

United States Court of Federal Claims
Russell et al. v. United States, Class Action
Case No. 14-cv-1062 SGB

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT OF AAFES SHIFT DIFFERENTIAL LAWSUIT**

A Federal court authorized this Notice. Read this Notice carefully. Your legal rights may be affected.

This Is Not A Solicitation. This Is Not A Notice That You Have Been Sued. This Is To Notify You That You May Be Entitled To A Cash Payment From A Class Action Settlement.

To: xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxx

Unique Claim Number: xxxxxxxx

You Have Been Sent This Notice And Accompanying Class Action Opt-In Claim Form Because The Army & Air Force Exchange Service (“AAFES”) Has Determined That You Are Within The Class The Court Has Certified. If You Choose To Opt In And Be Included In This Settlement, You Will Be Entitled To Recover Money For Unpaid Night Shift Differential And/Or Lump Sum Accrued Leave Payments.

On Your Enclosed Claim Form You Have Received An Estimated Amount Of Money That You May Be Entitled To Under This Proposed Settlement. You may receive less than this amount depending on the total dollar amount of approved claims in the settlement and other factors, including any taxes that must be withheld. If you lose your claim form or have questions about the estimated amount of your claim under this settlement, contact the Settlement Administrator or Class Counsel.

What Is This Notice About?

This notice is to advise you that a proposed settlement agreement has been reached in a class action lawsuit against the United States. The Court ordered this notice to be sent to you because you have a right to know about the proposed settlement of this class action lawsuit—and about your options—before the Court decides whether to grant final approval of the settlement.

What Is This Lawsuit About?

The lawsuit was brought by plaintiffs Andrew Russell and Ruth Gallego, who allege that during the course of their employment they were repeatedly denied payment of the shift differential despite being entitled to receive it. Specifically, plaintiffs allege that they worked or were scheduled to work non-overtime shifts where the majority of shift hours were between 3:00 p.m. and midnight (second shift) or between 11:00 p.m. and 8:00 a.m. (third shift), and that they were therefore entitled to premium pay, also known as shift differential pay. Plaintiffs assert that because of an error in the payroll system used by AAFES, employees often failed to receive 7.5 percent additional premium pay for working the second shift and 10 percent additional premium pay for working the third shift. Additionally, plaintiffs assert that payments to employees upon separation from AAFES for accrued leave, or lump sum payments, were not accurately paid to employees as a result of the alleged failure to accurately pay the shift differential.

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The plaintiffs allege that AAFES violated the Prevailing Rate System Act, 5 U.S.C. § 5341 *et seq.*, the regulations implemented thereunder, including 5 CFR § 532.505, the Federal Wage System Operating Manual, Subchapter S8, and the Exchange Operating Procedures 15-10, chapter 13-88. Plaintiffs filed their complaint in the United States Court of Federal Claims (the Court), where they sought to represent other present and former AAFES employees who were similarly situated, pursuant to Rule 23 of the Rules of the United States Court of Federal Claims. The lawsuit was filed against the United States of America (“defendant”).

For more information about the lawsuit and to obtain a copy of the complaint that was filed in this case, visit www.AafesShiftDifferentialSettlement.com.

Why Is This A Class Action?

In a class action, one or more people, called Class Representatives (in this case, Mr. Russell and Ms. Gallego), sue on behalf of people who have similar claims. All of these people make up the Class. A court then resolves the issues for the entire Class. Mr. Russell and Ms. Gallego sued on their own behalf and on behalf of all others similarly situated for proper payment of shift differential and/or related lump sum leave payments.

The Court decided that this case can proceed as a class action because it meets the requirements of Rule 23 of the Rules of the United States Court of Federal Claims, having found that the Class is so numerous that joinder of all members is impracticable, that there are questions of law and fact common to the Class, that the claims of the Class Representatives are typical of the claims of the Class, that the Class Representatives will fairly and adequately protect the interests of the Class, that common questions of law or fact predominate over questions affecting individual members, and that a class action is a superior method for fairly and efficiently adjudicating the case.

Why Is There A Settlement?

After plaintiffs filed their complaint, the defendant filed a motion to dismiss the lawsuit on numerous grounds. After plaintiffs filed an amended complaint, the defendant answered the amended complaint. The parties thereafter entered into an extensive negotiation process, culminating some 18 months later in the proposed settlement agreement that has been entered into and presented to the Court. The Court has given its preliminary approval to the settlement, finding the settlement to be fundamentally fair, adequate, and reasonable, subject to the Final Approval Hearing discussed below.

The Court has not determined the correctness of the ultimate positions of any of the parties in this lawsuit. Rather, the parties have agreed to settle the lawsuit so as to avoid the uncertainties, the expense, and the delay of further litigation. This settlement is not an admission by either party as to the strength of the other’s position or of any weakness in its own position. The attorneys for the Class have extensively investigated and researched the issues in the lawsuit and, together with the Class Representatives, believe that the proposed settlement is fair, reasonable and adequate, and in the best interests of the Class.

What Does The Proposed Settlement Provide?

Under the proposed settlement that has been preliminarily approved by the Court, a Qualified Settlement Trust (the Settlement Fund) of \$4,000,000 will be created. From the gross amount of the Settlement Fund will be deducted the following amounts: (a) the costs of the Settlement Administrator,

who will provide all notices and process and resolve all claims, make all required tax withholdings and filings with appropriate authorities, and issue all necessary W-2s; (b) the attorneys' fees and expenses of class counsel awarded by the Court; and (c) Court-approved incentive awards to Mr. Russell and Ms. Gallego for their role in bringing this suit and helping to make this result available to the Class.

The amount remaining in the Settlement Fund after the deductions of the foregoing items shall be known as the Net Settlement Fund. Potential settlement class members who wish to participate in the settlement and receive a payment must opt in to the class action lawsuit and file claims with the Settlement Administrator, RSM US LLP, by submitting a claim accompanied by a fully-executed federal Form W-4 within a 120 day period ending May 30, 2017. All approved claims made by Class Members in this case will be paid from the Net Settlement Fund.

Approved claimants will be paid 100% of the amount they were supposed to have received during the Class Period for shift differential and/or lump sum leave pay that each claimant was entitled to receive. In the event there is not enough money in the Net Settlement Fund to pay all approved claims, claimants will be paid their *pro rata* share of the Net Settlement Fund. If there is any money remaining in the Net Settlement Fund after payment of all approved claims and expenses, that money shall be returned to AAFES. In accordance with Federal, State and local tax laws, the Settlement Administrator will withhold required taxes from each claimant's individual settlement payment.

As part of the settlement process, experts have spent months reviewing AAFES' pay records and have determined, in consultation with counsel for the defendant and Class Counsel, the amount each Class Member was underpaid for shift differential and/or lump sum leave pay during the Class Period ("damages"). Additionally, as a result of this litigation, AAFES has implemented changes to its payment protocols that will ensure AAFES employees are now properly paid the shift differential and any lump sum pay.

You have received an estimate of what the full value of your claim would be if the amount in the Net Settlement Fund is sufficient to pay all approved claims. This amount is set forth in the box on the first page of the Claim Form that accompanies this Notice. The amount you are actually paid if the settlement is given final approval by the Court could vary depending on the amount of taxes withheld and the amount available in the Net Settlement Fund versus the total amount of approved claims.

You can obtain a full copy of the settlement agreement and other important documents in the case by going to www.AafesShiftDifferentialSettlement.com or by calling 1-800-222-2760.

How Do I Know If I Am Included In The Proposed Settlement?

The Court certified a class for settlement purposes only consisting of employees who worked for AAFES at any time between November 1, 2008 and April 22, 2016 (the "Class Period") who were eligible for night shift differential and who:

(i) worked or were scheduled to work non-overtime shifts where the majority of such shift hours occurred either between the hours of 3:00 p.m. and midnight or between 11:00 p.m. and 8:00 a.m., and who were not paid the shift differential to which they were entitled; or

(ii) were eligible for accumulated and current accrued annual or vacation leave payments upon separation from AAFES and who, upon separation, were not paid the

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full amount of lump-sum payments to which they were entitled as a result of the failure to receive the shift differential.

Excluded from the Settlement Class are all employees whose damages for shift differential and lump sum payments are less than \$10 in total. Those employees with damages of at least \$10 who choose to opt in to the settlement are the Settlement Class Members.

If you were sent this Notice and accompanying claim form, then according to AAFES records you are a part of the Settlement Class and may request to be included in the settlement as a Settlement Class Member by completing and timely filing the enclosed Claim Form along with a completed Form W-4 (a Federal employee withholding allowance certificate).

How Can I Receive Payment?

To participate in the settlement and receive payment, you must complete and submit a Claim Form and Form W-4. There are three methods by which you can submit your Claim Form and W-4: (1) online at www.AafesShiftDifferentialSettlement.com; (2) by mailing your documents to AAFES Shift Differential Settlement, c/o Settlement Administrator, P.O. Box 1327, Blue Bell, Pennsylvania 19422; or (3) by faxing your documents to 215-641-8680. **YOUR CLAIM FORM AND W-4 MUST BE POSTMARKED OR RECEIVED BY THE SETTLEMENT ADMINISTRATOR NO LATER THAN MAY 30, 2017.**

When Will I Receive My Payment?

After the Court grants final approval of the settlement and after any appeals are resolved, payments will be mailed to eligible Settlement Class Members who timely submitted approved Claim Forms. Please understand that if the Court grants final approval to the Settlement after a hearing on May 11, 2017, there may be appeals. It is always uncertain when any such appeals can be resolved, and resolving them can take time. Please be patient. To check on the status of the settlement, including the mailing of class member payments, visit the settlement website at www.AafesShiftDifferentialSettlement.com.

The Attorneys and Class Representatives Who Represent Your Interests

The Court appointed the following attorneys to represent you and the Settlement Class:

John G. Jacobs
Bryan G. Kolton
Jacobs Kolton, Chtd.
55 West Monroe Street
Suite 2970
Chicago, IL 60603
888-828-8493
aafesshiftifferential@jacobskolton.com

Together, these lawyers are called Class Counsel. You will not be charged for these lawyers; they will be paid from the Settlement Fund. If you wish to be represented by a different lawyer in this case, you may hire an attorney at your own expense who may file an appearance on your behalf in this lawsuit.

The Court also has appointed Mr. Russell and Ms. Gallego to serve as the Class Representatives in this litigation.

Questions? Call 1-800-222-2760, visit www.AafesShiftDifferentialSettlement.com, or Claims@AafesShiftDifferentialSettlement.com

How Will Class Counsel And The Class Representatives Be Compensated?

To date, Class Counsel have not received any payment for their work in investigating and prosecuting this lawsuit on behalf of the Settlement Class, nor have counsel been reimbursed for their out-of-pocket expenses. Class Counsel intend to ask that the Court award to Class Counsel: (1) attorneys' fees equal to 38 percent of the Settlement Fund to compensate for their efforts in investigating the facts, litigating the case, negotiating the settlement, and implementing the settlement on behalf of the Settlement Class and for their risk in undertaking this representation on a purely contingent basis; and (2) reimbursement from the Settlement Fund of reasonable expenses incurred by Class Counsel in connection with the litigation. Class Counsel also intend to ask the Court to permit an incentive award of \$5,000 each to Mr. Russell and Ms. Gallego to compensate for their time and effort and for the risks incurred in serving as the Class Representatives in this litigation. The Court may award less than the amounts requested.

What Are My Options?

| Your legal rights and options: | |
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| Opt In To The Class Action Settlement By Submitting A Claim Form | <p>You may request to be included in the settlement (opt in), by completing the enclosed Claim Form and supplying any requested documentation, including a completed Form W-4. Your completed Claim Form must be postmarked or received by the Settlement Administrator no later than May 30, 2017. There are three methods by which you can submit your Claim Form and W-4: (1) by filing online at www.AafesShiftDifferentialSettlement.com; (2) by mailing your documents to AAFES Shift Differential Settlement, c/o Settlement Administrator, P.O. Box 1327, Blue Bell, Pennsylvania 19422; or (3) by faxing your documents to 215-641-8680.</p> <p>Filing your completed Claim Form by the deadline is the only way to receive a payment under the settlement.</p> <p>If you opt in to this class action, you cannot sue, continue to sue, or be part of any other lawsuit against the United States about the legal issues in this case. You also will be bound by all rulings that the Court makes with respect to this matter.</p> |
| Comment On or Object To The Settlement | <p>If you request to be included in the settlement, you may, but are not required to, express to the Court your views in support of, or in opposition to, the fairness, reasonableness, and adequacy of the proposed settlement, Class Counsel's request for attorneys' fees and expenses and/or the Class Representatives' incentive awards, or any other aspect of the proposed settlement.</p> <p>You may object to the proposed settlement regardless of whether you are represented by an attorney. Objecting means telling the Court that you dislike something about the Settlement. You cannot ask the Court to order a larger settlement—the Court can only approve or disapprove the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If you wish to object to the settlement, you must file with the Court a signed, sworn statement of objection that: (a) identifies the case name and number (<i>Russell et al v. U.S.</i>, Case No. 14-cv-1062 SGB); (b) describes in detail the basis for your objection, including any citations to legal authority, and provides all evidence supporting your objection and for such objection; (c) contains your name,</p> |

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address, and telephone number, and, if represented by counsel, the name, address, email address and phone number of counsel; (d) states whether you filed a claim form and opted in to the settlement and provides evidence of your membership in the Settlement Class; and (e) states whether you (or your counsel) intend to appear at the Final Approval Hearing.

Unless the Court rules otherwise, you cannot appear and be heard at the Final Approval Hearing to object to the settlement unless you have filed a written objection that complies with the foregoing requirements for objections. You do not need to attend the Final Approval Hearing for your objection to be considered. If you have not timely filed a notice of intention to appear at the Final Approval Hearing, you (or your counsel) will not be allowed to speak in support of such objection at the Final Approval Hearing.

Any objection or notice of intention to appear at the Final Approval Hearing must be filed with the Court and postmarked or received by all three of the following recipients **no later than March 31, 2017**:

1. AAFES Shift Differential Settlement
c/o Settlement Administrator
P.O. Box 1327
Blue Bell, PA 19422
Settlement Administrator
2. Bryan G. Kolton, Esq.
Jacobs Kolton, Chtd.
55 West Monroe Street
Suite 2970
Chicago, IL 60603
Class Counsel
3. Michael A. Rodriguez, Esq.
Trial Attorney
U.S. Department of Justice, Civil Division
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Attorney for United States

Any Class Member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall forever be foreclosed from making any objections (by appeal or otherwise) to the proposed settlement.

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| <p>Go To The Final Approval Hearing</p> | <p>The Court has already given its preliminary approval to the proposed settlement agreement and has directed that this Notice be provided to potential settlement Class Members. The Court will hold a hearing at 3:00 p.m. on May 11, 2017, at the United States Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place NW, Washington, D.C. 20439, to decide whether to give final approval to the settlement, to make an award of attorneys' fees and expenses, to rule on Class Counsel's request for an incentive award for the Class Representatives, and to hear any objections properly received by the Court.</p> <p>Attendance at the Final Approval Hearing is not required. Class Counsel is prepared to answer the Court's questions on your behalf. If you or your attorney still want to attend the Final Approval Hearing, you are welcome to do so at your own expense. Attendance is not necessary or required, even if you submitted an objection. Class members who submitted statements with the Settlement Administrator also need not appear at the hearing for their views to be considered.</p> <p>The Final Approval Hearing may be changed to a different date without further mailed notice to the Class, in which case the new time and date will be listed on the settlement website at www.AafesShiftDifferentialSettlement.com.</p> |
| <p>Do Nothing</p> | <p>If you do nothing, you will receive nothing from the settlement, but you will not release any claims that you may have. If you do not make yourself a member of this class, depending on applicable statutes of limitations, you may or may not be able to bring your own lawsuit.</p> |

Where Do I Get More Information?

This Notice is only intended to provide a summary of the proposed settlement. You may obtain a copy of the settlement agreement at: www.AafesShiftDifferentialSettlement.com.

If you have any questions or want to get more information, you may contact the Settlement Administrator at 1-800-222-2760, visit the settlement website at www.AafesShiftDifferentialSettlement.com, or access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <http://www.pacer.gov>. You may also contact Class Counsel at 888-828-8493. **Please do not contact the Court, the Court Clerk's Office or attorneys for the United States.**

Date: January 30, 2017

By Order of the United States Court of Federal Claims

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or Claims@AafesShiftDifferentialSettlement.com