

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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TIMOTHY PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 97-1978 (PLF)
)	
TOM VILSACK, Secretary,)	
United States Department of Agriculture)	
)	
Defendant.)	
<hr/>)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98-1693 (PLF)
)	
TOM VILSACK, Secretary,)	
United States Department of Agriculture)	
)	
Defendant.)	
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STIPULATION AND ORDER

WHEREAS, on April 14, 1999, this Court approved and entered a Consent Decree in these consolidated actions designed to finally resolve the claims of the members of plaintiff class who opted to have their claims resolved under the claims processes provided in the Consent Decree; and

WHEREAS, the Court appointed a Monitor, Facilitator, Adjudicators, and Arbitrator (collectively, the “Neutrals”) to ensure the efficient operation of the Consent Decree; and

WHEREAS, the Court appointed Class Counsel to represent plaintiff class members in the implementation of the Consent Decree; and

WHEREAS, to facilitate the efficient resolution of the race discrimination claims of plaintiff class members, the Consent Decree established—

(i) two alternative dispute resolution processes for resolving claims submitted by plaintiff class members—Track A and Track B;

(ii) a six-month claims period for the submission of claims for resolution under Track A or Track B, and a “late-filing” authority under which putative class members who could show that their failure to submit their claim during the six-month claim period was due to extraordinary circumstances beyond their control were permitted to submit late claims; and

(iii) a procedure under which either party to a Track A or Track B claim could request that the Monitor direct the Adjudicator or Arbitrator to reexamine his decision; and

WHEREAS, the Monitor has filed a Final Report dated March 31, 2012 [Dkt. No. 1812 in Civil Action No. 97-1978] providing the status of claims filed under the Consent Decree; and

WHEREAS, the term of the Monitor expired on March 31, 2012, and the work of the other Neutrals has been completed, except as described below; and

WHEREAS, the Chestnut firm had expressed concern that, in a number of cases, the Neutrals forwarded compensation checks to the claims preparers and not to the legal representative of the estates; however, Class Counsel avers that the lapse of time has rendered the issue moot; and

WHEREAS, good cause exists to execute an orderly wind-down of all obligations imposed on the parties by the Consent Decree; and

WHEREAS, the parties agree that, although certain provisions of the Consent Decree are no longer in effect, the parties do not intend to undermine the interests of plaintiff class members or USDA; and

WHEREAS, the provisions of the Second Amended Supplemental Privacy Act Protective Order may conflict with the authority of the National Archives and Records Administration to maintain and preserve records, and the need for Class Counsel to maintain and have access to certain records of the implementation of the Consent Decree;

NOW, THEREFORE, the parties hereby agree and stipulate as follows:

1. (a) Effective on the date of the Court's approval and entry of this Stipulation and Order, the provisions of the Consent Decree shall forever terminate, except as follows:

(1) The termination of the Consent Decree shall not affect any of the rights, benefits, or relief under the Consent Decree to which Maurice McGinnis (Claim No. 12512) is or may be entitled;

(2) The termination of the Consent Decree shall not affect the rights provided under paragraphs 9(a)(iii)(A) and 10(g)(ii) of the Consent Decree.

(3) With respect to the duties of the Facilitator under paragraph 3(a)(ix) of the Consent Decree, relating to the maintenance and operation of a toll-free telephone line, the Facilitator is now relieved of all of those duties, in their entirety. Class Counsel and not the Government will be responsible for the costs for maintaining the phone line/recording,

operator/program manager costs to review messages, and/or operator/program manager to research calls and/or return messages.

The Facilitator may immediately terminate its post office box for this case with instructions thereafter that all mail be returned to sender.

(4) The Facilitator shall provide an accounting to the parties and the Court of any funds that have not been claimed by class members who prevailed on their claims under the Consent Decree. The Facilitator will provide USDA with a cost estimate to produce the accounting. The Facilitator shall not begin work on the accounting until USDA authorizes the modification of the Facilitator's contract. The Facilitator will provide the accounting within thirty (30) days after USDA authorizes the modification to the Facilitator's contract for this additional work. The Facilitator has previously returned all such unclaimed funds to the Department of the Treasury. Requests for payment of unclaimed awards shall be made to the Department of the Treasury, pursuant to the Financial Manual, Vol. I, Part 6, Chapter 3000, *available at* <http://www.fms.treas.gov/tfm/vol1/v1p6c300.html>. The provisions of this subparagraph shall not affect any relief that may be provided to Maurice McGinnis (Claim No. 12512).

(5) The Monitor was forever discharged and released from all duties under or related to the Consent Decree on March 31, 2012. In the event that a Track B hearing is ever conducted in the matter of Maurice McGinnis, the Court may request that the Monitor resume her duties in the future for the limited purpose of reviewing any Petition for Monitor Review of the Arbitrator's decision in that matter. The terms of the Monitor's service shall be established by further order of the Court, which, in any event, shall specify the particular matter for which the Monitor is resuming her duties and a limited period of time within

which she shall complete those duties. Should the previous Monitor be unwilling or unavailable, the parties may proffer appropriate alternative Monitors.

(6) Any work done by the Neutrals with respect to the matter described in clauses (1) – (5), above, shall be compensable under the applicable fee provisions of the Consent Decree.

(7) Paragraph 14(a) of the Consent Decree shall remain in effect for legal work performed by David Frantz, Phillip Fraas, and/or Faya Rose Toure (“Class Counsel”) on the wind down, from January 1, 2015 up to and including the date of entry of this Stipulation and Order. Fees for such work shall be filed by each counsel in a single petition within three (3) months from the date of the Court’s approval and entry of this Stipulation and Order. Fee petitions under this subparagraph shall be governed by the procedures for the resolution of fee petitions set out in the Court’s order of January 14, 2003; and the Arbitrator may seek compensation under such procedures for any work performed under this clause.

(8) The only claim for Track B fees still pending is that of Cross & Kearney for the Track B claim of Warren Miller.

(9) Paragraphs 2(a), 15, and 19 of the Consent Decree shall remain in effect as necessary with respect to any action taken under clauses (1) – (8) of this subparagraph.

(10) The termination of the Consent Decree shall not affect rights or duties provided under paragraphs 18, 20, 23, 24, and 25 of the Consent Decree.

(b) The parties shall be forever released from all obligations under the Consent Decree that remain in effect after the Court’s approval and entry of this Stipulation and Order when such obligations end, as provided in subparagraph (a) of this paragraph.

2. The disposition of all records relating to these consolidated cases shall be executed in accordance with the terms of the Final Privacy Act Protective Order, approved and entered by the Court on the same day as the Court's approval and entry of this Stipulation and Order.

3. Within 30 days of the Court's approval and entry of this Stipulation and Order, the Facilitator shall transfer to Class Counsel lists providing the results and claimant contact information for each claim resolved under the Consent Decree, and for each petition for late filing filed under paragraph 5(g) of the Consent Decree. Class Counsel shall be responsible for all costs associated with all such transfers and for maintaining the lists, and for handling any requests for information that the Facilitator receives concerning the information. The Facilitator shall maintain the existing claimant database until the transfer of lists is made, and shall provide Class Counsel access to that database. Class Counsel may use the information described above for the sole purpose of providing information to plaintiff class members regarding their claims under Track A or Track B of the Consent Decree. Class Counsel may only provide class members, or their legal representatives, with information contained in the claimant database pertaining to the claim that the class member submitted. Class Counsel may not provide plaintiff class members or their legal representatives with any copies of any claims, or with any information pertaining to the claims, of other plaintiff class members pursuant to the Consent Decree. Not later than six (6) years from the date of the Court's approval and entry of this Stipulation and Order, Class Counsel shall destroy all documents in their possession, and all information they have stored electronically, that contain information about specific claims and petitions they have received under this paragraph or generated with such information.

4. Except as otherwise provided above, Class Counsel, the Neutrals, and USDA are forever discharged and released from all duties under or related to the Consent Decree as of the date of the Court's approval and entry of this Stipulation and Order.

5. If the Neutrals are sued or if their testimony is compelled for actions taken during their tenures as Neutrals under the Consent Decree, they may request representation by the United States Department of Justice ("DOJ"). DOJ is not obliged to grant any such request, and DOJ's decision on any such request is committed entirely to its discretion.


6. The Court shall retain jurisdiction solely to enforce the terms of this wind-down Stipulation and Order, and the limited aspects of the Consent Decree provided herein.

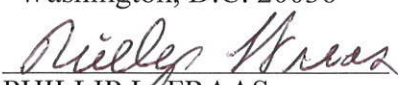
SO ORDERED.


PAUL L. FRIEDMAN
United States District Judge

Dated: 11/2/15

FOR THE PLAINTIFFS:


DAVID FRANTZ
Conlon, Frantz & Phelan, LLP
1740 N Street, N.W.
Suite One
Washington, D.C. 20036


PHILLIP L. FRAAS
Law office of Phillip Fraas
888 Sixteenth St., NW, Suite 800
Washington, DC 20006

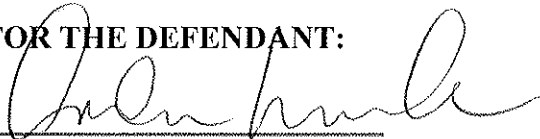
Dated: 10/21/15

Dated: 10/21/15

Faya Rose Toure by Phillip Adams
FAYA ROSE TOURE
formerly known as ROSE SANDERS
One Union Street
Selma, AL 36701

Dated: 10/20/15

FOR THE DEFENDANT:


ANDREA NEWMARK
U.S. Department of Justice
Civil Division
20 Massachusetts Avenue, NW
Washington, D.C. 20044

Dated: 10/22/15