

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 23 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

In re BLACK FARMERS DISCRIMINATION)
LITIGATION)
_____)

Misc. No. 08-mc-0511 (PLF)

This document relates to:)

ALL CASES)
_____)

~~PROPOSED~~ PROTECTIVE ORDER REGARDING "5(g) LIST"

At a status conference on November 14, 2008, counsel for all parties appeared before the Court and discussed a wide range of topics related to the management of these cases, including access to the so-called "5(g) list." The 5(g) list, as described by counsel, is a listing of the names, addresses, home phone numbers, and tracking numbers assigned by the Facilitator in *Pigford v. Glickman*, Civ. A. No. 1:97-cv-1978, to individuals who, pursuant to Section 5(g) of the Consent Decree, sought participation in the original *Pigford* action after the initial deadline for filing claims had passed and whose "late-filing" petitions were denied by the Arbitrator.¹ This information is periodically updated by the Facilitator, as new contact information for the listed individuals is

¹ Paragraph 5(g) of the *Pigford* Consent Decree provides, in pertinent part:

A claimant who satisfies the definition of the class . . . , but who fails to submit a completed claim package within 180 days of entry of this Consent Decree may petition the Court to permit him to nonetheless participate in the claims resolution procedures provided in [the Consent Decree]. The Court shall grant such a petition only where the claimant demonstrates that his failure to submit a timely claim was due to extraordinary circumstances beyond his control.

Consent Decree ¶ 5(g). By order of December 20, 1999, this Court delegated authority to the Arbitrator in this case, Michael K. Lewis, to decide all petitions by claimants seeking to late file under Section 5(g) of the Consent Decree.

obtained.² The Court understands that all plaintiffs' counsel in this consolidated action have access to the 5(g) list, except for counsel representing plaintiffs in Case Nos. 08-cv-1188 and 08-cv-1513.

In a December 9, 2008 Order, this Court, noting the government's consent to disclosure of this "5(g) list" to other plaintiffs' counsel (subject to Court authorization), and the importance of treating all firms in these cases equally, particularly with respect to the opportunity to discover and represent potential claimants, concluded that plaintiffs' counsel in Case Nos. 08-cv-1188 and 08-cv-1513 should have access to the 5(g) list to the same degree as all other plaintiffs' counsel.

However, in light of the concerns expressed at the November 14, 2008 status conference as to the uses to which the 5(g) list may be put, this Court, on December 9, 2008, ordered the parties to meet, confer and submit a proposed protective order to govern disclosure and use of the 5(g) list by all plaintiffs' counsel going forward.

Having determined that the 5(g) list shall be used by plaintiffs' counsel only for purposes of litigating these consolidated cases and disclosed no more widely than necessary to achieve that exclusive purpose, and having further determined that the use of the 5(g) list should be subject to conditions that will protect against abuses, it is hereby

ORDERED that except as authorized by this Court, plaintiffs' counsel may not use the 5(g) list to communicate with individuals on the list unless such individuals were represented by that counsel prior to disclosure of the list; and it is

FURTHER ORDERED that plaintiffs' counsel may use the 5(g) list to determine whether a particular individual is eligible to pursue a claim in these consolidated cases; and it is

² Plaintiffs' counsel may periodically seek from Epiq, at their own cost, an updated list of this information, for use as provided in this Order.

FURTHER ORDERED that no information on the 5(g) list will be disclosed by plaintiffs' counsel to any other person or entity, including any farmers' advocacy organizations, for recruitment, recruitment-related, or any other purposes; and it is

FURTHER ORDERED that any plaintiffs' counsel who seek to have access to the 5(g) list shall file with this Court, and serve on all parties, a Statement of Agreement to Conditions, as attached, that affirms the agreement of such counsel to the terms of usage set forth in this Order, including agreement to provide the Facilitator with any updated information received regarding a client's name, address, home phone number and tracking number, and to pay a *pro rata* share of the costs billed by the Facilitator for updating and making available the 5(g) list, for purposes of these consolidated cases; and it is

FURTHER ORDERED that Crowell & Moring LLP shall transmit an electronic copy of the 5(g) list to any plaintiffs' counsel who files a Statement of Agreement to Conditions, such transmittal to be made within five (5) business days of such filing; and it is

FURTHER ORDERED that the 5(g) list shall be stamped "PRODUCED SUBJECT TO PROTECTIVE ORDER" prior to any disclosure; and it is


FURTHER ORDERED that class counsel in *Pigford v. Glickman* shall not be prohibited by this Order from fulfilling their duties as class counsel in *Pigford*; and it is

FURTHER ORDERED that this Order does not govern or restrict in any way Defendant's use of the 5(g) list or any 5(g) information in these consolidated cases, *Pigford*, or in any other matter or inquiry.

SO ORDERED.

(Date)

12/23/08


PAUL L. FRIEDMAN
United States District Judge

3. The 5(g) list may be used to determine whether a particular individual is eligible to pursue a claim in these consolidated cases;

4. Neither the 5(g) list, not its content, will be disclosed to any other person or entity, including any farmers' advocacy organizations, for recruitment, recruitment-related, or any other purposes;

5. Any updated information that I receive regarding the name, address, home phone number and tracking number of any of my clients on the 5(g) list will be provided promptly to the Facilitator for entry into the Master 5(g) database; and

6. I will pay a *pro rata* share of the costs billed by the Facilitator for updating and making available the 5(g) list for purposes of this litigation.

Dated: _____

(address)

(signature)

(printed name)