

# In the United States Court of Federal Claims

No. 07-589 C

November 24, 2008

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	)
JEFFREY B. KING, SCOTT A. AUSTIN,	)
KEVIN J. HARRIS, AND JOHN J. HAYS,	)
on their own behalf and on behalf	)
of a class of others similarly situated,	)
	)
Plaintiffs,	)
v.	)
	)
THE UNITED STATES,	)
	)
Defendant.	)
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A court has authorized this Notice. This is not a solicitation from a lawyer.

TO: All employees of the United States who were or are employed as a member of the FBI Police (FBI Police Officers) during at least one pay period beginning after January 1, 2003 and who did not receive pay and benefits equivalent to the pay and benefits applicable to members of the United States Secret Service Uniformed Division as required by 28 U.S.C. § 540C.

RE: Jeffrey B. King, Scott A. Austen, Kevin J. Harris, and John J. Hays, on their own behalf, and on behalf of a class of others similarly situated, Case No. 07-589C in the United States Court of Federal Claims.

## BASIC INFORMATION

### 1. Why did I get this Notice?

United States employment records show that you currently work, or previously worked as an FBI Police Officer during at least one pay period after January 1, 2003.

The purpose of this Notice is to inform you of a class action lawsuit (Class Action) brought against the Federal Bureau of Investigation (FBI), to advise you of how your rights may be affected by this action, and to instruct you on the procedure to make a claim if you choose to do so.

The attorney for plaintiffs (Class Counsel) has been permitted to send this Notice by the United States Court of Federal Claims. However, the court is not encouraging individuals to join this lawsuit, nor is the court discouraging individuals from doing so.

## 2. What is this lawsuit about?

On August 2, 2007 an action was filed against United States in the United States Court of Federal Claims on behalf of the named plaintiffs and all other similarly-situated individuals who worked as FBI Police officers since January 1, 2003 (the Class). At the time the case was filed, more than 100 police officers had elected to join in the complaint. At the current time there are approximately 152 police officers in this lawsuit.

This lawsuit is about whether the FBI has complied with 28 U.S.C. § 540C, the FBI Reform Act of 2002, a law that mandated that FBI Police Officers be paid the same pay and benefits as members of the Uniformed Division of the United States Secret Service. Specifically, the action alleges that plaintiffs, and all other similarly-situated FBI Police Officers, are owed back pay and benefits under the Back Pay Act of 1966, 5 U.S.C. § 5596(b)(1).

## 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case Jeffrey B. King, Scott A. Austen, Kevin J. Harris, and John J. Hays) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The people who sued—and all the Class Members—are called plaintiffs. The United States is called defendant. In a class action in the United States Court of Federal Claims, one court resolves the issues for all Class Members who choose to join the lawsuit.

## 4. Why is this lawsuit a class action?

The court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Rule 23 of the Rules of the United States Court of Federal Claims, which governs class actions in United States Court of Federal Claims.

Specifically, the court found that:

1. There are approximately 300 potential Class Members;
2. There are legal questions and facts that are common to each Class Member's claims;
3. The Class Representatives' claims are typical of the claims of the rest of the Class;
4. The Class Representatives and their Class Counsel, Sandra Mazilah, with the anticipated support of the law firm of Passman & Kaplan, P.C., will fairly and adequately represent the interests of the Class;
5. The common legal questions and facts are more important than questions that affect only individuals; and
6. This Class action will be more efficient than having many individual lawsuits.

More information about why the court has allowed this lawsuit to be a class action is located in the Court's Order that certified the Class, available at:

<http://www.passmanandkaplan.com/CM/Custom/FBI-Wage-Claim.asp>

#### THE CLAIMS IN THE LAWSUIT

##### 5. What does this lawsuit complain about?

This lawsuit is about whether the FBI has complied with 28 U.S.C. § 540C, the FBI Reform Act of 2002, a law that mandated that FBI Police Officers be paid the same pay and benefits as members of the Uniformed Division of the United States Secret Service. Specifically, the action alleges that plaintiffs, and all other similarly-situated FBI Police Officers, are owed back pay and benefits under the Back Pay Act of 1966, 5 U.S.C. § 5596(b)(1).

##### 6. How does the United States answer to plaintiffs' complaints?

Defendant denies plaintiffs' allegations in their entirety. Specifically, defendant asserts that the FBI Director never established an FBI police force pursuant to § 540C and that FBI Police Officers continue to operate under prior grants of statutory authority. As a result, defendant argues that the pay provisions did not come into effect. Defendant also contends that it properly paid all of its current and former police officers.

##### 7. Has the court decided who is right?

The court has not decided whether the United States or plaintiffs are correct. By establishing the Class and issuing this Notice, the court is not suggesting that the

plaintiffs will win or lose the case. The plaintiffs must prove their claims at trial. This litigation is currently in the early pretrial stage.

8. What are plaintiffs asking for?

Plaintiffs seek back pay and benefits for all hours worked since January 1, 2003, or such other time as is established. Plaintiffs also seek attorneys fees and costs.

9. Is there any money available now?

No money or benefits are available now because the court has not yet decided whether the United States did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits ever will be obtained. If they are, and you decide to become part of this Class Action, you will be notified about how to ask for a share.

WHO IS IN THE CLASS ACTION

10. Am I part of this Class Action?

You will need to decide whether you wish to join this Class Action. You are not part of the Class unless and until you fill out the consent forms located at the back of this Notice. Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members “opt in” to a class action. If you fit the description in the next question, you may opt in and join this Class Action.

11. Who can be part of this Class Action?

The court decided that the Class consists of:

All employees of the United States who were or are employed as a member of the FBI Police (FBI Police Officers) during at least one pay period beginning after January 1, 2003 and who did not receive pay and benefits equivalent to the pay and benefits applicable to members of the United States Secret Service Uniformed Division as required by 28 U.S.C. § 540C.

The court’s description of Class Members was written for the sole purpose of determining the identity of those persons who wish to be involved in this Class Action. The fact that the court wrote the description of the Class does not mean that the court has decided whether the United States has done anything wrong.

12. Who should I contact if I am not sure if I can be part of this Class Action?

If you are not sure whether you can be included in this Class Action, you can contact the Class Counsel in this case, at the phone number, email address, or address provided in question 13.

RIGHTS AND OPTIONS FOR JOINING THE CLASS ACTION

13. How can I join the Class Action?

If you are or were a police officer employed by the FBI at any time between January 1, 2003 and the present, you have a right to participate in this lawsuit. Enclosed you will find a document titled "Plaintiff Consent Form and Declaration." If you choose to join this lawsuit, and potentially participate in any recovery that may result from this lawsuit, it is extremely important that you read, sign and return the Consent Form and Declaration by mail or fax to Plaintiffs' counsel at the following address:

Passman & Kaplan  
Attn. Sandra Mazliah  
1090 Vermont Ave., Ste 500  
Washington, DC 20005

Telephone: (202) 789-0100  
Facsimile: (202) 789-0101  
SMazliah@passmanandkaplan.com

The "Plaintiff Consent Form and Declaration" must be faxed or postmarked on or before sixty (60) days after the date of this Notice, that is, on or before January 23, 2009.

14. What happens once I join this Class Action?

If you choose to join this Class Action, you and defendant will be bound by any ruling, judgment, or award, whether favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the Class.

15. Does joining the Class Action cost any money?

If successful in this litigation, Class Counsel, Sandra Mazliah, on behalf of the firm Passman & Kaplan, P.C., will seek the court's permission to be compensated for litigating this case. Class Counsel anticipates asking for at least 20% of all proceeds, and up to a

combined 25% of all recovery, which will proportionately reduce the award that each class member would receive.

If you decide to participate in this action, you will incur, at a minimum, \$100 in costs during the litigation process. If the action is successful, those costs may be recoverable.

You should also understand that if you join the lawsuit, then you may—but will not necessarily be required to—provide documents to defendant's lawyers and/or attend a deposition and answer defendant's lawyers' questions under oath.

Class Counsel seeks to be paid on a contingency fee and/or statutory basis, which means that if there is no recovery, there will be no attorneys fees.

The specific terms and conditions of representation will be contained in a fee agreement entered into between Class Counsel and you.

16. What happens if I do not join this Class Action?

If you do not join this action, you will not be bound by any ruling, judgment, award or settlement entered in this case, favorable or unfavorable. If you do not to join this action, you are free to take action on your own.

17. How long do I have to decide whether to join the Class Action?

The Tucker Act, the law that governs this action, has a statute of limitations of six years. A “statute of limitations” is the time limit for filing an action in court. If you choose to join this action and the court finds in favor of the plaintiffs, you may be able to recover back wages only for weeks you worked within six years of the date you file your "Plaintiff Consent Form."

If you choose not to join in this action, then you may file your own action. The clock on the statute of limitations will still be running on your time limit for filing your own action, even if you do not join this lawsuit.

18. Can the FBI retaliate against me for joining this Class Action?

The law prohibits retaliation against employees for exercising their rights under the Back Pay Act. Defendant is prohibited from discharging you or retaliating against you in any other manner because you choose to participate in this action.

THE LAWYERS REPRESENTING CLASS MEMBERS

19. Do I have a lawyer in this case?

If you decide to join this Class Action, the court has decided that Sandra Mazilah, with the anticipated support of the law firm of Passman & Kaplan, P.C., is qualified to represent you and all Class Members. Sandra Mazilah is called "Class Counsel." Class Counsel is experienced in handling similar cases. More information about Class Counsel including the law firm, its practice, and its lawyers' experience is available at:

<http://www.passmanandkaplan.com/>

20. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel will work on your behalf if you choose to join this Class Action. You have the right to have your own lawyer. For example, you can ask your own lawyer to appear in court for you if you want someone other than Class Counsel to speak for you. However, if you want your own lawyer, you will have to pay that lawyer.

21. How will the lawyers be paid?

If Class Counsel obtains money or benefits for the Class, Class Counsel may ask the court for fees and expenses. You will not have to pay these fees and expenses up front. However, if you decide to participate in this action, and do not have your own counsel, you will incur, at a minimum, \$100 in costs during the litigation process. If the action is successful, those costs may be recoverable.

The specific terms and conditions of representation will be contained in a fee agreement entered into between Class Counsel and you.

22. If I join this class action, and do not have my own lawyer, who will be representing me?

If you choose to join this case by filing a Plaintiff Consent Form, you will be agreeing to representation by Class Counsel:

Sandra Mazliah, Bar No. 44074  
PASSMAN & KAPLAN, P.C.  
1090 Vermont Ave., Suite 500  
Washington, DC 20005

Telephone: (202) 789-0100  
Facsimile: (202) 789-0101  
Email: SMazliah@passmanandkaplan.com

## THE TRIAL

### 23. How and when will the court decide who is right?

If the case is not resolved by a settlement or otherwise, Class Counsel will have to prove plaintiffs' claims at a trial. No trial date has been set. The parties are currently in the discovery phase of the trial where they are exchanging information about the facts and circumstances of the case.

During the trial the judge will hear all the evidence to reach a decision about whether plaintiffs or defendant are right about the claims in the lawsuit. There is no guarantee that plaintiffs will win, or that they will get any money for the Class.

### 24. Do I have to come to the trial?

You do not need to attend the trial. Class Counsel will present the case for plaintiffs and defendant will present the defenses. You or your own lawyer are welcome to attend trial at your own expense.

### 25. Will I get money after the trial?

If plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate. The parties do not know how long this will take.

## GETTING MORE INFORMATION

### Are more details available?

Further information about this lawsuit or this Notice can be obtained by contacting Class Counsel:

Sandra Mazliah  
Email: SMazliah@passmanandkaplan.com  
Telephone: (202) 789-0100, ext 109

PASSMAN & KAPLAN, P.C.  
1090 Vermont Ave., N.W., Suite 500  
Washington, DC 20005  
Tel: (202)789-0100  
Fax: (202)789-0101  
www.passmanandkaplan.com

Debra A. D'Agostino  
Email: DDAgostino@passmanandkaplan.com  
Telephone: (202) 789-0100, ext 110

Joanna Friedman  
Email: JFriedman@passmanandkaplan.com  
Telephone: (202) 789-0100, ext 108

You may also contact attorneys for defendant:

Christopher Bowen  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
Attn: Classification Unit  
1100 L Street, N.W., 8th Floor  
Washington, D.C. 20530  
Tel: (202) 305-7594  
Fax: (202) 514-8624

You should not contact the court at this time.

CONSENT FORM AND DECLARATION

I hereby consent to join a lawsuit against the United States as a plaintiff to assert claims for back pay, benefits and interest, for the failure of the FBI to pay me wages and benefits in accordance with 28 U.S.C. § 540C. Since January 1, 2003, and continuing throughout my employment with the Federal Bureau of Investigation, I have not been paid in accordance with the requirements of 28 U.S.C. § 540C.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the information provided above is true and correct to the best of my knowledge and belief.

Please Fax or Mail this three-page Consent Form and Declaration to:

Sandra Mazliah, Esq.  
Passman & Kaplan, P.C.  
1090 Vermont Avenue, N.W., Ste 500  
Washington D.C. 20005  
FAX: 202-789-0101

DATE \_\_\_\_\_

SIGNATURE (IN INK) \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY STATE ZIP

HOME PHONE ( ) \_\_\_\_\_

WORK PHONE ( ) \_\_\_\_\_

CELL PHONE ( ) \_\_\_\_\_

SOCIAL SECURITY NO. \_\_\_\_\_

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION, THEN SIGN AND DATE AT THE BOTTOM:

PRINTED NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

HOME PHONE ( ) \_\_\_\_\_ WORK PHONE ( ) \_\_\_\_\_

CELL PHONE ( ) \_\_\_\_\_

SOCIAL SECURITY NO: \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

E-MAIL \_\_\_\_\_

CONTACT PERSON (Person, other than my spouse, who will know my next address):

PRINTED NAME \_\_\_\_\_ CITY AND STATE \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ E-MAIL \_\_\_\_\_

LIST BELOW IN REVERSE CHRONOLOGICAL ORDER ALL POSITIONS YOU HAVE HELD SINCE JANUARY 1, 2003, THE INSTITUTIONS AT WHICH YOU WORKED, AND THE GRADE/STEP LEVEL AND DATES IN THAT POSITION:

JOB TITLE	INSTITUTION	GRADE	STEP	START DATE	END DATE
_____	_____	_____	_____	____/____/____	____/____/____
_____	_____	_____	_____	____/____/____	____/____/____
_____	_____	_____	_____	____/____/____	____/____/____
_____	_____	_____	_____	____/____/____	____/____/____
_____	_____	_____	_____	____/____/____	____/____/____

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the information provided above is true and correct to the best of my knowledge and belief.

DATE \_\_\_\_\_

\_\_\_\_\_  
(Signature in ink)

POWER OF ATTORNEY

This is to certify that I,

\_\_\_\_\_  
NAME SOCIAL SECURITY NO.

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
PHONE (WORK) (HOME)

do hereby grant SANDRA MAZLIAH AND PASSMAN & KAPLAN, P.C., attorneys at law, 1090 Vermont Avenue, N.W., Suite 500, Washington, D.C. 20005, POWER OF ATTORNEY to act for and on my behalf in all matters coincidental to my case, including the right to have access to records pertaining to me which are contained in records, reports, investigations, examinations or system(s) of records maintained by any agency or office of the Government of the United States, any state government, any municipal government, or any other governmental entity, including documents and records otherwise protected from disclosure under the Privacy Act, 5 U.S.C. § 552a.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature