 p.m. and 6 a.m.; and/or instead of working tours of duty which included hours of scheduled daily or weekly overtime (other than hours on a compressed schedule).

6. None of the payments for back pay and interest sought by this opt-in class action were paid as back pay damages to members of the certified class in *Curry/Quimby et al. v. United States*, No. 02-101C, inasmuch as the class period in *Curry* did not encompass the period from or after August 23, 2012.

II. STATUTORY ALLEGATIONS

7. 38 U.S.C. §§7453(b) and 7454(a) provide that RNs, PAs, and EFDAs are entitled to “additional” night premium pay of 10% under title 38 for performance of work on an entire shift if four or more hours fall between 6 p.m. and 6 a.m. and otherwise “for each hour of service performed between those hours” without application of the “eight-hour rule.”

8. 38 U.S.C. §§7453(c) and 7454(a) provide that RNs, PAs, and EFDAs are entitled to “additional” premium pay of 25% under title 38 for performance of work on tours of duty “within the period commencing at midnight Friday and ending at midnight” on Saturday (excluding any Sunday hours) “for each hour of such service” performed between those hours.

9. 38 U.S.C. §§7453(e) and 7454(a) provide that RNs, PAs, and EFDAs “performing officially or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight consecutive hours, shall receive overtime pay for each hour of such additional service” at a rate of “one and one-half times such nurse’s [or PA’s or EFDA’s] hourly rate of basic pay.”

10. Title 5, U.S.C. Chapter 63, Subchapter II, provides the following leaves of absence: (1) 5 U.S.C. Chapter 63, §6322(a) provides for jury duty “leave without loss of, or reduction in, pay”; (2) 5 U.S.C. Chapter 63, §6323(a)(1) provides for military training leave “without loss in pay”; (3) 5 U.S.C. Chapter 63, §6326(a) provides under specified provisions for funeral “leave without loss of, or reduction in, pay”; (4) 5 U.S.C. Chapter 63, §6326 provides for absence in connection with funerals of immediate relatives in the Armed Forces “without loss of, or reduction in, pay”; (5) 5 U.S.C. Chapter 63, §6327(a) provides for “leave without loss of or reduction in pay...for the time necessary to permit such employee to serve as a bone-marrow or organ donor”; (6) 5 U.S.C. Chapter 63, §6329 provides under specified provisions for Disabled Veteran leave “without loss or reduction in pay”; (7) 5 U.S.C. Chapter 63, §6329a (a)(1)(A) provides “without loss of or reduction in-(i) pay” for administrative leave; (8) 5 U.S.C. Chapter 63, §6329b provides for investigative and notice leave “without loss of or reduction in-pay”; and (9) 5 U.S.C. Chapter 63, §6329c provides for weather and safety leave “without loss of or reduction in the pay of the employee or employees....”

11. RNs, PAs, and EFDAs are or were “employees” since August 23, 2012 entitled to “pay” or “without loss or reduction in pay” for authorized and accrued leave under the “leave with pay” statutes of title 5 enumerated in paragraph 10, *supra*, of the United States Code equal

to the same “pay” they would have received had they worked their regularly scheduled hours until their authorized leave expired.

12. PAs, and EFDAs are or were “employees” entitled to “pay” for authorized and accrued annual leave pursuant to 5 U.S.C. §6303 and/or sick leave pursuant to 5 U.S.C. §6307 equal to the same “pay” they would have received had they worked their regularly scheduled hours until their authorized leave expired, without application of the “eight-hour rule” as to “night” premium pay.

13. RNs are or were entitled to “pay” for authorized and accrued annual leave and/or sick leave pursuant to established VA policy equal to the “pay” they would have received had they worked their regular and customary scheduled hours until their authorized leave expired, without application of the “eight-hour rule” as to “night premium pay.

14. Plaintiffs, and the eligible opt-in class of similarly situated RNs, Pas, and EFDAs, who were excused or prevented from working on official paid holidays since August 23, 2012, are or were “entitled to the same pay for that day as for a day on which an ordinary day’s work is performed” pursuant to 5 U.S.C. §6104(3).

15. Since August 23, 2012, Plaintiffs and other members of the class have been regularly scheduled to work on tours of duty which included hours of scheduled work on Saturdays between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours); and/or at night between 6 p.m. and 6 a.m.; and/or on hours of scheduled daily or weekly overtime (other than hours on a compressed schedule).

16. When Plaintiffs and other members of the class used authorized and accrued leave as enumerated in paragraphs 1 and 2, *supra*, instead of working their regular tours of duty which were part of their regular tours of duty which were at night between 6 p.m. and 6 a.m.; and/or on Saturdays between midnight on Friday night and midnight on Saturday night (excluding any Sunday hours); and/or on regularly scheduled daily or weekly overtime hours (other than hours on a compressed schedule), since August 23, 2012, the “pay” they were paid for such leave did

not include an amount equal to the “additional pay” they would have regularly received while working their regular tour of duty.

17. When Plaintiffs and other members of the class were officially excused, or prevented, from work on official paid holidays, the “pay” they were paid for such holidays did not include an amount equal to the “additional pay” they would have received while working their regular tour of duty which included hours of work between Friday 12 p.m. and Saturday 12 p.m. (excluding any Sunday hours), and/or at night between the hours of 6 p.m. and 6 a.m., and/or on regularly scheduled daily or weekly overtime hours (other than hours on a compressed schedule).

18. Congress explicitly provided by 38 U.S.C. §7421(a) that the Secretary “shall prescribe by regulation the hours and conditions of employment and leaves of absence” of RNs, PAs, and EFDAs. The Secretary issued Handbook 5007/47 on March 24, 2014 (incorporating and superseding the provisions of Handbook 5007/43, issued on March 12, 2012) which changed the VA’s “pay” policy when RNs, PAs, and EFDAs use paid leave and are excused from work on holidays. The Secretary promulgated the provisions of Handbook 5007/47, rather than “by regulation,” which provide an “eight-hour rule” limiting the payment of night differential pay when employees use authorized and accrued annual leave and sick leave. Section 1(a)(1) of Handbook 5007/47 provides: “When on annual or sick leave, a nurse, PA, and EFDA shall be entitled to night differential pay otherwise appropriate, provided the total amount of such leave in a pay period, including both night and day hours, is fewer than 8 hours.”

19. The Secretary issued Handbook 5007/47, §1(b), rather than “by regulation,” excluding the payment of “weekend pay” for periods of paid leave and holidays: “Weekend pay is payable only during periods when work is performed. Weekend pay is therefore not payable for periods of paid leave or excused absence including annual leave, sick leave, compensatory time off, credit hours, military leave, court leave, excused absence on a holiday, or time off as an incentive or performance award, etc.”

20. Plaintiffs claim back pay, as well as interest on such back pay pursuant to the provisions of 5 U.S.C. § 5596(b), reasonable attorneys' fees, administrative fees, and costs.

III. JURISDICTION AND VENUE

21. Jurisdiction and venue over this action is conferred by 28 U.S.C. §1346(a)(2) (the Tucker Act); 5 U.S.C. §5596 (the Back Pay Act); the "leave with pay" statutes of Title 5; the holiday pay statute 5 U.S.C. §6104(3); VA's established policy that annual and sick leave with pay "shall accrue" to RNs; and 28 U.S.C. § 2501.

IV. FACTUAL ALLEGATIONS AS TO PAYMENT OF PREMIUM PAY

22. Plaintiffs and other eligible members of the opt-in class were or are employed by the VA as Registered Nurses (RNs), Physician Assistants (PAs), or Expanded Functions Dental Assistants (EFDAs) since August 23, 2012.

23. RNs, PAs, and EFDAs, who are eligible members of the opt-in class, were or are covered by the "leave with pay" provisions of 5 U.S.C. Chapter 63, Subchapter II, as an "employee in or under an Executive agency" as defined by section 2105 of title 5.

24. PAs, and EFDAs, who are eligible members of the opt-in class, were or are covered by the "leave with pay" provisions of 5 U.S.C. Chapter 63, Subchapter I, with respect to authorized and accrued annual leave pursuant to 5 U.S.C. 6303 and/or authorized and accrued sick leave pursuant to 5 U.S.C. 6307, as an "employee in or under an Executive agency" as defined by section 2105 of title 5.

25. RNs are or were entitled to "pay" for authorized and accrued annual leave and/or sick leave pursuant to established VA policy.

26. RNs, PAs, and EFDAs, as eligible members of the opt-in class, regularly received premium pay of 10% pursuant to 38 U.S.C. §§ 7453(b) and 7454(a) for working on tours of duty which included night hours between 6 p.m. and 6 a.m.

27. RNs, PAs, and EFDAs, as eligible members of the opt-in class, regularly received premium pay of 25% pursuant to 38 U.S.C. §§ 7453(c) and 7454(a) for working on tours of duty

which included “weekend” hours between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours, if any, on such tours).

28. RNs, PAs, and EFDAs, as eligible members of the opt-in class, regularly received time and one-half premium pay pursuant to 38 U.S.C. §§ 7453(e) and 7454(a) for working on overtime shifts in excess of eight consecutive hours per day or 40 hours in an administrative workweek (other than hours on a “compressed schedule”).

29. Plaintiffs are or were title 38 employees employed by the VA within the applicable six-year limitations period.

V. CLASS ACTION ALLEGATIONS

30. **Class Description:** The “opt-in” claimant class consists of all persons who meet the following qualifications:

(1) Registered Nurses (RNs), Physician Assistants (PAs), and Expanded Functions Dental Assistants (EFDAs) who were employed from August 23, 2012, or thereafter, by the Department of Veterans Affairs (“VA”) in the Veterans Health Administration (“VHA”);

(2) who regularly worked on a tour of duty any part of which was within the period beginning 6 p.m. and culminating thereafter at 6 a.m., and/or who regularly worked on tours of duty which included “weekend” hours between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours on such tours), and/or who regularly worked overtime in excess of eight consecutive hours per day or 40 hours in an administrative workweek (other than hours on a compressed schedule);

(3) who received premium pay of 10% pursuant to 38 U.S.C. §§ 7453(b) and 7454(a) for each such tour of duty if at least four hours of such tour fell between 6 p.m. and 6 a.m., or for each hour of service between 6 p.m. and 6 a.m. when less than four hours of such tour fell between 6 p.m. and 6 a.m.; and/or who regularly received premium pay of 25% pursuant to 38

U.S.C. §§ 7453(c) and 7454(a) for working on tours of duty which included “weekend” hours between 12 p.m. Friday and 12 p.m. Saturday (excluding any Sunday hours on such tours); and/or who regularly received time and one-half premium pay pursuant to 38 U.S.C. §§ 7453(e) and 7454(a) for working overtime in excess of eight consecutive hours per day or 40 hours in an administrative workweek (other than hours on a compressed schedule); and/or

(4) whose “night differential pay” during periods of authorized and accrued paid annual leave or sick leave was reduced by application of the “eight-hour rule” in a pay period rather than being paid the amount of “night differential pay” pursuant to 38 U.S.C. §§ 7453(b) and 7454(a) which they would have been paid had they performed their regular and customary work at night instead of using authorized paid annual leave or sick leave; and/or

(5) whose “night differential pay” pursuant to 38 U.S.C. §§ 7453(b) and 7454(a) during periods of authorized and accrued paid leave other than annual leave and sick leave, as enumerated in paragraph 10, *supra*, was not equal to the amount of “night differential pay” which such employees would have been paid had they performed their regular and customary work at night instead of using such authorized paid leave; and/or

(6) whose “pay” during periods of authorized paid leave on tours of duty in a pay period which included Saturday hours between the hours of 12 p.m. Friday and 12 p.m. Saturday (not including any Sunday hours on such tours) was reduced in amounts equal to the Saturday “weekend” premium pay pursuant to 38 U.S.C. §§ 7453(c) and 7454(a) which such employees would have been paid had they performed their regular and customary work during Saturday hours (excluding any Sunday hours on such tours) instead of using authorized paid leave; and/or

(7) whose “pay” during periods of authorized paid leave on tours of duty in a pay period was reduced in amounts equal to the overtime premium pay which such employees would have

been paid had they performed their regular and customary overtime work on such tours instead of using authorized paid leave (other than hours on a compressed schedule); and/or

(8) when members of the class were officially excused, or prevented, from work on official paid holidays, the “pay” they were paid for such excused absence on holidays did not include an amount equal to the “additional pay” they would have regularly received while working on such holiday, including work between Friday 12 p.m. and Saturday 12 p.m. (excluding any Sunday hours), and/or regularly scheduled overtime hours on such holiday (other than hours on a compressed schedule).

VI. THIS CASE IS PROPERLY MAINTAINED AS A CLASS ACTION UNDER RULE 23

31. The class is so numerous that joinder of all members is impracticable as the pool of potential class members is in excess of 5,000 present and former employees.

32. There are common questions of law and fact affecting the members of the class:

(a) The VA violated the “leave with pay” statutes of Title 5, Part III, Subpart E, Chapter 63, Subchapter II, enumerated in paragraph 10, *supra*, which are applicable to all RNs, PAs and EFDAs, by which Congress guaranteed that those employees would receive the same “pay,” or “without loss of, or reduction in, pay,” when they used such authorized paid leave as when they performed regularly scheduled work with respect to “night differential pay” and “Saturday” pay which such employees would have been paid if they had worked their regularly scheduled tours of duty instead of using authorized and accrued paid leave;

(b) The VA violated the “annual leave with pay” and “sick leave with pay” statutes of Title 5, Part III, Subpart E, Chapter 63, Subchapter I, with respect to the “night differential pay” of PAs and EFDAs by application of the “eight-hour rule,”;

(c) The VA violated its own established policy by the application of the “eight-hour rule” with respect to payment of “night differential pay” to RNs when they used authorized and accrued annual leave and sick leave;

(d) The VA violated the “leave with pay” statutes of Title 5 and its own established policy with respect to withholding payment of “Saturday additional pay” and overtime pay to RNs, PAs, and EFDAs when they used authorized and accrued paid leave (other than hours on a compressed schedule); and

(e) The VA violated 5 U.S.C. §6104(3) with respect to the “night differential pay,” “Saturday additional pay,” and regularly scheduled overtime pay of all RNs, PAs, and EFDAs when they were excused, or prevented, from scheduled work on official holidays.

33. As affirmed by *Curry, et al. v. United States*, 66 Fed. Cl. 593, 603-607 (2005); *Lanehart, et al. v. Horner*, 818 F.2d 1574 (Fed. Cir. 1987); and *Armitage, et al. v. United States*, 991 F.2d 746 (Fed. Cir. 1993), the VA violated the “contract” between the VA and RNs by which the VA guaranteed that RNs would receive the same “pay” when they used authorized and accrued paid annual leave and sick leave as they received when they performed regularly scheduled work.

34. Plaintiffs’ claims are typical of the claims of eligible members of the opt-in class because the harm suffered by Plaintiffs and the other eligible opt-in class members was caused by the same systemic policy of the VA, which was not issued or promulgated by “regulation” as required by 38 U.S.C. §7421(a), to bar remuneration for authorized and accrued paid leave and/or holidays equal to the “additional” pay which the plaintiffs and the class regularly were paid when they worked during tours of duty which included hours between 6 p.m. and 6 a.m., on Saturdays (excluding any Sunday hours), at “night” as defined, *supra*, or on daily or weekly overtime(other than hours on a compressed schedule).

35. Plaintiffs do not have interests antagonistic to, or in conflict with, members of the class.

36. Plaintiffs will fairly and adequately protect the interests of the class.

37. Plaintiffs have retained competent counsel experienced in class action litigation and in litigation involving federal pay statutes.

38. Certification of this case as a class action is appropriate because Defendant has acted on grounds applicable to all eligible RNs, PAs, and EFDAs, who opt-in as class members, by denying proper compensation since August 23, 2012 to those class members who regularly worked night hours, and/or on Saturdays (excluding any Sunday hours), and/or on overtime hours (other than hours on a compressed schedule).

VII. THE APPLICABLE LAW

39. Congress explicitly provided by 38 U.S.C. §7421(a) that the Secretary “shall prescribe by regulation the hours and conditions of employment and leaves of absence” of RNs, PAs, and EFDAs. The Secretary failed to do so by issuing Handbook 5007/43 on March 12, 2012, and Handbook 5007/47 on March 24, 2014, rather than “by regulation”, to limit the “conditions of employment and leaves of absence” when RNs, PAs, and EFDAs use “leave with pay,” and/or are excused from work on official holidays pursuant to 5 U.S.C. §6104(3).

VIII. FIRST CAUSE OF ACTION VIOLATION OF “LEAVE WITH PAY” STATUTES 5 U.S.C. §§ 6303, 6307, 6322, 6323, 6326, 6327, 6329, 6329a, 6329b, 6329c and 38 U.S.C. 7421(a) with respect to established VA “pay” policy

40. Plaintiffs incorporate herein by reference the allegations of the Complaint set forth in paragraphs 1 through 39 above.

41. The VA has failed and refused to abide by, or apply, the rule of law proclaimed by Congress pursuant to 38 U.S.C. §7421(a), by the United States Court of Federal Claims, and by the United States Court of Appeals for the Federal Circuit, in *Curry*, *Lanehart* and *Armitage, supra*, with respect to RNs, PAs, and EFDAs’ entitlement to “additional pay” while on authorized and accrued leaves of absence equal to the “additional pay” which those employees would have been paid under title 38 if they had performed regularly scheduled work at night, on tours of duty which include Saturday hours (excluding any Sunday hours), and/or on overtime (other than hours on a compressed schedule), instead of using authorized and accrued leaves of absence.

42. Members of the eligible opt-in class employed by VA regularly worked at night, and/or on Saturdays (on tours of duty which did not include any Sunday hours), and/or on overtime (other than hours on a compressed schedule), and they received “additional pay” for work performed on such tours of duty pursuant to title 38.

43. As a result of the foregoing, there is due and owing to Plaintiffs, and to eligible members of the opt-in plaintiff class, payment equal to the amount of night premium pay, Saturday “weekend” premium pay, and/or overtime pay (“additional pay” pursuant to title 38) that they should have received from August 23, 2012 and thereafter for those hours for which they were charged authorized and accrued paid leave on tours of duty which included night hours, Saturday hours (excluding any Sunday hours), and/or overtime (other than hours on a compressed schedule), and interest thereon pursuant to 5 U.S.C. § 5596(b).

44. Plaintiffs are unable to determine the exact amounts hereof because the relevant records, books, and accounts are maintained by, and are in the exclusive possession and control of, Defendant.

IX. SECOND CAUSE OF ACTION VIOLATION OF 38 U.S.C. §7421(a) and 5 U.S.C. §6104(3) ON BEHALF OF RNs, Pas, and EFDAs

45. Plaintiffs incorporate herein by reference the allegations of the Complaint set forth in paragraphs 1 through 44 above.

46. The VA has failed and refused to abide by, or apply, the rule of law proclaimed by Congress pursuant to 38 U.S.C. §7421(a) and 5 U.S.C. §6104(3) with respect to RNs, PAs, and EFDAs’ entitlement to “additional pay” when excused (or prevented) from performing regularly scheduled work on official public holidays equal to the “additional pay” which those employees would have been paid under title 38 if they had performed regularly scheduled work on those holidays at night, on tours of duty which included Saturday hours (not including any Sunday hours), and/or on overtime (other than hours on a compressed schedule), during such hours of work.

47. Members of the eligible opt-in class who are or were similarly situated, worked at night, and/or on tours of duty which included Saturday hours (not including any Sunday hours), and/or on overtime (other than hours on a compressed schedule), and received “additional pay” for work performed on such tours of duty pursuant to title 38.

48. As a result of the foregoing, there is due and owing to Plaintiffs, and to eligible members of the opt-in plaintiff class, payment equal to the amount of night premium pay, Saturday “weekend” premium pay (excluding any Sunday hours), and/or overtime pay (“additional pay” pursuant to title 38) that they should have received from August 23, 2012 and thereafter for those hours for which they were excused (or prevented) from performing regularly scheduled work on official public holidays pursuant to 5 U.S.C. §6104(3), and interest thereon pursuant to 5 U.S.C. § 5596(b).

49. Plaintiffs are unable to determine the exact amounts hereof because the relevant records, books, and accounts are maintained by, and are in the exclusive possession and control of, Defendant.

WHEREFORE, Plaintiffs pray that this Court:

(a) Certify this action as an “opt-in” class action pursuant to Rule 23 of the Rules of the United States Court of Federal Claims; certify Plaintiffs as the class representatives; and approve the undersigned attorneys as Co-Class Counsel;

(b) Enter judgment against Defendant for back pay due Plaintiffs, and all other eligible opt-in class members who are or were RNs, PAs, or EFDAs, for periods of paid leave from August 23, 2012, as enumerated *supra*, in an amount equal to the “additional pay” pursuant to 38 U.S.C. §§ 7453(b), (c), and (e), and 7454(a) which Defendant unlawfully withheld for those hours at night, on Saturdays (excluding any Sunday hours), or on overtime (other than hours on a compressed schedule) for which the members of the class were charged such authorized and accrued paid leave, and for which they would have been paid such “additional pay” had they remained at work at their regular work schedule;

(c) Enter judgment against Defendant for back pay due eligible opt-in class members

who are or were RNs, PAs, or EFDAs since August 23, 2012 for excused paid absence on official public holidays in an amount equal to the “additional pay” pursuant to 38 U.S.C. §§ 7453(b), (c), and (e), and 7454(a) which Defendant unlawfully withheld for those holiday hours at night, on Saturdays (excluding any Sunday hours), or on overtime (other than hours on a compressed schedule), for which the class members would have been paid had they remained at work at their regularly scheduled work schedule;

(d) Award interest pursuant to 5 U.S.C. § 5596(b) on all above amounts;

(e) Award reasonable attorneys’ fees and costs, and the reasonable administrative costs and fees of this action, to be paid by Defendant to Plaintiffs’ counsel and the Court appointed administrator, under the Back Pay Act; and

(f) Grant such other relief as may be just and proper.

Dated: August 23, 2018

s/Ira M. Lechner
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PLAINTIFFS' EXHIBIT 1: List of Names, Address, Last four SSN of all Plaintiffs

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Chester, VA 23831
SSN:-4563
3. GLORIYADI ECHEVARRIA
350 Rivers Ridge Circle
Newport News, VA 23608
SSN:-4437
4. ARLENE FRANCES HOBBS
7519 Valencia Road
Chesterfield, VA 23832
SSN:-2776
5. TIERRA I. KELLY
7547 Woods Ridge Trace
Prince George, VA 23875
SSN:-4605
6. JULIA M. MULDROW
6105 Rosenblum Ct.
North Chesterfield, VA 23234
SSN:-2089

In The United States Court of Federal Claims**Cover Sheet**

Plaintiff(s) or Petitioner(s)

Names: Danuta Ysla, Henrietta Hargress Davis, Gloriyadi Echevarria, Arlene Francis Hobbs, Tierra L. Kelly, Julia MildrowLocation of Plaintiff(s)/Petitioner(s) (city/state): Los Angeles, CA; Chester, VA; Newport News, VA; Chesterfield, VA; Prince George, VA; North Chesterfield, VA

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Ira M. LechnerFirm Name: Law Office of Ira M. Lechner

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box:

Street Address:

City-State-ZIP:

Telephone & Facsimile Numbers:

E-mail Address:

1150 Connecticut Ave., N.W., Ste. 1050Washington, D.C. 20036858-864-2258lralechner@yahoo.com

Is the attorney of record admitted to the Court of Federal Claims Bar?



Yes



No

Nature of Suit Code: 300

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: VANumber of Claims Involved: Two Causes of ActionAmount Claimed: \$ 10 Million

Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ N/A

Is plaintiff a small business?



Yes



No

Was this action preceded by the filing of a protest before the GAO?



Yes



No

If yes, was a decision on the merits rendered?



Yes



No

Income Tax (Partnership) Case:

Identify partnership or partnership group: N/A

Takings Case:

Specify Location of Property (city/state): N/A

Vaccine Case:

Date of Vaccination: N/A

Related Case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.



Yes



No