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*Representing Individuals and Companies in Employment and Business Disputes*

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March 12, 2019

To: Tschappat v. OSHA Class Members

**Re: Tschappat, et al. v. DOL/OSHA, Our File Ref. 1119.6**

I have been requested by Administrative Judge Enechi Modu to report at the next conference on a number of matters, including how my personal plans to continue in practice may have an impact on this case. I am filing a motion to stay further proceedings for 45 days to allow any class members who are interested in proceeding in this case to step forward. I have spoken with several class members, and it is apparent that there are very few class members that were GS-12s seeking promotion to GS-13 positions in OSHA, to become Class Agents to cover all parts of the class certification from November of 1994 through the present. There is a need to have Class Agents for GS-13s seeking GS-14 positions in OSHA for the period 2009 to the present. We have spoken with some individuals and many do not fit the right periods or have no record of seeking promotions. As class counsel I am concerned that the AJ may cut the class back if we do not have Class Agents step forward and appear in the class case.

In addition, I have been hesitant to bring new Class Agents into the case that do not have easily discernible claims or may not be able to bear the expenses that might be entailed. I have not heard from any class member that they are represented by counsel and willing to become active in this case. One of AJ Modu's orders entered at the last pretrial conference directed a question to me about what my plans were with respect to this case. I do not intend to continue in the active practice of law forever or even for the foreseeable future. I intend to be fully retired no later than the middle of 2020.

Part of the difficulty with this case is that it was pending on appeal for about nine (9) years and after reversal by the EEOC's Office of Federal Operations the case was not assigned to a judge for about a year and a half. These were events outside my control or the original Class Agent's control. I am filing a motion for a stay to allow class members to decide whether or not to come forward. The Class Agent is William Tschappat, who retired in 2009.

The AJ has made it clear that she expects to have Class Agents to cover not only the 2009 and beyond period for GS-14 applicants, but also Class Agents to cover the GS-13 applicant group from 1994 to the present. A new Class Agent could be retired or still employed. Any class

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member that responds or talks with class counsel is engaging in attorney-client communications. I am resolving this dilemma for my small firm by choosing to bring this case to a conclusion. I have communicated with many different class members and I regret that I will not continue further in this case. No one appears willing to come forward and join the fight for this case.

I am continuing to wind down my practice. I welcome each of you to consider what you can or wish to do, I personally believe that this case has merit, but I cannot bring this case to trial without additional assistance. Thank you for your support and consideration of my requests.

Sincerely,

*s/ Bruce B. Elvin*

Bruce B. Elvin