

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 97-0805-CIV-SEITZ/GARBER

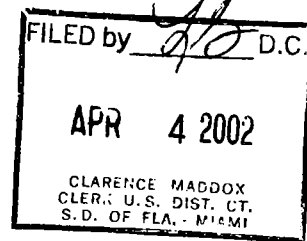
ROBERTO TEFEL, et al.,

Plaintiffs,

v.

JOHN ASHCROFT, Attorney General  
of the United States, et al.,

Defendants.



**ORDER DENYING PLAINTIFFS' MOTION TO ALTER AND AMEND  
THIS COURT'S FINAL JUDGMENT**

THIS MATTER is before the Court on Plaintiffs' Motion to Alter and Amend This Court's Final Judgment [DE-295]. Pursuant to Fed. R. Civ. P. 59(e), three grounds justify a court's reconsideration of an order: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice. See Wendy's Int'l, Inc. v. Nu-Cape Construction, Inc., 169 F.R.D. 680, 684 (M.D. Fla. 1996). The disposition of a motion to alter and amend is committed to the sound discretion of the district court. Mincey v. Head, 206 F.3d 1106, 1137 (11th Cir. 2000). "The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory. . . [or] to give the moving party another 'bite at the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." Id. at 1137 n.69.

In their motion to alter and amend, Plaintiffs attempt to merely rehash and reargue points already made in response to Defendants' motions for class decertification and summary judgment. Plaintiffs have not established an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or manifest injustice. See Wendy's Int'l, Inc., 169 F.R.D. at 684. Moreover, Plaintiffs' contention that "[t]his Court also failed to address the Plaintiffs' request for attorney's fees, which was reiterated as part of Plaintiffs' October 12, 2001 Opposition and Response to Defendants' Motions for Class Decertification, Summary Judgment, and Judgment on the Pleadings"

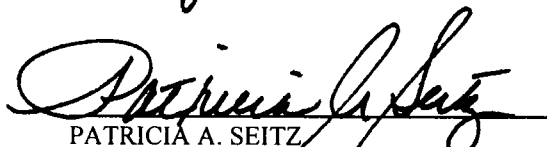
is inaccurate. To the contrary, the Court explicitly addressed the issue of attorney's fees in its January 24, 2002 Order Granting Defendants' Motion for Decertification of Class and Motion for Summary Judgment [DE-293]:

In response to Defendants' motions, Plaintiffs reassert that they are entitled to fees and expenses, notwithstanding the fact that on December 14, 1999, Magistrate Judge Garber ordered that "[b]arring a determination...that the Eleventh Circuit's opinion [in Tefel] is not based upon law or fact, the Court must conclude that the government's actions and subsequent litigation position were reasonable." See Dec. 14, 1999 Order. Because Plaintiffs have not established that the Eleventh Circuit's opinion is not based on law or fact, this Court reaffirms Magistrate Judge Garber's December 14, 1999 Order and denies Plaintiffs' renewed motion for costs, fees and other expenses.  
(Order, Jan. 24, 2002, at 14-15).

Accordingly, it is hereby

ORDERED that Plaintiffs' Motion to Alter and Amend This Court's Final Judgment [DE-295] is DENIED.

DONE and ORDERED in Miami, Florida, this 4 day of April, 2002.

  
PATRICIA A. SEITZ  
UNITED STATES DISTRICT JUDGE

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