

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                      |   |                               |
|----------------------|---|-------------------------------|
| ELLIS FRANKLIN,      | ) |                               |
|                      | ) |                               |
| Plaintiff,           | ) |                               |
|                      | ) |                               |
| v.                   | ) | CIVIL ACTION NO. 2:01CV638-ID |
|                      | ) | (WO)                          |
| RHEEM MANUFACTURING, | ) |                               |
|                      | ) |                               |
| Defendant.           | ) |                               |

**ORDER**

This action was dismissed on July 31, 2001 – after plaintiff failed to respond to the court’s order to show cause – because it appeared from the complaint and the attachments filed with the complaint that plaintiff had failed to file a timely charge of discrimination with the EEOC. (Doc. # 9). Plaintiff subsequently filed a pleading which the court construed as a motion to set aside the judgment and, on September 18, 2001, the court denied the motion. (Doc. # 11). Two and a half months later, on December 3, 2001, plaintiff filed an amended complaint (Doc. # 12), which the court construed as a Rule 60(b) motion to set aside the judgment. The court denied the motion on December 11, 2001. (Doc. # 13). Several months later, the court received a letter from the plaintiff, which the court again construed as a Rule 60(b) motion to set aside the judgment. The court denied the motion on July 22, 2002. (Docs. ## 14, 15).

Now, more than eight years after this case was dismissed, plaintiff has filed an

application to proceed *in forma pauperis* in this action<sup>1</sup> (Docs. ## 17, 19) and another complaint alleging discriminatory termination by defendant Rheem Manufacturing in 1999. (Docs. ## 16, 18).<sup>2</sup> The court construes plaintiff's new complaint(s) as yet another Rule 60(b) motion for relief from the July 31, 2001 judgment. Because the motion does not present grounds justifying relief under Fed. R. Civ. P. 60(b) and because it is not made within a reasonable time as required by Fed. R. Civ. P. 60(c), it is

CONSIDERED and ORDERED that the motion be and the same is hereby DENIED.

It is further ORDERED that the motion for leave to proceed *in forma pauperis* is DENIED.

Done, this 15th day of September, 2009.

\_\_\_\_\_  
/s/ Ira DeMent  
SENIOR UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> Plaintiff paid the filing fee on July 3, 2001.

<sup>2</sup> Plaintiff filed two complaints and two motions to proceed *in forma pauperis*, all bearing both the case number for this action and for Civil Action No. 2:01CV637, Franklin v. Premiere Refreshment Service, which was dismissed by the court on June 27, 2001, and bringing claims against both Premiere Refreshments and Rheem Manufacturing.