

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**L. KEVIN ARNOLD, et al.**

**Plaintiffs**

**No.: 19-59-PEC**

**v.**

**Judge Patricia E. Campbell-Smith**

**THE UNITED STATES**

**Defendant.**

**PLAINTIFFS' RESPONSE TO DEFENDANT'S  
MOTION TO CONSOLIDATE CASES**

Plaintiffs, by and through their undersigned counsel, hereby timely submit their Response to the Defendant's Motions to Consolidate Cases (ECF No. 10 and 14). Plaintiffs do not necessarily oppose consolidation, but do oppose the appointment of a lead counsel at the current juncture of the litigation. In support thereof, Plaintiffs state as follows:

**Background**

This case arises out of lapse of government funding necessitating the partial shutdown of the United States government effective December 22, 2018. *See generally*, ECF No. 1, 6. Due to the shutdown, several federal agencies were unable to perform their respective missions and provide their necessary services to the American people. *Id.* Despite the partial shutdown, employees designated by Defendant as excepted were required to perform their duties without receiving their appropriate overtime and minimum wage in violation of 29 U.S.C. § 201, *et. seq.*, the Fair Labor Standards Act ("FLSA"). *Id.*

In addition to the instant case, twelve other cases, asserting similar, though distinguishable facts have been filed. ECF No. 14. Defendants have moved for this Court to consolidate all thirteen cases and appoint a single-point of contact.

### **Argument and Analysis**

#### **I. Plaintiffs do not contest certain cases being consolidated.**

Under Rule 42(a) of the Rules of the Court of Federal Claims, the court may order actions to be consolidated “when actions involve[e] a common question of law or fact.” RCFC 42(a). The Court has “broad discretion to determine whether consolidation is appropriate,” and consolidation is encouraged where “common questions of law or fact are involved and consolidation would avoid unnecessary costs.” *Cienega Gardens v. United States*, 62 Fed. Cl. 28, 32 (2004).

In this case even though there are differences of both law and fact between several of the cases, Plaintiffs recognize that under the broad discretion afforded to the Court as well as the general encouragement of consolidation, that consolidation for the cases may be appropriate.

#### **II. Plaintiffs contest the designation of a single point of contact or class counsel.**

In addition to consolidation, Defendant requested either the “formation of a plaintiffs’ committee, which may then determine a single point of contact,” or the “appointment of a lead counsel which will represent the interests of each of the plaintiffs’ counsel.” Docket No. 10.

While it is obvious that if the cases are consolidated that certain cooperation between plaintiffs’ counsel will be required, Plaintiffs do not believe that the appointment of either a single point of contact or lead counsel is appropriate at this time when the issue of consolidation is still pending. Rather, if and when some, or all of the cases are consolidated, Plaintiffs respectfully request that the Court order an in-person conference to be attended by all plaintiffs’

counsel to discuss and agree upon an effective and efficient process for representation of the various plaintiff groups. In the alternative, Plaintiffs respectfully request the opportunity to submit additional briefing on the issue of a potential steering committee and/or lead counsel.

Respectfully submitted,

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Counsel of Record for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of March, 2019, a copy of the foregoing was filed via the CM/ECF filing system.

**/s/ JACOB Y. STATMAN**  
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