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UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	JAMES B. ZAGEL	Sitting Judge if Other Than Assigned Judge	
Case Number	92 C 1982	Date	September 11, 1992
Case Title	MEMISOVSKI V. BRADLEY		

[In the following box (a) indicate the party filing the motion, * p., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1) Filed motion of [use listing in 'MOTION' box above]

(2) Brief in support of motion due _____

(3) Answer brief to motion due _____ Reply to answer brief due _____

(4) Ruling on _____ set for _____ at _____
 Hearing

(5) Status hearing held continued to _____ set for _____ re-set for 19 Oct 92 at 10:00 a.m.

(6) Pretrial conf. held continued re-set for _____ at _____

(7) Trial Set for _____ re-set for _____ at _____

(8) Bench Trial Jury Trial Hearing held and continued to _____ at _____

(9) This case is dismissed without with prejudice and without costs by agreement pursuant to _____
 FRCP 4(j) (failure to serve) General Rule 21 (want of prosecution) FRCP 41(a)(1) C P 41(a)(2)

(10) (Other docket entry) Defendant's motion to dismiss is taken under advisement.
 Plaintiff's motion for class certification is granted.

(11) [For further detail see order on the reverse of order attached to the original minute order form.]

<input type="checkbox"/> No notices required, advised in open court	RECEIVED ED-5 92 SEP 14 15:41:00 SEP 15 1992	<input type="checkbox"/> No notices required.	SEP 15 1992 SEP 15 1992	<input type="checkbox"/> Notices mailed by judge's staff.	number of notices	Document # 42
<input type="checkbox"/> Notified counsel by telephone.		date docketed				
<input checked="" type="checkbox"/> Docketing to mail notices.		docketing dpty. initials				
<input type="checkbox"/> Mail AO 450 form.		date mailed notice				
<input type="checkbox"/> Copy to judge/magistrate Judge.		mailing dpty. initials				
<input type="checkbox"/> courtroom deputy's Initials DW	Date/time received in central Clerk's Office					

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

H. Stuart Cunningham
CLERK

Office of the Clerk

Nelson Soltman
Legal Assistance Foundation of Chicago
343 South Dearborn Street
Suite 700
Chicago, IL 60604

Case Number: 1:92-cv-01982

Title: Memisovski v. Bradley

Assigned Judge: Honorable James B. Zagel

MINUTE ORDER of 9/11/92 by Hon. James B. Zagel : Status hearing held; continued to 10/19/92 at 10:00 a.m. Defendant's motion to dismiss the complaint [28-1] is taken under advisement. Granting plaintiff's motion for class certification [13-1]. Mailed notice

This order was entered on the docket by the Clerk September 15, 1992

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure. It was generated by the automated docketing system being introduced to handle the civil dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

1 THE CLERK : 92 C 1982, Memisovski v. Bradley.

2 MR. SOLTMAN: Good morning, Your Honor. Nelson
3 Soltman for the plaintiffs.

4 MR. HUSTON: Good morning, Your Honor. John Huston,
5 Special Assistant Attorney General on behalf of Director
6 Bradley.

7 THE COURT : I have before me a motion to dismiss and a
8 motion for class certification. I have examined the motion to
9 dismiss. I find the matter requires further thought, or to put
10 it in simple terms, I don't think it's a simple case, and I'm
11 not going to rule on the motion to dismiss today.

12 The motion for class certification is resisted essentially
13 on two grounds, one that the class is too broad, at least in
14 the sense that it is temporally inappropriate because for
15 purposes of the prospective relief called for in this case, the
16 fact that the class includes members whose claims date from
17 July 1, 1990, is inappropriate.

18 I'm inclined to reject that objection largely because --
19 I'm not exactly sure why given the prospective nature of the
20 relief sought the classes are designated as of July 1, 1990.
21 Perhaps it may have to do with the plaintiffs' view of what the
22 nature of the class -- what effect the nature of the class
23 would have on the **ambit** of admissible evidence in this case.

24 I don't know that it would have any effect. If to prove
25 its case on the merits the plaintiffs would have to introduce

1 evidence of events and circumstances occurring prior to today,
2 I think they could do so.

3 On the other hand, I do not believe that the defendants are
4 harmed by having a class that in the temporal sense might be
5 too broad. And if in fact there is some subtle aspect of this
6 case that I don't see where the time period does become rele-
7 vant, I would reconsider the question of class certification.

8 The more important objection to class certification is
9 basically found in the motion to dismiss which says that the
10 plaintiffs have no standing to bring this case, that there is
11 in fact no remedy available and no standard -- judiciable
12 standard by which to say that a legal wrong has occurred, a
13 variation on a couple of issues and particularly the -- what
14 may be the seminal case of *Suter v. Artist M.*

15 So the defendants say that this case falls in those class
16 of cases where you can't have a class certification because the
17 named plaintiffs don't have standing to raise a claim.

18 But I have always understood that rule of law to really
19 address what is the more pressing question, and that is -- in
20 those kinds of cases, and that is yes, there may be class
21 rights here, but these particular named plaintiffs are
22 inappropriate plaintiffs to pursue the matter because they have
23 no standing to press a claim.

24 In this case I think it's a little different. If the
25 defendant wins on the grounds that he urges, there is no one

1 who has standing in this class, no one.

2 So it is not the kind of objection which says find another
3 class representative because these particular ones don't have
4 standing. This is a general objection to the standing of any
5 member of the class.

6 That being the case, I have some degree of interest into
7 why it is that the defendant objects to the class **certificatio**
8 in this case, particularly if it is very confident of its
9 ability to win; but that's not my office to pursue.

10 My view of this matter is that the class certification is
11 appropriate, precisely in those cases where the challenge to
12 standing is classwide in its application. I think the
13 objections offered by the defendant are in fact argument for
14 why this ought to be a class action one way or the other.

15 So I grant the plaintiffs' motion for class certification.

16 I will address in due course the motion to dismiss, but I
17 may also in this case call for some oral argument. I also wisl
18 to advise counsel that to some extent my views on Suter and
19 Artist M. are going to be prestiged by another case, the City
20 of Chicago in **Smith v. Nelson**, which is a case in which the
21 City of Chicago and its commissioner of -- **of** whatever its
22 aging department is called have sued the director of the
23 State -- acting director of the State Department of Aging on
24 the grounds that the allocation formula is a violation of the
25 federal law which requires that low income and minority-elderly

1 be given a preference, and it's a dispute over whether you can
2 come to court and ask a judge to say whether preference has
3 been given, whether adequate preference has been given.

4 That case, because of the projected distribution of funds
5 on October 1st, I'm going to address before I address this one.
6 And I think next week I may have some argument in that. so I
7 will do that case first, and then I will turn my attention to
8 this case.

9 I do want to express the view I don't necessarily regard
10 the result in this case as controlling. It is quite possible
11 that I would find that there is no cause of action and no
12 standing in Smith v. Nelson and find that there is in this
13 case. But I'm addressing that one first. I thought it might
14 be useful for you to be advised of that.

15 Thank you, counsel.

16 Set this for status in five weeks.

17 THE CLERK: October 19th at 10 a.m.

18 MR. SOLTMAN: Thank you, Your Honor.

19 Does the Court have a case number on the City of Chicago --

20 THE COURT: You can get it from the clerk.

21 MR. SOLTMAN: Thank you, Judge.

22 MR. HUSTON: Thank you, Judge.

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* * * * *

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the above-entitled matter.

Wanda L. Barnes

9/11/92

Official Court Reporter

Date

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