

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY C. PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
MIKE JOHANNS, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
MIKE JOHANNS,)	
)	
Defendant.)	
)	

**REPLY TO DEFENDANT'S RESPONSE TO MOTION BY CLASS COUNSEL FOR
ENTRY OF AN ORDER DIRECTING PAYMENT OF 2ND AND 3RD QUARTER 2006
ATTORNEY'S FEES, COSTS AND EXPENSES BY FEBRUARY 16, 2007**

Class counsel submits this reply to Defendant's Response to class counsel's motion for entry of an order directing payment of second and third quarter 2006 attorney's fees, costs and expenses by February 16, 2007. On January 31, 2007, class counsel received payment

of the second quarter 2006 fees. The motion is now moot with regard to those fees. The third quarter fees 2006 remain unpaid.

The Defendant's Response to this motion suggests that USDA is powerless to effectuate payment of attorney's fees agreed upon by the parties and ordered by the Court. The history of attorney's fees awards in this case indicates otherwise. On August 4, 2000, the Court ordered payment of *\$7 million* in fees and costs payable within *20 days*. *See Order* (Aug. 4, 2000) (docket #314). The Defendant paid the fees and costs as ordered. On January 15, 2003, the Court ordered payment of fees and costs of \$500,000 by February 12, 2003. *See Memorandum Opinion and Order* (Jan. 15, 2003) (docket #739). The Defendant met that deadline as well. Whether the payments are made directly by the Defendant or through the judgment fund, the Defendant has the means to make payment or cause the judgment fund to make payment in a timely manner. It appears that it is just a matter of the Defendant's priorities whether it takes the initiative to effectuate payment in a timely manner. When the Court orders payment by a fixed date, it happens. That is what we are asking here – that the Court order payment of the third quarter 2006 fees, costs and expenses – agreed to by stipulation on November 20, 2006 – by February 16, 2007.

February 1, 2007

Respectfully submitted,

/s/

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