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Edward H. Passman (DC, MD)  
Joseph V. Kaplan (DC, MD)

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Andrew J. Perlmutter (DC, MD)  
Amy L. Beckett (DC, MD)  
Daniel T. Raposa (DC)  
Johnathan P. Lloyd (DC, VA)  
Adria S. Zeldin (DC, PA)

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Dear Potential Class Member:

Attached is a copy of the notice to potential class members ordered by the court in King vs. The United States. See Attachment 1. If you wish to join the class, please send your election forms (pages 13 – 15) and \$100 payment to the above address as soon as possible. Please note that our mailing address is different from the one stated in the November 7, 2008, Order's election forms.

There are a few changes to the November 7, 2008, Order. As of August 4, 2010, I was appointed as class counsel. See Attachment 2.

If you have any questions regarding whether Passman & Kaplan, PC has both your election form and payment, please contact Carol Williams at 202-789-0100, Ext. 102. If you have any other questions, please contact me at [jkaplan@passmanandkaplan.com](mailto:jkaplan@passmanandkaplan.com) or 202-789-0100, Ext. 105. Additionally, if I am unavailable, you can contact either of my two associates, Amy Beckett ([abeckett@passmanandkaplan.com](mailto:abeckett@passmanandkaplan.com), 202-789-0100, Ext. 110) or Daniel Raposa ([draposa@passmanandkaplan.com](mailto:draposa@passmanandkaplan.com), 202-789-0100, Ext. 108).

Very truly yours,



Joseph V. Kaplan

JVK:ndc  
Attachments

# In the United States Court of Federal Claims

No. 07-589 C

(E-Filed: November 7, 2008)

<hr/>	
	)
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.	)
<hr/>	

Sandra Mazliah, Washington, DC, for plaintiffs.

Christopher Bowen, with whom were Gregory G. Katsas, Assistant Attorney General, Jeanne E. Davidson, Director, and Martin F. Hockey, Jr., Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant.

## ORDER

Before the court are Plaintiff[s]’ Response re[:] Treatment of the Statute of Limitations, Defendant’s Memorandum of Law in Response to Court’s Order Dated October 23, 2008, Defendant’s Reply to Plaintiff’s Response re: Treatment of the Statute of Limitations, and Plaintiffs’ Response to Defendant’s Memorandum re[:] the Treatment of the Statute of Limitations. Also before the court is parties’ Joint Status Report Regarding Further Proceedings (JSR) containing a Proposed Class Notice. Further to the court’s order of October 23, 2008 (October 23 Order), this order contains a revised class notice (Class Notice) to be sent to all potential class members.

The court thanks the parties for their briefings on the statute of limitations. The court has not materially altered the treatment of the statute of limitations in the Class Notice from the language in the Proposed Class Notice. The court may, in the future, issue a substantive opinion on the statute of limitations in this case.

The Class Notice, as rewritten,<sup>1</sup> aims to provide potential class members with “the best notice practicable under the circumstances” and is written “in plain, easily understood language” that “concisely and clearly” provides potential class members with the information required by Rules of the Court of Federal Claims (RCFC). RCFC 23(c)(2)(B). The Class Notice is attached to this order as Appendix A. Further to the October 23 Order, the parties shall use the Class Notice to contact potential class members.

IT IS SO ORDERED.

s/ Emily C. Hewitt  
EMILY C. HEWITT  
Judge

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<sup>1</sup>Rule 23 of the Rules of the United States Court of Federal Claims (RCFC) is modeled after the Federal Rules of Civil Procedure (FRCP) Rule 23. RCFC 23, Rules Committee Notes (2002) (noting that RCFC 23 is “modeled largely” on FRCP 23); see Curry v. United States, 81 Fed. Cl. 328, 332 n.10 (2008). Because the language of RCFC 23 and FRCP 23 are practically identical, the Advisory Committee Notes to FRCP 23 are helpful in interpreting RCFC 23. The Class Notice is modeled after a sample notice published by the Federal Judicial Center. See FRCP 23, Advisory Committee Notes (2003 Amendments) (suggesting parties use Federal Judicial Center model notices as a starting point for drafting because “[t]he direction that class-certification notice be couched in plain, easily understood language is a reminder of the need to work unremittingly at the difficult task of communicating with class members. It is difficult to provide information about most class actions that is both accurate and easily understood by class member who are not themselves lawyers. Factual uncertainty, legal complexity, and the complication of class-action procedure raise the barriers high”).

RCFC 23 differs from the federal rule in two ways: (1) it has been modified to reflect the court’s jurisdiction, in particular, the narrow circumstances in which the court will afford declaratory or injunctive relief, and (2) it allows only “opt-in,” but not “opt-out” class actions. RCFC 23, Rules Committee Notes (2002). The Class Notice has been modified to reflect the “opt-in” nature of this class action.

Appendix A

**In the United States Court of Federal Claims**

No. 07-589 C

November 24, 2008

\_\_\_\_\_  
)  
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. )  
\_\_\_\_\_

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](http://www.passmanandkaplan.com)

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

Joanna Friedman  
Email: [JFriedman@passmanandkaplan.com](mailto: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



**In the United States Court of Federal Claims**

No. 07-589 C

(E-Filed: August 4, 2010)

<hr/>		)
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,	)	) Motion to Substitute Class
	)	) Counsel; RCFC 23(g), 83.1(c)
Plaintiffs,	)	)
	)	)
v.	)	)
	)	)
THE UNITED STATES,	)	)
	)	)
Defendant.	)	)
<hr/>		)

Sandra Mazliah, Washington, DC, for plaintiffs.

Christopher Bowen, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant.

ORDER AND OPINION

HEWITT, Chief Judge

Before the court is Plaintiffs' Motion to Add Class Counsel (plaintiffs' Motion or Pls.' Mot.), Docket Number (Dkt. No.) 77, filed on July 29, 2010, under Rules 23(a)(4), 23(g) and 83.1(c) of the Rules of the United States Court of Federal Claims (RCFC).<sup>1</sup> The complaint in this action, filed on August 2, 2007, claims that plaintiffs, FBI police officers working during at least one pay period after January 1, 2003, were denied pay and benefits mandated by 28 U.S.C. § 540C. Complaint (Compl.) 1, 3. Plaintiffs claim

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<sup>1</sup> In response to an inquiry from the court, government counsel has indicated that defendant does not intend to respond to Plaintiffs' Motion to Add Class Counsel (plaintiffs' Motion).

that pursuant to the Back Pay Act of 1996, 5 U.S.C. § 5596 (2006), they are entitled to compensation, back pay, restitution, and attorney fees. Compl. 1. The court issued an order and opinion on September 26, 2008, granting class certification and appointing Sandra Mazliah of the law firm of Passman & Kaplan, P.C., as class counsel. Order of Sept. 26, 2008, Dkt. No. 28, at 10-11, 14. Plaintiffs now seek to substitute Joseph V. Kaplan, also of Passman & Kaplan, P.C., as attorney of record and lead counsel in this matter. Pls.' Mot. 1. For the following reasons, plaintiffs' Motion is GRANTED and Joseph V. Kaplan is APPOINTED class counsel.

#### I. Substitution and Adequacy of Class Counsel

Generally, under RCFC 83.1(c)(4)(A)(i), a plaintiff "may seek leave of the court to substitute its attorney of record at any time by filing a motion signed by the party or by the newly designated attorney along with an affidavit of appointment by such attorney." RCFC 83.1(c)(4)(A)(i). When the previous attorney's consent to the substitution is indicated in the motion, as here, Pls.' Mot. 1, "the clerk will automatically enter the substitution on the docket." RCFC 83.1(c)(4)(A)(i)(I). However, under RCFC 23(g), "a court that certifies a class must appoint class counsel." RCFC 23(g)(1). "Class counsel must fairly and adequately represent the interests of the class." RCFC 23(g)(4). To determine whether an attorney will "fairly and adequately" represent the class, the court must consider:

[ (1) ] the work counsel has done in identifying or investigating potential claims in the action; [ (2) ] counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; [ (3) ] counsel's knowledge of the applicable law; and [ (4) ] the resources that counsel will commit to representing the class[.]

RCFC 23(g)(1)(A). In addition, the court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." RCFC 23(g)(1)(B). Class counsel must be "qualified, experienced and generally able to conduct the litigation." Barnes v. United States, 68 Fed. Cl. 492, 499 (2005) (internal quotation marks omitted) (citing In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992)).

Joseph V. Kaplan, in the context of and with the anticipated support of the law firm of Passman & Kaplan, P.C. (the firm), satisfies the considerations set out in RCFC 23(g)(1)(A). As the court stated in its September 26, 2008 Order, the firm has investigated the current case, researched the applicable legal issues, and identified potential class members. Order of Sept. 26, 2008, at 10-11. The court noted at that time

that “the firm’s senior partners, Edward Passman and Joseph Kaplan, are fully briefed on the status and issues in the complaint.” Id. at 11 (internal quotation marks omitted).

Mr. Kaplan and the firm have “extensive experience handling class actions and other complex litigation and claims of the type asserted in this action.” Pls.’ Mot. 2. Mr. Kaplan has served as lead counsel and attorney of record in four class actions, the firm’s involvement in which was previously cited by this court in appointing Ms. Mazliah as class counsel. Id.; Order of Sept. 26, 2008, at 11. Plaintiffs assert that “Mr. Kaplan has an able litigation team in place to assist him in the prosecution of the [p]laintiffs’ claims.” Pls.’ Mot. 2. The firm “focuses its practice on employment matters affecting federal civil service employees, is well-published in the area of federal employment law, and has handled a number of class complaints involving an array of different federal employment matters.” Id. In addition to the litigation efforts of Mr. Kaplan and two associates, Ms. Mazliah will continue to contribute to the case, and “the firm’s other attorneys and paralegal have contributed to the case.” Id. The court expects that class counsel will continue to “devote sufficient resources to this case” as previously assured by Ms. Mazliah and the firm. See Order of Sept. 26, 2008, at 11 (internal quotation marks omitted).

The court concludes that Mr. Kaplan, considered in the context of and with the anticipated support of the law firm of Passman & Kaplan, P.C., will fairly and adequately represent the class.<sup>2</sup> The RCFC allow for only “one attorney of record” and state that a party “must be represented by an attorney (not a firm).” RCFC 83.1(c)(1). All other attorneys shall be designated “of counsel.” Id. This court appoints Joseph V. Kaplan as class counsel for the reasons discussed above.

## II. Conclusion

For the foregoing reasons, this court GRANTS plaintiffs’ Motion and APPOINTS Joseph V. Kaplan as class counsel.

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<sup>2</sup> Because the adequacy of the individual proposed as class counsel has been determined in the context of the support provided to him and to this litigation by the firm, the court may reconsider this decision if Mr. Kaplan should separate from the firm, or if the firm should become materially diminished or lack capacity to provide the support described in plaintiffs’ Motion, or if the firm should dissolve during the pendency of this litigation. In any such event counsel shall promptly notify the court by motion to take notice of the event.

IT IS SO ORDERED.

s/ Emily C. Hewitt  
EMILY C. HEWITT  
Chief Judge