

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

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

OPPOSITION TO APPELLANT'S MOTION TO EXTEND WORD LIMIT

Defendant-appellee, the Secretary of the United States Department of Agriculture ("USDA"), opposes appellants' motion for permission to file a principal brief of not more than 21,000 words and a reply brief of not more than 10,500 words. As explained below, appellants have not satisfied their burden of showing "extraordinarily compelling reasons," D.C. Cir. Rule 28(f)(1), why they cannot comply with the normal word limits prescribed by the Federal Rules of Appellate Procedure. Moreover, allowing an overlength brief in this case would be both prejudicial to the government and contrary to this Court's substantial interests in judicial economy.

1. This case concerns discrimination claims by Hispanic farmers alleging that they were denied credit and benefits in a variety of different farm programs administered by the USDA. It is one of three separate cases now pending in district court

alleging virtually identical claims against the USDA under the Equal Credit Opportunity Act ("ECOA") and the APA on behalf of different minority groups that each desire to proceed as a class action. In this case and Love v. Johanns, No. 00-02502 - a case involving female farmers - Judge Robertson denied plaintiffs' motions for class certification, while in Keepseagle v. Johanns, No. 99-3119 - a case involving Native American farmers - Judge Sullivan granted plaintiffs' motion to proceed as a class limited (at least for now) solely to claims for declaratory and injunctive relief under Fed. R. Civ. P. 23(b)(2).

2. After the district court certified a class action in Keepseagle, the USDA petitioned this Court for interlocutory review under Rule 23(f), arguing not only that the district court abused its discretion in certifying a class under Rule 23(b)(2) but also that plaintiffs' allegations that the USDA failed to investigate and process claims of discrimination (the chief predicate for the court's finding of commonality under Rule 23) were not independently actionable under either the APA or the ECOA. See In re: Veneman, 309 F.3d 789, 794 (D.C. Cir. 2002) (declining to address USDA's arguments concerning the viability of plaintiffs' "complaint-processing claim" on the ground that it would mix a "merits" question with the question of class certification). Notably, the government presented its arguments on both the merits of class certification and the validity of

plaintiffs' complaint-processing claim in an opening brief of 13,632 words and a reply of 6996 words. See Attach. A (Certifics of Compliance in Keepseagle, on file in No. 02-5021).

3. In this case, and in Love (Nos. 04-5449, 05-5084, pending in this Court), plaintiffs now seek to litigate the exact same legal issues on appeal that the government attempted to litigate in Keepseagle. In both cases, plaintiffs sought interlocutory review of Judge Robertson's decisions denying class certification pursuant to Fed. R. Civ. P. 23(f), and sought interlocutory review of his decisions dismissing their complaint-processing claim pursuant to 28 U.S.C. 1292(b). Because the denials of class certification in this case and Love (and the dismissal of the complaint-processing claims in those cases) conflict with Judge Sullivan's rulings in Keepseagle, the USDA acknowledged that some form of interlocutory review at this juncture would be appropriate. This Court has now granted the petitions for review in both this case and Love, consolidated the appeals under Rule 23(f) and Section 1292(b) in each case, and set this case and Love for argument on the same day before the same panel. Appellants' opening briefs in both this case and Love are due on August 29, 2005, and the USDA's briefs in both cases are due on October 13, 2005.

4. The primary (if not the only) reason the plaintiffs in this case have given for an extension of the briefing word limit

is that this Court consolidated their interlocutory appeals under Rule 23(f) and Section 1292(b). However, appeals with similar issues are routinely consolidated without extending the word limits for the parties' briefs, and this practice is particularly sound where the appeals are interlocutory and involve discrete legal issues arising from the same case in district court. Moreover, because the government was able to cover the exact same legal terrain within the normal briefing limits in Keepseagle, plaintiffs in this case should be required to do the same. Although the government was unable to convince this Court to review the "merits" question whether plaintiffs' complaint-processing claim is actionable in the context of its Rule 23(f) appeal in Keepseagle, see Veneman, 309 F.3d at 794, that is precisely the question that is now presented in the "separate appeals" under Section 1292(b) in both this case and Love. Because this question and the propriety of class certification are narrow legal issues with substantial overlap, no extension of the word limits is warranted in either case.¹

5. Allowing overlength briefs in these appeals would be especially prejudicial to the government given the briefing schedule established by this Court. Because the government must

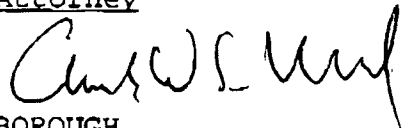
¹ Although the plaintiffs in Love have not (to date) sought an extension of the word limits in their appeal, they would presumably also request to file an overlength brief if an extension were granted to the plaintiffs in this case, because the legal issues presented in the two cases are identical.

respond on the same day to briefs filed by both the plaintiffs in this case and the plaintiffs in Love, and also to briefs by amici supporting the plaintiffs, enlarging the word count permitted in the plaintiffs' briefs would cause considerable hardship to the government - increasing the number of words and arguments to digest by half - without any discernible benefit to the parties or the Court. In turn, the Court would be forced to expend its limited resources sifting through briefs that could undoubtedly have covered the same material more succinctly and cogently. Given the government's demonstrated ability (in the Keepseagle appeal) to address these same legal issues within normal briefing parameters, and the possibility of coordination among the two sets of plaintiffs in this case (and their amici) to cover all the legal ground necessary in this case, plaintiffs' motion for leave to file overlength briefs should be denied.

Respectfully submitted,

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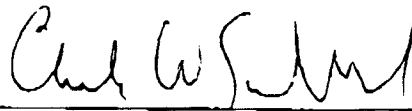
JULY 2005

ATTACHMENT

Certificates of Compliance in Keepseagle v. Veneman, No. 02-5021
(Opening brief and Reply brief)

CERTIFICATE OF COMPLIANCE

Counsel for the USDA hereby certifies that the foregoing brief satisfies the requirements of Fed. R. App. P. 32(a)(7) and D.C. Cir. Rule 32(a) as follows: the brief was prepared in 12-point Courier New font and the computer word count is 6996.



CHARLES W. SCARBOROUGH

CERTIFICATE OF COMPLIANCE

Counsel for the USDA hereby certifies that the foregoing brief satisfies the requirements of Fed. R. App. P. 32(a)(7) and D.C. Cir. Rule 32(a) as follows: the brief was prepared in 12-point Courier New font and the computer word count is 13,632.

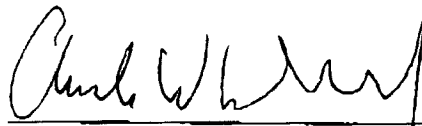

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2005, I have caused the Defendant's Opposition To Appellant's Motion To Extend Word Limit to be served by first-class United States mail upon the following:

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