

*PL File*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ANN M. VENEMAN<sup>1</sup>, Secretary of )  
Agriculture, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 1:00CV02445

Judge: Louis F. Oberdorfer

**DEFENDANT'S MOTION TO STRIKE  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Plaintiffs' Motion for Certification of Class ("Plaintiffs' Motion") was filed in clear and flagrant violation of the Court's Order of January 23, 2001, which explicitly stayed all briefing on plaintiffs' motion for class certification. Plaintiffs' Motion therefore should be struck.

1. On December 22, 2001, defendant moved to dismiss plaintiffs' First Amended Class Action Complaint, pursuant to Fed. R. Civ. P. 12, and to strike the class action allegations contained therein, pursuant to Fed. R. Civ. P. 23. At the time defendant filed her motion, plaintiffs had not moved for class certification.

2. Prior to responding to defendant's dispositive motion, plaintiffs moved for an extension of time to move for class certification. In her response to plaintiffs' motion for an extension, defendant noted that her dispositive motion argued that plaintiffs' class action allegations were insufficient as a matter of law even to state a claim that was certifiable under Rule 23. Defendant therefore suggested that the Court postpone consideration of plaintiffs'

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d)(1), Ann M. Veneman, Secretary of Agriculture, has been automatically substituted as defendant in place of former Secretary Daniel Glickman.

entitlement to class certification until the Court ruled on her pending dispositive motion.

3. On January 23, 2001, the Court ordered that “briefing on plaintiffs’ motion for class certification is stayed pending resolution of the defendant’s motion to dismiss and to strike class action allegations.” The Court further ordered that “the parties shall submit a proposed schedule for briefing on the plaintiffs’ motion for class certification within 10 days after the Court rules on the defendant’s pending motion.” See Order, Garcia v. Glickman, Civ. Action No. 00-2445 (LFO), dated January 23, 2001 (emphasis added).

4. Despite the Court’s clear instruction in its January 23 order, plaintiffs stated in their Opposition to Defendant’s Motion to Dismiss and to Strike Class Action Allegations (“Plaintiffs’ Opposition”), filed on February 5, 2001, that they nonetheless intended to move for class certification on February 12, 2001. Upon receipt of Plaintiffs’ Opposition, defendant’s counsel telephoned plaintiffs’ counsel to remind them that the Court’s January 23, 2001 Order explicitly forbade them from filing such a motion. Plaintiffs’ counsel acknowledged that they were aware of the Court’s January 23 Order.

5. On February 12, 2001, plaintiffs served defendant with their Motion for Certification of Class. Plaintiffs’ Motion did not seek reconsideration of the Court’s January 23 Order. Instead, it simply announced that plaintiffs had elected to move for class certification notwithstanding that Order so that they could put into “place the framework within which this case should proceed.” See Plaintiffs’ Motion at 18.

7. If plaintiffs believed that “the framework” established by the Court’s January 23, 2001 Order required alteration, they were free to seek reconsideration, at which time they would have had to identify the errors in the Order that justified their request for relief. See Fed. R. Civ.

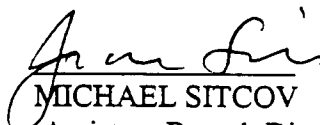
P. 60(b)(6). Instead of doing so, plaintiffs have chosen to thumb their noses at the Court in a manner that works particularly to defendant's disadvantage; viz., they can argue the "merits" of their motion for class certification at the same time they respond to defendant's challenge to the sufficiency of the class allegations, in the hope that the "merits" of their claim to certification will convince the Court to ignore the fatal deficiencies in the class allegations themselves, all the while knowing that the January 23 Order prohibits defendant from responding to Plaintiffs' Motion. Because plaintiffs have made no effort to demonstrate that the procedure mandated by the January 23 Order is improper or unfair, and because Plaintiffs' Motion violates that Order's express terms and is prejudicial to defendant, it should be struck from the record.

Respectfully submitted,

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United States Attorney

DENNIS G. LINDER  
Director

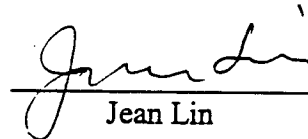
  
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**CERTIFICATE OF SERVICE**

I certify that today, February 20, 2001, I served the foregoing Defendant's Motion to Strike Plaintiffs' Motion for Certification of Class by facsimile and by first-class mail, postage prepaid, upon:

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Jean Lin

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ORDER

The Court, having considered Defendant's Motion to Strike Plaintiffs' Motion for Certification of Class, GRANTS defendant's motion.

It is hereby ORDERED that Plaintiffs' Motion for Certification of Class is struck from the Record.

SO ORDERED.

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LOUIS F. OBERDORFER  
United States District Judge

Dated: \_\_\_\_\_

\_\_\_\_\_  
\* Pursuant to Fed. R. Civ. P. 25(d)(1), Ann M. Veneman, Secretary of Agriculture, has been automatically substituted as defendant in place of former Secretary Daniel Glickman.

Please serve upon:

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