

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GUADALUPE L. GARCIA, et al.,)	
)	
Plaintiffs-Appellants,)	
)	Nos. 04-5448, 05-5002
v.)	
)	
MICHAEL JOHANNNS, Secretary, UNITED STATES DEPARTMENT OF AGRICULTURE,)	
)	
Defendant-Appellee.)	
)	

ROSEMARY LOVE, et al.,)	
)	
Plaintiffs-Appellants,)	
)	Nos. 04-5449, 05-5084
v.)	
)	
MICHAEL JOHANNNS, Secretary, UNITED STATES DEPARTMENT OF AGRICULTURE,)	
)	
Defendant-Appellee.)	
)	

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE APPEALS


In opposing the government's motion to consolidate the above-captioned appeals, both the plaintiffs in Garcia and the plaintiffs in Love agree that it would be desirable to have these two cases heard by the same panel on the same day. Nonetheless, citing differences in the factual records and the procedural postures of the two cases, both sets of plaintiffs contend that consolidation of the two appeals would be inappropriate. Among other things, both sets of plaintiffs assert that the complexity of the legal issues in these cases and differences in the way the

each group of plaintiffs has attempted to obtain class certification make separate briefing and argument in the two cases imperative.

Although the government does not believe that any of the differences in the procedural postures and factual records that plaintiffs have identified between the two case will ultimately be outcome-determinative on either the question of class certification or the threshold legal question certified under 28 U.S.C. 1292(b) (whether plaintiffs' allegations that the USDA failed to process complaints of credit discrimination is actionable under the APA or the ECOA), we do not object to separate briefing and argument by the plaintiffs in these two appeals. Provided the government is given adequate time to respond to separate briefs and joint appendices filed by both sets of plaintiffs under a comprehensive briefing schedule governing both cases, formal consolidation of these appeals is not necessary. However, the government reiterates its request (which plaintiffs agree is reasonable) that these cases be set for briefing and argument before the same panel on the same day to ensure uniformity in the disposition of these appeals.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General
KENNETH L. WAINSTEIN
United States Attorney

ROBERT M. LOEB 
(202) 514-4332
CHARLES W. SCARBOROUGH
(202) 514-1927
Attorneys, Appellate Staff
Civil Division
Department of Justice
950 Pennsylvania Ave., N.W., Room 7244
Washington, D.C. 20530-3001

MAY 2005


CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2005, I have caused the Defendant's Reply In Support Of Motion To Consolidate Appeals to be served by first class United States mail upon the following:

Alan M. Wiseman
Stephen S. Hill
Howrey, Simon, Arnold & White, LLP
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 783-0800
(Counsel for Garcia plaintiffs)

Marc L. Fleishaker
Barbara S. Wahl
Kristine Dunne
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000
(Counsel for Love plaintiffs)

Glen D. Nager
Shay Dvoretzky
Jones Day
51 Louisian Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
(Counsel for Amicus Curiae U.S. Chamber of Commerce)



Charles W. Scarborough