IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO MODIFY FINAL ORDER AND JUDGMENT

Plaintiffs have filed a motion that seeks to amend the order approving the settlement agreement in order to permit certain specified categories of putative claimants to participate in the claims process. The motion does not seek to amend the settlement agreement itself.¹

The Government takes no position on the merits of plaintiffs' motion or on whether plaintiffs' motion must be granted in order for the claimants at issue to have their claims considered. The Government notes that responsibility for implementation of the class application process established in the settlement agreement, including the application of eligibility criteria to class members, rests exclusively with plaintiffs. The manner in which plaintiffs implement those

¹ By its terms, the settlement agreement may not be modified without the written consent of the parties. *See* Revised Settlement Agreement, XVIII.B, at 44 ("After this Preliminary Approval Date, this Agreement, including the attached exhibits, may be modified only with the written agreement of the Parties and with the approval of the District Court, upon such notice to the Class, if any, as the District Court may require."). Because of the Government's strong interest in ensuring the finality of the Revised Settlement Agreement so that the claims at issue can be resolved and the money distributed to claimants, the Government has not agreed to any amendment of the Revised Settlement Agreement. The Government takes no position on whether plaintiffs' motion requires modification of the agreement. If the Court were to somehow construe plaintiffs' motion as seeking amendment of the settlement agreement, however, the Government would then oppose the motion.

provisions is up to them, subject of course to any other applicable terms of the settlement agreement and the Claims Resolution Act of 2010, Pub L. No. 111-291.²

Dated: August 31, 2012 Respectfully submitted,

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² As the Revised Settlement Agreement recognizes, the amount of funding for the settlement agreement may not be sufficient to provide recovery in the full amount contemplated for successful claimants under § 14012 of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-234 and/or 110-246. As a result, the amount actually recovered by each successful claimant will depend on the number of successful class members. *See* Revised Settlement Agreement, I.M., at 3. Thus, the inclusion of the individuals who are the subject of plaintiffs' motion in the claims process may further decrease the amount awarded to successful claimants who have already been deemed class members and whose claims are currently being adjudicated under the terms of the settlement agreement.