UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3 and JANE DOE 1,individually and on behalf of all others similarly situated, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	Case No. **CLASS ACTION COMPLAINT**

INTRODUCTION

1. Plaintiffs John Doe 1, John Doe 2, John Doe 3, and Jane Doe 1, bring this class action lawsuit individually and, pursuant to Federal Rule of Civil Procedure 23, on behalf of all other similarly situated individuals, for violations of the Federal Employees' Retirement Systems Act of 1986 ("FERSA"), Pub. L. No. 99-335, 100 Stat. 514 (codified at 5 U.S.C. §§ 8351 and 8401 *et seq*.).

2. Over the last three decades there has been a major evolution in the retirement plans for most Americans in the private sector. Beginning in the early 1980s many employers began transferring employees from defined benefit retirement plans to defined contribution plans in an order to minimize their potential pension liabilities. The most common defined contribution plans are "401(k)" plans, formed pursuant to the eponymous section of the Internal Revenue Code.

3. Unlike defined benefit plans, retirees' income under defined contribution plans are dependent upon their personal contributions to their accounts, which are typically deducted on a pre-tax basis from their paychecks. In addition to personal contributions from employee

paychecks, employers frequently contribute to employee retirement accounts by “matching” contributions up to a certain percentage of an employee’s salary.

4. With the increase in popularity of defined contribution plans, Congress passed FERSA in an effort to offer federal employees a savings and tax benefit similar to what many private sector employers offered their employees under 401(k) plans. Specifically, FERSA created the Thrift Savings Plan (“TSP”), a defined contribution plan for federal employees.

5. Since its creation over thirty years ago, the TSP has become the largest retirement plan in the country, managing more than $500 billion in retirement assets. The assets of the TSP are held in trust in individual employee accounts within the Thrift Savings Fund.

6. Eligible federal employees are automatically entitled to receive a contribution to their TSP accounts by their employing federal agency equal to 1% of their salary. 5 U.S.C. § 8432(c)(1). Additionally, federal employees are able to make elective contributions to their TSP accounts which are deducted from their paychecks. 5 U.S.C. § 8351(a)(1). For all elective deductions up to 5% of the employee’s salary, the United States “matches” 50% to 100% of the contribution. 5 U.S.C. § 8432(c)(2).

7. Federal employees are typically paid on a bi-weekly basis (referred to as a “pay period”), and historically receive their compensation within a week of each end of the pay period.

8. In passing FERSA, Congress required that employing agencies (*i.e.*, the United States) make all TSP contributions for the benefit of its employees “no later than 12 days after the end of each… pay period[.]” 5 U.S.C. § 8432(c).

9. Over the holiday season of 2018 and into the beginning of 2019, however, Plaintiffs and the Class went over a month without their paychecks and TSP contributions due to the government shutdown from December 22, 2018 through January 25, 2019 (“Shutdown”).

10. During the thirty-four (34) day Shutdown the value of TSP investment funds increased considerably, across the board. In particular, the most popular TSP investment funds increased over 10% in the short period of time.

11. Upon funding of the federal agencies, Plaintiffs and all TSP participants were entitled to receive their backpay and be made whole—meaning, federal employees should have received their salary ***plus*** lost TSP earnings as a result of not receiving their contributions in accordance with Section 8432(c) of FERSA. Much to their surprise and disappointment, when they received their "backpay" on January 31, 2019, Plaintiffs and other Class members were not compensated for the United States' failure to make timely TSP contributions. As a result, when Plaintiffs received their backpay salary and contributions on January 31, 2019, they were forced to acquire the TSP funds at inflated prices, which were materially more expensive than what they should have paid but for the United States' FERSA violations.

12. Plaintiffs estimate, based on publicly available information, that the United States' violations of FERSA resulted in millions of dollars in injuries sustained by the Class . This loss will have a compounding effect and will impact the retirement of federal employees for decades to come.

13. Plaintiffs' and the Class members' losses are a direct result of the United States' denial of their right to receive TSP contributions within twelve (12) days of the end of a given pay period.

14. Plaintiffs seek relief as set forth in the Prayer, including, an order providing lost benefits caused by Defendant's violations of FERSA alleged herein.

JURISDICTION AND VENUE

15. This action arises under Section 8477 of FERSA, 5 U.S.C. § 8477. This Court has original, exclusive subject matter jurisdiction over this action pursuant to Section 8477(e)(7)(A) of FERSA, which vests "exclusive jurisdiction of civil actions" arising under Section 8477(e) in the "district courts of the United States[.]"5 U.S.C. § 8477(e)(7); *see also id.* § 8477(e)(3)(C)(i) (TSP participants may bring "[a] civil action… in the district courts of the United States to recover benefits of such participant…, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions…").

16. This Court has personal jurisdiction over Defendant pursuant to FERSA § 8477(e)(7)(B), which provides for service in any district where a defendant may be found. Plaintiffs were employed by Defendant in this district and it is self-evident that the United States may be found in this district.

17. Venue is proper in this district pursuant to FERSA § 8477(e)(7)(B), because the violations of FERSA alleged in this action took place in this district, and/or Defendant may be found in this district.

PARTIES

18. Plaintiff, John Doe 1, is a federal employee who worked during the Shutdown as an Investigative Specialist for the Federal Bureau of Investigation ("FBI").[1] John Doe 1 did not receive timely TSP contributions by Defendant the United States during the Shutdown, and suffered losses as a result.

[1] Investigative Specialists work covertly and, as a condition of their employment, they are not permitted to publicly affiliate with the FBI. Plaintiffs have filed a motion for leave to proceed anonymously concurrently with the filing of this complaint.

19. Plaintiff, John Doe 2, is a federal employee who worked during the Shutdown as an Investigative Specialist for FBI. John Doe 2 did not receive timely TSP contributions by Defendant the United States during the Shutdown, and suffered losses as a result.

20. Plaintiff, John Doe 3, is a federal employee who worked during the Shutdown as an Investigative Specialist for FBI. John Doe 3 did not receive timely TSP contributions by Defendant the United States during the Shutdown, and suffered losses as a result.

21. Plaintiff, Jane Doe 1, is a federal employee who worked during the Shutdown as an Investigative Specialist for the FBI. Jane Doe 1 did not receive timely TSP contributions by Defendant the United States during the Shutdown, and suffered losses as a result.

22. Defendant is the United States of America. Plaintiffs and Class members are or were employed by executive agencies of the United States government and TSP participants.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this lawsuit on behalf of the following class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All Thrift Savings Plan participants who did not receive timely TSP contributions for pay periods beginning on or after December 22, 2018 and ending on or before January 25, 2019, in violation of the Federal Employees' Retirement Systems Act of 1986 (the "Class").

24. Plaintiffs are Class members because they participate in the TSP retirement program and did not receive TSP contributions, as required by FERSA, during the Shutdown, and, as a result, missed market gains they would have received were it not for Defendant's FERSA violations.

25. Plaintiffs can identify all other Class members from Defendant's own records.

26. Plaintiffs do not know the exact size of the Class; however, publicly available news reports state 800,000 or more employees had their compensation delayed as a result of the

Shutdown.

27. Plaintiffs' claims are typical of other Class members' claims because they were injured through the same violations of FERSA as all other Class members. Accordingly, by proving their own claims, Plaintiffs will necessarily prove the other Class members' claims.

28. Common legal and factual questions predominate within the class, including but not limited to the following:

a. Whether the United States violated FERSA by failing to make timely TSP contributions for the benefit of the Class during the Shutdown;

c. Whether Plaintiffs and Class members were injured as a result of Defendant's FERSA violations;

d. Whether any such injuries were foreseeable to Defendant; and

e. The measure of lost benefits to Plaintiffs and Class members.

29. Plaintiffs can and will fairly and adequately represent and protect the class members' interests and have no interests that conflict with, or are antagonistic to, those of the class. Moreover, Plaintiffs' attorneys are experienced and competent in complex, class-action, and investment-related litigation.

30. Class certification is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted because:

a. Common questions of law and fact overwhelmingly predominate over any individual questions that exist within the class and, consequently, economies to the Court and parties exist in litigating the common issues on a class-wide basis instead of on a repetitive individual basis;

b. Each class member's lost benefits claim is too small to make individual litigation an economically viable alternative, and few class members have any interest in individually controlling the prosecution of separate actions;

c. Class treatment is required for optimal deterrence and compensation; and

d. No unusual difficulties are likely to be encountered in this class action's management in that all legal and factual questions are common to the class.

SUBSTANTIVE ALLEGATIONS

The Retirement System for Federal Employees

35. In 1986, Congress passed FERSA in order to provide federal employees with many of the retirement savings opportunities afforded by private employers. Central to enactment of FERSA was the creation of the TSP, which is administered by the Federal Retirement Thrift Investment Board ("FRTIB").[2]

36. The TSP is a statutorily created defined contribution plan available to federal employees, just like the ubiquitous 401(k) plans available to employees in the private sector.

37. Every federal employee (as defined by FERSA, § 8401(11)) participates in the TSP. Federal employees are entitled to receive a retirement contribution from their employing agency equal to 1% of their base pay or salary (referred to as an Automatic Contribution). 5 U.S.C. § 8432(c)(1); 5 C.F.R. § 1600.19. This contribution is automatically deposited into a TSP account created on the employee's behalf. Employees may also elect to make Regular Employee Contributions, which are deducted from their basic pay on a pre-tax basis each pay period.

[2] While the FRTIB is responsible for overseeing the administration of the TSP, an employee's "[Federal] [a]gency… [p]lays an [i]mportant [r]ole in the TSP" and "is responsible for determining [an employee's] retirement coverage and reporting to the record keeper the dollar amount of contributions to [their TSP] account each pay period." https://www.tsp.gov/PlanParticipation/AboutTheTSP/index.html#whoAdministers

38. In addition to Automatic Contributions and Regular Employee Contributions, TSP participants are eligible to receive Matching Contributions on the first 5% of pay that they elect to contribute to their TSP accounts. 5 U.S.C. § 8432(c)(2); 5 C.F.R. § 1600.19. The first 3% of their pay is matched dollar-for-dollar, and the remaining 2% of contributed pay is matched 50 cents on the dollar.[3]

39. Section 8432(c) of FERSA requires employing agencies (*i.e.*, the United States) to make all Automatic Contributions, Regular Employee Contributions, and Matching Contributions for the benefit of its employees "***no later than 12 days after the end of each… pay period***[.]" 5 U.S.C. § 8432(c).[4]

40. Based on information and belief, federal agencies adopted a bi-weekly pay period for all federal employees, and issue paychecks and contributions within a week of the last day of each pay period. For example, in the ordinary course, federal employees would receive their paychecks and TSP contributions for the pay period of December 23, 2018 through January 5, 2019, on January 11, 2019,

41. Once the funds are contributed to their TSP accounts, participants can invest their employee and employer contributions in five core funds:

a. Government Securities Investment Fund (G Fund), which invests in short-term U.S. Treasury securities;

b. Fixed Income Index Investment Fund (F Fund), which tracks the Bloomberg Barclays U.S. Aggregate Bond Index;

[3] For 2019, the Internal Revenue Service placed a $19,000 annual limit on elective TSP employee contributions. IRC § 402(g).[3] This limit did not apply to Agency Automatic (1%) Contributions, Agency Matching Contributions, catch-up contributions, traditional contributions made from tax-exempt pay, or amounts transferred or rolled over into the TSP. IRC § 414(v).

[4] Emphasis added throughout, unless stated otherwise.

c. Common Stock Index Investment Fund (C Fund), which tracks the Standard & Poor's 500 Stock Index;

d. Small Cap Stock Index Investment Fund (S Fund), which tracks the Dow Jones U.S. Completion Total Stock Market (TSM) Index; and

e. International Stock Index Investment Fund (I Fund), which tracks the MSCI EAFE (Europe, Australasia, Far East) Index.

42. In addition to these indexed core funds, TSP participants may invest in five Lifecycle Funds (L Funds). The L Funds are custom target-date funds invested exclusively in the G, F, C, S, and I Funds.

43. Contributions are automatically invested based upon each TSP participant's pre-determined portfolio allocation. Employees are able to allocate their existing funds as well as their contributions. In other words, an employee can elect to have all future contributions differently than how he or she has allocated funds in the TSP account.

* * *

44. The program has been a success and has grown into the largest retirement plan in the country. By the end of 2018, the TSP had over $558 billion in assets. This was accomplished as a result of FERSA's tremendous participation rate which reached 93.3% of eligible individuals in 2018, including 97.1% of individuals below the age of 30. Moreover, the average participant contribution rate is approximately 8%, nearly 20% above the average deferral rate of other defined contribution plans.[5]

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[5] Thrift Savings Plan, Annual Report of the Thrift Savings Plan Required by §105 of the TSP Enhancement Act of 2009, at 6 (June 30, 2019), available at https://www.frtib.gov/ReadingRoom/Congress/TSP-Annual-Report_2018.pdf (citing Deloitte, Annual Defined Contribution Benchmarking Survey – Ease of Use Drives Engagement in Saving for Retirement, 2017 Edition).

The Shutdown

31. The longest federal government shutdown in the history of the United States began on December 22, 2018, at 12:01 am, after Congress and President Donald Trump could not come to an agreement on an appropriations bill to fund the federal government for fiscal year 2019. The Shutdown would last until January 25, 2019.

32. When the federal government is in the midst of a shutdown, the United States, through its executive agencies, designate its employee either "excepted" or "non-excepted". "Non-excepted" employees are those who are subject to furlough and ordered to not report to work. "Excepted" employees are "employees who are funded through annual appropriations who are nonetheless excepted from the furlough . . ." under guidance issued by the U.S. Office of Personnel Management.

33. Mindful of the multitude of issues which frequently plague government benefits, Congress passed FERSA and created the TSP with the hope that it would be "not be subject to political or other priorities which might otherwise be imposed by the usual budget/appropriations process." Hearing of the Federal Thrift Investment Board and to Discuss H.R. 2514: Before the Subcommittee on Compensation and Employee Benefits, H.R. Rep. 101-18 (July 25, 1989)(Statement of Francis X. Cavanaugh (the first Executive Director of the FRTIB from its enactment in 1986 until 1994)).

34. Congress' best of intentions for FERSA fell upon deaf ears and their initial concerns materialized. Over the course of the Shutdown, which covered at least two pay periods, Plaintiffs and the other Class members (including "excepted" employees) did not receive any paychecks or, *a fortiori*, their TSP contributions, in violation of Section 8432(c) of FERSA.

35. The absence of paychecks and TSP contributions during the Shutdown imposed a great burden on federal employees. The FRTIB reported that there was a "significant spike" in the

number of TSP participants seeking "hardship withdrawals" from their TSP accounts during this period.[6]

36. On January 16, 2019, the Government Employee Fair Treatment Act of 2019, Pub. L. 116-1, 133 Stat. 3, was signed into law which provided that each federal employee affected by the Shutdown "shall be paid for the period of the lapse in appropriations… at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates."

The United States' Violations of FERSA Caused Significant Losses to the Class

37. Although the government Shutdown cost the country approximately $11 billion in lost GDP,[7] financial markets increased considerably in that time. Indeed, the S&P 500 increased over 10% over the same period.

38. Over the course of the Shutdown, each TSP investment fund increased, some of which grew by as much as 14.9%:

Date	G Fund	F Fund	C Fund	S Fund	I Fund
25-Jan-19	16.0225	18.195	38.2549	48.3991	28.1953
24-Jan-19	16.0213	18.222	37.9309	47.7512	27.9131
23-Jan-19	16.0201	18.1779	37.8783	47.4112	27.8808
22-Jan-19	16.0189	18.1906	37.7951	47.5084	27.9154
18-Jan-19	16.0141	18.1417	38.3365	48.2715	28.0609
17-Jan-19	16.0129	18.1567	37.8365	47.7229	27.8525
16-Jan-19	16.0117	18.1608	37.5476	47.3145	27.7327
15-Jan-19	16.0105	18.1667	37.4633	46.9927	27.75
14-Jan-19	16.0093	18.1661	37.0654	46.5818	27.6554
11-Jan-19	16.0057	18.1767	37.2572	46.9537	27.763
10-Jan-19	16.0045	18.1457	37.2626	46.8996	27.7763
9-Jan-19	16.0033	18.1562	37.095	46.6288	27.7435
8-Jan-19	16.0021	18.1561	36.932	46.2188	27.388

[6] Erich Wagner, "TSP Saw 26 Percent Spike in Hardship Withdrawals During Shutdown," Government Executive (Jan. 28, 2019), available at https://www.govexec.com/pay-benefits/2019/01/tsp-saw-26-percent-spike-hardship-withdrawals-during-shutdown/154458/. "A financial hardship withdrawal is a withdrawal you make while still employed because of ***genuine financial need***[,]" and is subject to a 10% tax penalty. Thrift savings Plan, "In-Service Withdrawals" available at https://www.tsp.gov/PDF/formspubs/tspbk12.pdf.

[7] Congressional Budget Office, "The Effects of the Partial Shutdown Ending in January 2019," (January 2019) https://www.cbo.gov/system/files/2019-01/54937-PartialShutdownEffects.pdf).

7-Jan-19	16.0009	18.1788	36.5768	45.5472	27.2332
4-Jan-19	15.9973	18.1837	36.322	44.7812	27.1899
3-Jan-19	15.9961	18.2683	35.1161	43.2176	26.4053
2-Jan-19	15.9949	18.1687	35.9983	43.9762	26.5338
31-Dec-18	15.9923	18.1428	35.9523	43.9772	26.7131
28-Dec-18	15.9883	18.0996	35.6451	43.5706	26.5981
27-Dec-18	15.987	18.092	35.6841	43.4253	26.383
26-Dec-18	15.9858	18.0516	35.3777	43.2447	26.4747
24-Dec-18	15.9831	18.0948	33.7031	41.1846	25.9428
21-Dec-18	15.9792	18.0617	34.64	42.0954	26.1209
Share Price Growth	**0.2710%**	**0.7380%**	**10.4356%**	**14.9748%**	**7.9415%**

39. Likewise, the L Funds, comprised of the L Income fund, L 2020 fund, L 2030, L 2040 fund, and L 2050 fund, increased by 2.2628%, 3.2125%, 6.2422%, 7.4433%, 8.4950%, respectively, over the course of the Shutdown.

40. Based on information and belief, all federal employees received a paycheck and their TSP contributions for the pay periods of December 23, 2018 through January 5, 2019, and January 6, 2019 through January 19, 2019, on January 31, 2019,

41. These purported "backpay" contributions, however, failed to provide Plaintiffs and the Class with the lost earnings caused the United States, failure to make timely TSP contributions as required by FERSA.

42. In fact, a material portion of the overall market increase during the Shutdown (up to 4.6% for certain funds) occurred in the twenty (20) day period between when Plaintiffs expected to receive their first TSP contributions (January 11, 2019) and the date on which the "backpay" contributions were made (January 31, 2019):

Date	L Income	L 2020	L 2030	L 2040	L 2050	G Fund	F Fund	C Fund	S Fund	I Fund
31-Jan-19	20.0501	27.4717	31.0951	33.7069	19.4459	16.0297	18.3361	38.8329	49.0959	28.4759
30-Jan-19	20.0189	27.4141	30.9715	33.5491	19.3435	16.0285	18.2639	38.4938	48.6695	28.4448
29-Jan-19	19.9618	27.3042	30.723	33.2298	19.1351	16.0273	18.2407	37.9001	48.1085	28.15
28-Jan-19	19.9582	27.2992	30.7171	33.2233	19.1315	16.0261	18.2073	37.9545	48.1956	28.0657

25-Jan-19	19.9798	27.3442	30.8285	33.3679	19.2265	16.0225	18.195	38.2549	48.3991	28.1953
24-Jan-19	19.9406	27.2674	30.6499	33.1367	19.074	16.0213	18.222	37.9309	47.7512	27.9131
23-Jan-19	19.9282	27.2453	30.6047	33.0785	19.0358	16.0201	18.1779	37.8783	47.4112	27.8808
22-Jan-19	19.9262	27.2419	30.5985	33.0714	19.0318	16.0189	18.1906	37.7951	47.5084	27.9154
18-Jan-19	19.9649	27.3225	30.7988	33.3329	19.2048	16.0141	18.1417	38.3365	48.2715	28.0609
17-Jan-19	19.9197	27.2346	30.5976	33.074	19.0354	16.0129	18.1567	37.8365	47.7229	27.8525
16-Jan-19	19.8918	27.1808	30.4754	32.9167	18.9323	16.0117	18.1608	37.5476	47.3145	27.7327
15-Jan-19	19.8835	27.1651	30.4403	32.871	18.9019	16.0105	18.1667	37.4633	46.9927	27.75
14-Jan-19	19.8503	27.1011	30.2959	32.6858	18.781	16.0093	18.1661	37.0654	46.5818	27.6554
11-Jan-19	19.8683	27.1385	30.388	32.8062	18.8607	16.0057	18.1767	37.2572	46.9537	27.763
10-Jan-19	19.8655	27.135	30.3851	32.8031	18.859	16.0045	18.1457	37.2626	46.8996	27.7763
Share Price Growth	**0.93%**	**1.24%**	**2.34%**	**2.76%**	**3.11%**	**0.16%**	**1.05%**	**4.21%**	**4.68%**	**2.52%**

43. Accordingly, when Plaintiffs received their backpay TSP contributions on January 31, 2019, they were forced to acquire the TSP funds at prices up to 4.68% more expensive than what they should have paid for the same Funds on January 11, 2019.

44. This seemingly small price inflation will have a material effect on the overall funds available to each TSP participant upon retirement due to the compounding effect of Defendant's violations. Indeed, the U.S. Department of Labor promotes "The Magic of Compounding" to future retirees on its website, noting that "[c]ompounding investment earnings is what can make even small investments become large investments given enough time."[8]

45. Plaintiffs estimate that the Class suffered millions in lost earnings as a result of the United States' untimely TSP contributions in violation of FERSA. Even when accounting for the recent market downturn cause by Covid-19, the harm suffered by the Class will "compound" overtime.

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[8] U.S. Dep't of Labor, "The Magic of Compounding" available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications/the-magic-of-compounding (last accessed Apr. 14, 2020).

46. Additionally, even if markets completely deviate from its historical returns and do not increase over time, the very structure of the TSP core funds practically guarantee that the Class' damages will increase over time. TSP funds do not issue dividends or distributions to individual TSP accounts. Rather, all dividends and distributions generated by the underlying security investments directly increase the value of the TSP fund in which the securities are held. Thus, so long as dividends and distributions continue to be paid by the underlying investments the Net Asset Value[9] of each TSP fund will increase. Moreover, unlike other U.S. Treasury bond funds that fluctuate with the value of the underlying bonds, the TSP G fund never decreases in value, regardless of the movement in bond prices.

47. Accordingly, the losses borne by the Class to date are substantial, will increase over time, unless rectified, and are directly attributable to Defendant's violations of FERSA.

COUNT I

VIOLATIONS OF § 8432(c) OF THE FEDERAL EMPLOYEE RETIREMENT SYSTEMS ACT OF 1986

(brought pursuant 5 U.S.C. § 8477(e)(3)(C)(i))

45. Plaintiffs incorporate the above allegations as though fully set forth herein.

46. Plaintiffs and the other Class members are current and former federal employees enrolled in the TSP, pursuant to FERSA.

47. Section 8432(c) of FERSA provides in pertinent part:

> (1)(A) At the time prescribed by the Executive Director, but ***no later than 12 days after the end of the pay period*** that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay

[9] Net Asset Value is a measure of a fund's value, calculated by subtracting the value of assets in a fund by the value of liabilities within that fund. The Net Asset Value is a key valuation component for portfolio funds such as the five core TSP funds.

> period), ***the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period***.
>
> * * *
>
> (2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. ***The employing agency's contribution shall be made*** within such time as the Executive Director may prescribe, but ***no later than 12 days after the end of each such pay period***.

48. Pursuant to Section 8432(c), Defendant the United States was required to make TSP contributions to the Thrift Savings Fund for the pay period of December 23, 2018 through January 5, 2019, by January 17, 2019, at the latest.

49. Defendant the United States did not make TSP contributions for the Class until January 31, 2019.

50. Defendant the United States violated § 8432(c) by failing to make timely TSP contributions to the Thrift Savings Fund on behalf of Plaintiffs and the Class during the Shutdown.

51. Plaintiffs bring this Claim, individually and on behalf of the Class, pursuant to Section 8477(e)(3)(C)(i) of FERSA which provides that a civil action may be brought: "by any participant or beneficiary—(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions…."

52. As a direct and proximate result of the above Defendant the United States' violations, Plaintiffs and the Class have suffered millions of dollars in lost benefits.

53. Plaintiffs and the Class are entitled to recover the benefits owed as a result of Defendant the United States' violations of FERSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That the Court certify this case as a class action and appoint the named Plaintiffs to be Class representatives and their counsel to be Class counsel;

B. That this Court finds Defendant the United States violated FERSA by failing to make timely contributions to the Thrift Savings Fund for the benefit of Plaintiffs and the Class;

C. That this Court enter an order awarding lost earnings to Plaintiffs and the Class, including lost earnings for future gains not realized, and pre-judgment and post-judgment interest;

D. That this Court enter an order awarding attorneys' fees and costs associated with investigating and prosecuting this action pursuant to any provision of the law allowing for such an award; and

E. That the Court enter an order providing other equitable or remedial relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: April 17, 2020

Respectfully submitted,

/s/ *Douglas J. Bench, Jr.*

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