

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al., :  
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 Plaintiffs, :  
 :  
 v. : Civil Action No. 00-2445 (JR)  
 :  
 ANN V. VENEMAN, Secretary, :  
 United States Department of :  
 Agriculture, :  
 :  
 Defendant. :

FILED

MAR 20 2002

ROSCY M. WATSON, CLERK  
U.S. DISTRICT COURT

MEMORANDUM ORDER

Plaintiffs are Hispanic farmers who complain of discrimination in the administration of U.S. Department of Agriculture loan and disaster benefit programs.<sup>1</sup> The government moves to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), arguing that the Court lacks jurisdiction over several claims and that plaintiffs have failed to allege a cognizable claim under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et seq., the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. For the reasons set forth below and in Love v. Veneman, Civ. No. 00-2502, mem. op. (D.D.C. Dec. 13, 2001), the motion will be denied in part and granted in part.

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<sup>1</sup> The ten named plaintiffs also sue on behalf of others similarly situated, including 92 individuals named but not described in the second amended complaint. The plaintiffs' motion for class certification and the government's motion to strike class action allegations and to dismiss the putative class members are in abeyance pending further briefing by the parties.

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### Background

This case is one of a number of class actions filed by minority and women farmers in the wake of several reports documenting discriminatory practices in local USDA offices and the dismantling of the Department's civil rights enforcement program in the early 1980s. In 1998, concerned that farmers had relied to their detriment upon USDA's (inoperative) internal mechanisms to investigate their discrimination complaints, Congress extended the statute of limitations until October 21, 2000, to allow farmers who had filed administrative complaints concerning USDA discrimination between 1981 and 1996 to bring suit in U.S. District Court. 7 U.S.C. § 2279 Note. USDA has settled a class action filed on behalf of African American farmers, Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), aff'd, 206 F.3d 1212 (D.C. Cir. 2000). This action by Hispanic farmers, however, as well as suits by Native American farmers, Keepseagle v. Veneman, Civ. No. 99-3119, and female farmers, Love v. Veneman, Civ. No. 00-2502, continue in litigation.

The Garcia plaintiffs allege that from January 1, 1981, to the present, the Farmers Home Administration and its successor, the Farm Service Agency, discriminated against Hispanic farmers and ranchers in awarding disaster benefits and operating, farm ownership, and emergency loans. They also allege

that the USDA acted arbitrarily in failing to investigate and resolve their discrimination complaints.

#### Analysis

The government's motion to dismiss raises the same legal arguments advanced in its motion to dismiss in Love v. Veneman. For the reasons set forth in a memorandum issued in the Love case on Dec. 13, 2001, (1) the Garcia plaintiffs are entitled to bring ECOA claims for discrimination in lending transactions without administrative exhaustion; (2) at least some of the named plaintiffs' lending claims satisfy the statute of limitations<sup>2</sup>; and (3) plaintiffs' allegations of failure to

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<sup>2</sup> Plaintiffs Guadalupe Garcia and Gloria Morales satisfied the special statute of limitations for USDA claims by bringing suit on "eligible [administrative] complaints" that they had filed prior to July 1, 1997, asserting discrimination in USDA lending and disaster benefit programs between 1981 and 1996. Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, Pub. L. 105-277, § 741, 112 Stat. 2681-30 (codified at 7 U.S.C. § 2279 Note). However, Mr. Garcia's "eligible complaint" only appears to have concerned his 1986 loan application. The plaintiffs' second amended complaint does not describe any discrimination complaint meeting the requirements of 7 U.S.C. § 2279 as having been filed concerning his 1988 and 1994 credit applications, so those claims are now time barred.

It is unclear from the face of the complaint whether Tony and Patricia Jimenez, Beatrice and Rodolfo Garza, and Edward and Normal Flores filed complaints within the USDA that specifically asserted discrimination as required by 7 U.S.C. § 2279 Note. Love v. Veneman, Civ. No. 00-2502, mem. op. at 10-12. It is also unclear whether Mr. Garcia, Mr. and Mrs. Jimenez, and Larry and Robert Chavarria meet ECOA's general two-year statute of limitations as to their claims based on 1998 credit transactions. 15 U.S.C. § 1691e(f). Since the special statute of limitations does not apply to USDA discrimination after 1996 or administrative complaints filed after July 1, 1997, the 1998

investigate civil rights complaints do not state claims under ECOA or the APA.

The only legal issue requiring further discussion arises from plaintiffs' claims for discriminatory administration of disaster benefit programs.<sup>3</sup> A disaster benefit decision is not a "credit transaction" within the meaning of ECOA. 15 U.S.C. § 1691(a). A final agency action denying a disaster benefit is, however, reviewable under the Administrative Procedure Act, 5 U.S.C. §§ 702, 704. Plaintiff Gloria Morales asserts that she was denied disaster benefit payments for losses to her grape crop in 1993 and that she filed a discrimination complaint with the USDA prior to July 1, 1997, concerning that denial. Although the effectiveness of APA relief is questionable - the APA does not waive the government's sovereign immunity with regard to money damages, 5 U.S.C. § 702 -- Ms. Morales has satisfied the special statute of limitations approved by Congress and has standing to assert her claim before this court. 7 U.S.C. § 2279 Note.

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claims are barred unless they concern transactions occurring within two years of the filing of this action on October 13, 2000. Because 12(b)(1) motions must be generously construed in the plaintiffs' favor, the motion to dismiss these plaintiffs will be denied at this time. Love v. Veneman, Civ. No. 00-2502, mem. op. at 12 & n.8. However, the government is free to renew its motion if these plaintiffs cannot demonstrate that they satisfy the statute of limitation requirements.

<sup>3</sup> Such claims were dismissed in Love because the only named plaintiff who alleged the unlawful denial of disaster benefits was successful on her administrative appeal. Love v. Veneman, Civ. No. 00-2502, mem. op. at 13.

It is accordingly this 16<sup>th</sup> day of March 2002,

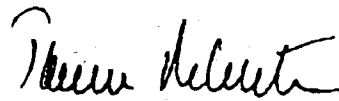
ORDERED that defendant's motion to dismiss [#5] is denied in part and granted in part. And it is

FURTHER ORDERED that plaintiffs' motion to for leave to file a second amended complaint [#16, #19] is granted. And it is

FURTHER ORDERED that defendant's motion to strike plaintiffs' motion to certify the class [#21] is denied. And it is

FURTHER ORDERED that plaintiffs' motion to strike defendant's notice of filing [#33, #34] is granted. And it is

FURTHER ORDERED that the Court's order of January 23, 2001 [#14] is modified as described in open court on February 21, 2002, to permit further briefing on the motions to certify a class [#18] and to strike class action allegations [#5].



JAMES ROBERTSON  
United States District Judge

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# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al.,

Plaintiffs,

v.

ANN V. VENEMAN, Secretary,  
United States Department of  
Agriculture,

Defendant.

Civil Action No. 00-2445 (JR)

**FILED**

MAY - 9 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

ORDER

Plaintiff's motion to lift the stay on discovery and to  
adopt discovery plan [# 51] is denied, this 8<sup>th</sup> day of May,  
2002.



JAMES ROBERTSON  
United States District Judge

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# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al.,

Plaintiffs,

v.

ANN V. VENEMAN, Secretary,  
United States Department of  
Agriculture,

Defendant.

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: Civil Action No. 00-2445 (JR)  
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**FILED**

MAY 22 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

MEMORANDUM ORDER

After careful consideration of the parties' briefs on the motion for class certification, I find the government's reliance upon footnote 15 of General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 159 n.15 (1982), overly literal. The Court has not categorically prohibited class actions in discrimination suits involving less than "entirely" subjective decisionmaking processes. Numerous credit and employment discrimination cases have allowed the use of disparate impact analysis to challenge subjective as well as objective criteria and practices that operate systematically to disadvantage minority groups. See, e.g., 12 C.F.R. § 202.6(a) n.2; Watson v. Ft. Worth Bank & Trust, 487 U.S. 977, 990-91 (1988); Griffin v. Carlin, 755 F.2d 1516, 1523 (11th Cir. 1985); Jones v. Ford Motor Credit Co., 2002 WL 88431 at \*3-\*4 (S.D.N.Y. Jan. 22, 2002). Commonality and typicality in such cases must be subjected to the same "rigorous analysis" used in any other Rule 23 proceeding,

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Falcon 457 U.S. at 161, but I cannot say as a matter of law that plaintiffs who challenge a set of criteria that include subjective elements can never demonstrate a sufficient "nexus" common to the whole group. Wagner v. Taylor, 836 F.2d 578, 594 (D.C. Cir. 1987) ("The existence of some common practices, such as subjective decisionmaking, can form the nexus between employees and applicants . . . ." (footnote omitted)).

That being said, however, the plaintiffs' 1997 statistical analysis and other evidence of record have not established a causal link between the policies that plaintiffs challenge and the asserted fact that Hispanic and Latino farmers have been less likely than white farmers to receive loans from USDA. Koger v. Reno, 98 F.3d 631, 639 (D.C. Cir. 1996). In other words, typicality and commonality cannot be determined on the limited record that has been compiled thus far.

The class certification motions in this case and Love v. Veneman, Civ. No. 00-2502, present similar if not identical legal issues, and simultaneous or joint briefing of those issues may be in the interest of justice.

It is this 22<sup>d</sup> day of May 2002,

ORDERED that the parties meet and confer on a schedule for further discovery related to the class certification issue.

It is

FURTHER ORDERED that a status conference is set for  
4:30 p.m. June 24, 2002, in Chambers.



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JAMES ROBERTSON  
United States District Judge

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JUN 6 - 2002

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

GUADALUPE L. GARCIA, et al., :  
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 Plaintiffs, :  
 :  
 v. : Civil Action No. 00-2445 (JR)  
 :  
 ANN V. VENEMAN, Secretary, :  
 United States Department of :  
 Agriculture, :  
 :  
 Defendant. :

ORDER

Upon consideration of plaintiffs' motion for  
reconsideration, it is this 5<sup>th</sup> day of June 2002,

ORDERED that plaintiffs' motion [#57] is denied.

Failure to process civil rights complaints is not an independent  
violation of the Equal Credit Opportunity Act and many failures  
do not establish commonality for class certification purposes.



JAMES ROBERTSON  
United States District Judge

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# **EXHIBIT G**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.,

Plaintiffs,

v.

ANNE VENEMAN,

Defendant.

Civil Action No. 1:00CVO2445  
Judge Robertson

FILED

DEC 19 2002

NANCY MAYER WASHINGTON, CLERK  
U.S. DISTRICT COURT

ORDER

Upon consideration of plaintiffs' emergency motion to stay proceedings in this case, *nunc pro tunc*, to December 2, 2002, for purposes of tolling the statute of limitations pending resolution of plaintiffs' Rule 23(f) appeal and defendants' opposition thereto, it is by the Court hereby

ORDERED that plaintiffs' motion to stay proceedings for purposes of tolling the statute of limitations is GRANTED, and the case is STAYED *nunc pro tunc* to December 2, 2002 for purposes of tolling the statute of limitations pending resolution of plaintiffs' Rule 23(f) *appeal*.

SO ORDERED this 19<sup>th</sup> day of December, 2002



James Robertson  
United States District Judge

Date: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of December 2002, I have caused the foregoing Petition of Plaintiffs Guadalupe L. Garcia et al. for Permission To Take An Interlocutory Appeal. Under Fed. R.Civ. P. 23(f) and the attached Addendum to be served by hand delivery upon the following counsel:

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