UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re BLACK FARMERS DISCRIMINATION LITIGATION	)	
This document relates to:	)	Misc. No. 08-0511 (PLF)
ALL CASES	)	

MEMORANDUM OPINION AND ORDER

This afternoon certain plaintiffs participating in this consolidated case have filed a motion for a temporary restraining order that would enjoin another plaintiff, the Black Farmers & Agriculturalists Association, Inc. ("BFAA"), from holding a planned public informational meeting regarding this case. That meeting is, according to the movants, scheduled to take place tomorrow, February 12, 2011, in Baton Rouge, Louisiana, from 10 a.m. to 1 p.m. Although the movants have filed a notice certifying that they have properly served their motion papers upon BFAA's counsel of record, BFAA has made no response to the motion.[1] Because the Court understands from the representations of movants that BFAA is unlikely to consent to the relief

[1] See Notice of Service of Certain Plaintiffs' Motion for Temporary Restraining Order, Docket No. 159. The moving plaintiffs represent in the filed notice that BFAA's counsel was promptly terminated once BFAA learned that this motion might be filed. See id. at 1. Dedrick Brittenum, Jr., however, is still counsel of record in this matter and may only withdraw his appearance with leave of court. See LOC. CIV. R. 83.6(c). At the same time, BFAA, as a corporation, may not proceed *pro se*. See Rowland v. Cal. Men's Colony, 506 U.S. 194, 201-02 (1993). Mr. Brittenum therefore remains the proper recipient of service of the pending motion. See FED. R. CIV. P. 5(b)(1) ("If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.").

requested in the motion, and because the movants seek to enjoin an event scheduled to take place tomorrow morning, the motion will be denied without response from BFAA.

The movants seeking a temporary restraining order are those plaintiffs named in Civil Action Nos. 08-882, 08-901, 08-901, 08-919, 08-940, 08-962, 08-1062, 08-1070, 08-1381, and 09-1507, all of which have been consolidated as part of the same miscellaneous action. See Certain Plaintiffs' Motion for Temporary Restraining Order ("Mot.") at 1 n.1. These plaintiffs claim that BFAA, named as a plaintiff in Civil Action No. 08-1188, intends to hold a meeting tomorrow in Baton Rouge, Louisiana, at which BFAA will "disseminate highly misleading and inaccurate information to black farmers who may be attempting to determine if they are eligible to seek relief under Section 14012 of the 2008 Farm Bill." Id. at 1. The moving plaintiffs base this contention on the contents of a public notice allegedly circulated by BFAA in Louisiana. See Mot., Ex. A ("Notice"). That notice announces the time and place of the planned meeting and informs readers that they should attend if they: (1) "received the $50,000.00 settlement in 1999 and/or 2000"; (2) "were denied the $50,000.00 settlement"; (3) "had a Track B claim but were persuade[d] to file under Track A"; (4) "were denied an opportunity to file a claim by the Arbitrator, Michael K. Lewis ([were a] Late Filer)"; or (5) "believe that you have a meritorious claim of discrimination in the Black farmers class action lawsuit but did not receive any notice regarding the lawsuit until after October 12, 1999." Id. The notice also states, incorrectly, that BFAA has been granted "associational standing" in this lawsuit by order of this Court. Id.

According to the movants, the meeting notice demonstrates that BFAA will disseminate false and misleading information about this litigation because the notice specifically targets groups of people who are not eligible for any relief under the Farm Bill, which creates a

cause of action for those individuals who, among other things, "previously submitted a late-filing request under section 5(g) of the consent decree" entered in Pigford v. Glickman, Civil Action No. 97-1978 ("Pigford"), but only if those individuals have "not previously obtained a determination on the merits of a Pigford claim." Pub. L. 110-234, § 14012(a)-(b), 122 Stat. 923, 1494 (2008). The movants fear that BFAA intends to propagate the idea that the Farm Bill authorizes relief for a much wider class of individuals than it actually does, and in doing so, "cause irreparable harm to the targeted farmers by sowing confusion, causing them to expend time and resources in a fruitless quest for relief, and inevitably [creating] profound disappointment and frustration." Mot. at 7.

These contentions do not reveal a basis for the issuance of a temporary restraining order. The legal standard applicable to a motion for a temporary restraining order is the same as the one that applies to a motion for a preliminary injunction. See Sterling Commercial Credit-Michigan v. Phoenix Indus. I, LLC, Civil Action No. 10-2332, 2011 WL 263674, at *2 (D.D.C. Jan. 28, 2011). To justify the issuance of such "extraordinary relief," a moving party must show (1) that there is a substantial likelihood that the movant will succeed on the merits of its claims; (2) that it will suffer irreparable harm in the absence of an injunction; (3) that an injunction would not substantially harm the defendant or other interested parties (balance of harms); and (4) that the public interest would be furthered, or at least not adversely affected, by the injunction. Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006) (citation and internal quotation marks omitted). While a stronger showing on some of those four factors may compensate in some circumstances for a weak showing on another factor, a motion for a temporary restraining order cannot succeed where there is no likelihood of success on the merits

or where there is no showing of irreparable harm. See Sterling Commercial Credit-Michigan v. Phoenix Indus. I, LLC, Civil Action No. 10-2332, 2011 WL 263674, at *3. Movants in this instance have demonstrated neither a likelihood of success on the merits of their contentions nor any likelihood of irreparable harm, a failure that is fatal to their request for relief.

The pending motion fails on the merits because the movants have not demonstrated either that BFAA intends to disseminate misleading information about this case, or that this Court would have legal grounds for enjoining BFAA's activities even if the organization were making inaccurate representations about this litigation. It is certainly true that the BFAA meeting notice targets at least one group which, as a matter of law, has no legal right to relief under the 2008 Farm Bill: claimants who received an award of $50,000 under the Pigford consent decree. Such claimants have "previously obtained a determination on the merits" of their claims and so have no cause of action under the Farm Bill. Pub. L. 110-234, § 14012(b), 122 Stat. at 1494. Numerous individuals who fall into the other groups enumerated in the BFAA notice may also be ineligible for relief. But the mere fact that BFAA has invited ineligible individuals to its meeting is not determinative evidence that those or any other individuals will receive misleading information about this case from BFAA. The Court presumes that *all* parties to this case will take pains to communicate only accurate information about this litigation to prospective claimants and to the public at large, and it cannot enjoin communications by parties on the basis of such a thin factual record. See Gulf Oil Co. v. Bernard, 452 U.S. 89, 101 (1981) ("[A]n order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties.").

Even if the Court were persuaded that BFAA does intend to supply misleading information to interested individuals at the scheduled meeting, the movants have cited no authority suggesting that the Court has in these circumstances the power to issue the order that the movants request. While "a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and the parties," Gulf Oil Co. v. Bernard, 452 U.S. at 100, this litigation — by movants' own choice, see Certain Plaintiffs' Consolidated Opposition to Defendant's Motion to Certify a Rule 23(b)(1) Class, Docket No. 64 — is not yet a class action. And although the Court has on many occasions expressed its desire that the counsel and the parties involved in this case conduct themselves in a manner conducive to the orderly and just resolution of this matter, BFAA's proposed course of action offends no order previously issued by the Court in this case.

The Court is also unpersuaded that the moving plaintiffs, or any other individuals, will experience irreparable harm in the absence of a restraining order. The litigation of this matter, although it has now continued for more than two years, is still in the early stages. No class has been certified; no settlement has been submitted for the Court's approval; and certainly no official notice regarding any settlement has been disseminated. If attendees of the BFAA meeting come away confused or frustrated, their questions can be answered and their concerns addressed as this matter progresses.

Because the movants have demonstrated neither a likelihood of success on the merits nor a probability of imminent irreparable harm, the Court declines to issue the requested temporary restraining order. Accordingly, it is hereby

ORDERED that [158] Certain Plaintiffs' Motion for Temporary Restraining Order is DENIED.

SO ORDERED.

/s/ Colleen Kollar-Kotelly, for
PAUL L. FRIEDMAN
United States District Judge

DATE: February 11, 2011