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United States District Court,
District of Columbia.

Timothy PIGFORD, et al., Plaintiffs,
v.
Ann VENEMAN, Secretary, United States Department of Agriculture, Defendant.
Cecil Brewington, et al., Plaintiffs,
v.
Ann Veneman, Secretary, United States Department of Agriculture, Defendant.

Civil Action Nos. 97–1978 (PLF), 98–1693(PLF). |
May 5, 2005.

Opinion

MEMORANDUM OPINION AND ORDER

PAUL L. FRIEDMAN, District Judge.

***1** This matter is before the Court on the *pro se* motions of Cecil Brewington, Eddie Gray, Gregory Erves, Arthur Flonnory, Lucious Abrams and Herbert Williams for a Court Order instructing the Arbitrator that so long as they were were originally represented by class counsel and were not named plaintiffs, that they are qualified for relief under the June 21, 2002 decision by the court of appeals in this case. Upon consideration of plaintiffs' motions and the government's opposition, the Court concludes that plaintiffs' motions must be denied.

On June 21, 2002, the court of appeals explained in this case that an attorney's mistakes generally cannot form the basis for the modification of a consent decree under Rule 60(b)(5) of the Federal Rules of Civil Procedures. *See Pigford v. Veneman,* 292 F.3d 918, 926 (D.C.Cir.2002). The court of appeals noted, however, that an exception to the general rule could be made in the class action context where a plaintiff had not "voluntarily" chosen class counsel—i.e. was not a named plaintiff. *See id.* The court of appeals then remanded the case to this Court to tailor a remedy for the affected plaintiffs. *See id.* at 927.

One of the issues remaining before this Court was whether the relief granted by the court of appeals applied to those claimants not originally represented by class counsel. On November 8, 2004, this Court issued a Memorandum Opinion and Order explaining that it did not. *See Pigford v. Veneman,* 344 F.Supp.2d 149, 152 (D.D.C.2004). At that time, however, a number of pro se plaintiffs alleged that they were represented by class counsel from August 15, 1997 through December 1999. *See id.* The Court acknowledged that "if any of these plaintiffs were, in fact, originally represented by class counsel and injured by class counsel's actions, relief is warranted." *Id.* at 150.

A number of pro se plaintiffs have now filed motions with the Court asking that the Court instruct the Arbitrator that to claim relief under the Court's November 8, 2004 Memorandum Opinion and Order, a claimant need only demonstrate that (1) he or she was not a named plaintiff and (2) that he or she was originally represented by class counsel. These motions were filed in response to a November 9, 2004 letter from the Arbitrator which stated, in relevant part:

> Judge Friedman has just issued an order in which he finds that he does not have the authority to extend the Consent Decree deadlines unless you were represented by class counsel and your case was somehow injured by class counsel's errors.
>
> Our records indicate that the attorney handling your case at the time that your Track B claim was filed and began moving through the process was Heidi Pender. She was not class counsel.
>
> As a result of Judge Friedman's decision, I am now obligated to dismiss your claim unless you can show me that class counsel represented you and that class counsel made errors affecting your claim.

***2** *See* Plaintiff's Motion, Exh. 1, November 9, 2004 Letter to Lucious Abrams.[1] The Arbitrator is correct. Because the relief afforded by the court of appeals relies on the fact that it was class counsel's errors that injured the plaintiff, a claimant seeking relief under the decision by the court of appeals must demonstrate both that he or she was represented by class counsel and that it was errors made by class counsel which caused him or her to miss the deadlines imposed by the Consent Decree. The

Arbitrator's requirement, therefore, that the claimant demonstrate that he was injured by class counsel is not an additional criteria and was, in fact, required by this Court's Memorandum Opinion and Order. Plaintiffs' motions must therefore be denied.

Accordingly, it is hereby

ORDERED that plaintiff Cecil Brewington's motion [473] in Civ. No. 98–1693 is DENIED; it is

FURTHER ORDERED that Eddie Gray's motion and [1095] in Civ. No. 97–1978 and [484] in Civ. No. 98–1693 is DENIED; it is

FURTHER ORDERED that Gregory Erves' motion [1096] in Civ. No. 97–1978 and [485] in Civ. No. 98–1693 is DENIED; it is

FURTHER ORDERED that Arthur Flonnory's motion [1098] in Civ. No. 97–1978 and [487] in Civ. No. 98–1693 is DENIED; it is

FURTHER ORDERED that Lucious Abrams' motion [1099] in Civ. No. 97–1978 and [488] in Civ. No. 98–1693 is DENIED; and it is

FURTHER ORDERED that Herbert Williams' motion [1100] in Civ. No. 97–1978 and [489] in Civ. No. 98–1693 is DENIED.

SO ORDERED.

Footnotes

1 Although all of the farmers attached a copy of the letter that was sent to Lucious Abrams, the Court assumes that a similar letter was received by the other farmers as well.