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United States Court of Appeals, District of Columbia Circuit.

Carolee Brady HARTMAN and All Other Plaintiffs, Approx. 50 additional plaintiffs, Appellees
Zuzanna J. DILLON, Dr., Appellants
v.
Colin L. POWELL, Secretary of State, et al., Appellees

No. 00-5356. | March 15, 2001.

Before: WILLIAMS, RANDOLPH, and GARLAND, Circuit Judges.

Opinion

ORDER

PER CURIAM.

***1** Upon consideration of the motions for summary affirmance, the responses thereto, and the replies; and appellants' motion for summary reversal, the responses thereto, and the replies, it is

ORDERED, for the reasons stated in the accompanying memorandum, that the motion for summary reversal be denied, and the motions for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley,* 819 F.2d 294, 297 (D.C.Cir.1987) (per curiam); *Walker v. Washington,* 627 F.2d 541, 545 (D.C.Cir.) (per curiam), *cert. denied,* 449 U.S. 994 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R.App. P. 41(b); D.C.Cir. Rule 41.

MEMORANDUM

The district court has approved a $508 million settlement of this long-running Title VII class action against the United States Information Agency (USIA). The merits of the consent decree are not before us. This appeal challenges the district court's decision denying appellants leave to file untimely claims that would allow them to share in the settlement.

The deadline for filing claims was July 15, 1989. Nevertheless, the district court retained the power under Federal Rules of Civil Procedure 6(b)(2) and 23(d) to enlarge the time for filing claims after expiration of the claim period should it find excusable neglect. *See In re Cendant Corp. Prides Litig.,* 233 F.3d 188, 192-96 (3d Cir.2000); *In re Gypsum Antitrust Cases,* 565 F.2d 1123, 1127-28 (9th Cir.1977). The determination whether neglect in a particular case is excusable is an equitable one, committed to the district judge's discretion. *See In re Cendant,* 233 F.3d at 195-97. Here, the district court recognized it had discretion to permit late claims and appropriately exercised that discretion in declining to allow appellants to join the 1,100 member class. *See Pioneer Inv. Serv. Co. v. Brunswick Associates L.P.,* 507 U.S. 380, 398 (1993) (recognizing that the trial court has discretion to decline to find the neglect to be excusable and deny an extension request where, for example, there is evidence of prejudice to other parties or to judicial administration of the case).

Drawing a line is essential to achieve certainty and finality in such a large class action. *See In re Gypsum,* 565 F.2d at 1127. And the district court did so in a principled way by using the 1991 Order of Reference to the special master as the cutoff point for new claims. *See Burns v. Elrod,* 757 F.2d 151, 155 & n. 7 (7th Cir.1985) (no inconsistency in the prior grant of other late petitions that were "less tardy" and had stronger equitable claims). Coming six to nine years after the last claims

were accepted, appellants are not similarly situated to the 22 who were admitted to the class between 1989 and 1991 and participated in the remedial proceedings; therefore, the district court was not compelled to treat them the same way. *See In re Gypsum,* 565 F.2d at 1128.

***2** Moreover, the district court acted within its discretion in approving the notice to potential class members as adequate and fair for the class as a whole. The proper inquiry here is not whether appellants actually received the notices but instead whether the method of providing the notices was "reasonably calculated, under all the circumstances," to inform potential claimants of the class action and of their right to participate. *See Peters v. National R .R. Passenger Corp.,* 966 F.2d 1483, 1486 (D.C.Cir.1992) (quoting *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314-15 (1950)). The due process clause "does not amount to a guarantee of notice," *Peters,* 966 F.2d at 1486, and the district court correctly concluded that the procedures prescribed by the remedial order, *Hartman v. Wick,* 678 F.Supp. 312, 328-33, 342-44 (D.D.C.1988), and carried out by the USIA met the due process standard and the requirements of Rule 23. Appellants' claim that the class was improperly certified for settlement pursuant to Rule 23(b)(2), instead of (b)(3), was not raised in appellants' objections to the district court and, hence, need not be considered. *See District of Columbia v. Air Florida, Inc.,* 750 F.2d 1077, 1084 (D.C.Cir.1984). In any event, the claim is without merit. The nature of the settlement, providing equitable relief under Title VII, is consistent with class certification under Rule 23(b)(2). *See Martini v. Federal Nat'l Mortgage Ass'n,* 178 F.3d 1336, 1348-49 (D.C.Cir.1999), *cert. dismissed,* 528 U.S. 1147 (2000); *Jefferson v. Ingersoll Int'l Inc.,* 195 F.3d 894, 896 (7th Cir.1999); *Allison v. Citgo Petroleum Corp.,* 151 F.3d 402, 415-16 (5th Cir.1998).

For these reasons, we deny appellants' motion for summary reversal and grant appellees' motions for summary affirmance.