

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:00CV02445
	)	
TOM VILSACK, Secretary of	)	Judge: James Robertson
Agriculture,	)	
	)	
Defendant.	)	
_____	)	

**MOTION TO TRANSFER AND SUPPORTING MEMORANDUM**

Pursuant to 28 U.S.C. §1404(a), defendant Tom Vilsack,<sup>1</sup> Secretary of the United States Department of Agriculture (“USDA”), hereby moves the Court to transfer the individual claims of each named plaintiff to the respective judicial Districts in which those claims arose.<sup>2</sup> All that remains in this action are the individual discrimination claims brought by each of 81 named plaintiffs in six different states and 41 towns on the opposite side of the continental United States.<sup>3</sup> To litigate plaintiffs’ claims in the District of Columbia, when the witnesses,

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<sup>1</sup> By rule, Secretary Vilsack is automatically substituted in this action for his predecessor, Ed Schafer. Fed. R. Civ. P. 25(d). Defendant respectfully requests that the Clerk of Court update the docket to reflect this change.

<sup>2</sup> Counsel for Secretary Vilsack has conferred, pursuant to LCvR 7(m), with plaintiffs’ counsel and is informed that plaintiffs oppose this motion.

<sup>3</sup> Plaintiffs’ claims arose in California, New Mexico, Texas, Arizona, Colorado, and the State of Washington.

documents,<sup>4</sup> and property at issue are located in the respective states where each plaintiff's claims arose, would be unnecessarily costly and difficult. The interests of convenience, ease of access to sources of proof, judicial economy, litigation expense, and justice all favor litigation of the individual plaintiffs' claims in respective Districts where those claims arose. In Wise v. Vilsack, No. 00-2508 (D.D.C.), an action which, like this case, was brought against USDA for allegedly discriminatory loan practices, after class certification was denied, the Court transferred the remaining individual claims at the United States' request to a District in the plaintiffs' home state. It should do the same thing here even if plaintiffs object.

### **STATUTORY AND REGULATORY FRAMEWORK**

\_\_\_\_\_ The Farm Service Agency ("FSA"), a component of the USDA, is statutorily authorized to make loans to farmers who cannot obtain credit from commercial institutions. See Consolidated Farm and Rural Development Act, 7 U.S.C. § 1921 et seq. During the time period at issue in the present case, FSA and its predecessor, the Farmers Home Administration, administered USDA's various loan programs through county committees, the members of which were selected locally and which were located in over 2,700 counties nationwide. Garcia v. Johanns, 444 F.3d 625, 628 (D.C. Cir. 2006). A farmer seeking a loan first had to obtain an application from his or her county office. 7 C.F.R. § 1910.4(b) (Jan. 1, 2000). The completed application was submitted to the committee, which determined whether the farmer met specific

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<sup>4</sup> Defendant has at headquarters the loan and disaster benefit files of approximately 35 of the 104 named plaintiffs and class representatives in the second amended complaint. These files were brought to the District of Columbia for discovery relating to plaintiffs' motion for class certification. See Garcia v. Veneman, 224 F.R.D. 8, 10 (D.D.C. 2004). However, the third amended complaint names only 81 plaintiffs, and it has not been determined how many of the 35 sets of files actually relate to plaintiffs named in the third amended complaint.

USDA loan criteria. 7 C.F.R. §§ 1941, 1943 (Jan. 1, 2000).

The USDA has longstanding internal management guidelines proscribing discrimination based on “race, color, religion, sex, age, handicap, or national origin” in the administration of any of its programs and activities. See 7 C.F.R. § 15.1, 15.52 (Jan. 1, 1999). Since 1966, these internal guidelines have included an administrative mechanism under which a person who believed that he or she has experienced discrimination in any USDA program could file a written complaint with the agency. See id. Part 15d.<sup>5</sup> Such complaints are now reviewed by the USDA’s Office of the Assistant Secretary for Civil Rights (“OASCR”), which investigates discrimination complaints and determines what corrective action, if any, is required to resolve them. Id. § 2.25 (Jan. 1, 2008).

### **FACTS**

Given the Court’s familiarity with the events in this matter, it is sufficient for present purposes to note that the complaint in this case was filed by certain Hispanic farmers alleging that since 1981 USDA has unlawfully discriminated against them in the administration of its farm credit and non-credit benefit programs and failed to act on their administrative complaints

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<sup>5</sup> The precise terms of this mechanism have changed over the years. For example, the USDA’s 1981 regulations stated that discrimination complaints would be handled “in accordance with the procedures established . . . for the handling of complaints or appeals . . . which are not based on discrimination,” and that the “investigative function . . . shall be discharged by the Office of the Inspector General in the manner determined by the Inspector General.” 31 Fed Reg. 8175. In 1989, the regulations were amended, deleting the provision stating that discrimination complaints would be processed in the same manner as other complaints, and instead stating that “[t]he Director, Office of Advocacy and Enterprise, will make determinations as to the merits of complaints under this subpart and as to corrective actions required to resolve the complaints.” 54 Fed. Reg. 31163. And, in 1999, the regulations were again amended, replacing references to the Office of Advocacy and Enterprise with the Office of Civil Rights, and specifying that a claimant “will be notified of the final determination on his or her complaint.” 64 Fed. Reg. 66709; see 7 C.F.R. Part 15d.

in accordance with USDA regulations. This Court dismissed plaintiffs' motion for class certification, Garcia v. Veneman, 224 F.R.D. 8 (D.D.C. 2004), and dismissed their failure-to-investigate claim under Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 ("APA"), Garcia v. Veneman, 2002 WL 33004124 (D.D.C. March 20, 2002). The Court of Appeals affirmed the denial of class certification and the dismissal of the ECOA failure-to-investigate claim, but remanded the APA failure-to-investigate claims to this Court for further development. Garcia, 444 F.3d 625 (D.C. Cir. 2006). On remand this Court against dismissed plaintiffs' APA failure-to-investigate claims. Garcia v. Veneman, No. 00-2445 (D.D.C.), Nov. 30, 2007 Order (Docket #159). On a second interlocutory appeal, the Court of Appeals affirmed the dismissal of plaintiffs' APA failure-to-investigate claims and remanded the case to the District Court. Garcia v. Vilsack, \_\_\_ F.3d \_\_\_, 2009 WL 1098703 (D.C. Cir. April 24, 2009). On June 18, 2009, the Court of Appeals unanimously denied plaintiffs' motion for a rehearing en banc of the plaintiffs' appeal of the District Court's dismissal of plaintiffs' APA claims. The Court of Appeals issued the mandate in this case on July 1, 2009. All that remains before this Court now are the individual discrimination claims brought by the 81 named plaintiffs in the third amended complaint.<sup>6</sup>

### ARGUMENT

#### **PLAINTIFFS' CLAIMS SHOULD BE TRANSFERRED TO THE RESPECTIVE DISTRICTS WHERE THOSE CLAIMS AROSE**

"For the convenience of parties and witnesses" and "in the interest of justice," a district

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<sup>6</sup> These include a single non-credit disaster benefit claim raised by Gloria Moralez, see Garcia v. Veneman, 2002 WL 33004124 (March 20, 2002), at \*1, the only named plaintiff to raise a disaster benefit claim, see Third Amended Class Action Complaint.

court “may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. §1404(a). In considering whether a transfer of venue is proper in a given case, the court first considers whether venue is proper in the transferor district. If it is, the court considers a variety of private and public factors, including the convenience of (and for) witnesses; access to sources of proof; the location where the claim arose; availability of compulsory processes to compel the attendance of unwilling witnesses; expense; calendar congestion in the respective districts, and “other practical aspects of expeditiously and conveniently conducting trial.” Marks v. Torres, 576 F. Supp. 2d 107, 112 (D.D.C. 2008) (quoting SEC v. Page Airways, 464 F. Supp. 461, 463 (D.D.C. 1978)). The court also considers the parties’ respective choices of forum, and while plaintiffs are traditionally given some deference, that deference is diminished where the plaintiffs do not reside in their chosen forum, as is the case here. See Marks, 576 F. Supp. 2d at 111 (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981)). Generally, where an action involves disputes over physical sources of proof, the district in which the physical site is located “will ordinarily be the more convenient forum.” Joyner v. District of Columbia, 267 F. Supp. 2d 15, 20-21 (D.D.C. 2003) (citing Starnes v. McGuire, 512 F.2d 918, 931 (D.C. Cir. 1974)).

These factors overwhelmingly support litigating each plaintiff’s claims in the respective District where the alleged events took place. See 28 U.S.C. §1391 (providing that a civil action in which a defendant is an officer of the United States may be brought in any district in which “a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated”). Plaintiffs’ claims originated in 41 towns across six states; involve different types of financial assistance with “varied eligibility

criteria”; and “arise from multiple individual decisions made by multiple individual committees” over a 20-year period. Garcia, 444 F.3d at 633-34. Litigation of the claims will therefore involve in-depth and individualized inquiry into events surrounding farm credit applications and loans concerning USDA, FSA, and/or its predecessor agency, FmHA, in the many different Districts where plaintiffs’ farms are located and the alleged events occurred.

For example, the plaintiff Jimenez family, which farmed in Mariposa County, California, contends that their FSA office wrongly denied them an operating loan, emergency loan, 60-day extension, loan deferral, and interest rate adjustment. Third Amended Complaint ¶ 7. The Garza family from Zapala County, Texas alleges that their local FSA office failed to respond to their request for an operating loan and later refused them a loan. Id. ¶ 26. Plaintiffs Rodriguez and Salazar own a farm near Pearsall, Texas and complain that the Frio County supervisor imposed special restrictions on their loan, refused to release funds, and denied them primary loan servicing. Id. ¶ 39.

Given the different types of claims each plaintiff has brought involving different officials and evidence at various USDA offices in six states, the interests of justice and economy clearly favor litigation in the respective Districts where the alleged actions in the complaint took place. The vast majority of potential witnesses (including the respective plaintiffs themselves and most of the relevant government officials involved in the transactions at issue) are there, as are likely to be the vast majority of relevant documents. Indeed, even to the extent the complaint alleges involvement of other USDA officials, such as those tasked with investigating plaintiffs’ claims of discrimination, that involvement itself centered on events and activities that occurred in the Districts where the claims arose. And these witnesses are significantly fewer in number than

their counterparts in plaintiffs' home Districts, whose actions will be the primary focus of any litigation.

Similarly postured cases have routinely been transferred in the interest of convenience and efficiency. When class certification was denied in Wise, No. 00-2508 (D.D.C.), for example, leaving those plaintiffs in the same position as the plaintiffs in this case are now in, this Court transferred the remaining individual claims to the state where the plaintiffs resided at the parties' request. See id., March 17, 2009 Order. In Hunter v. Johanns, 517 F. Supp. 2d 340, 344 (D.D.C. 2007), this Court transferred a Title VII action brought against the Secretary of the USDA to the nearby District of Maryland because the operative events occurred at an FSA office in Maryland, the plaintiff resided there, and the bulk of relevant witnesses and documents were located there. Similarly, in Beckham v. National Railroad Passenger Corp., 496 F. Supp. 2d 57, 58-59 (D.D.C. 2007), this Court transferred a civil rights action against Amtrak to the District of Maryland because both the plaintiff and one of the defendants resided there, Amtrak did not oppose the transfer, and officials and documents were located in Maryland. Here, the same rationales apply, only with more force, given that witnesses with respect to the claims of 81 named plaintiffs would have to shuttle back and forth across the United States should plaintiffs' cases be litigated in this Court. See also Rosales v. United States, 477 F. Supp. 2d 213 (D.D.C. 2007) (transferring to the Southern District of California an action alleging that the construction of a hotel/casino would violate the Native American Graves Protection and Repatriation Act, where the property at issue was located and where the plaintiffs resided).

### CONCLUSION

For the foregoing reasons, the claims of the individually named plaintiffs should be

transferred to the Districts in which they arose.

Respectfully submitted,

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Dated: July 7, 2009