

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, Jr. *et al.*,

Plaintiffs,

v.

ANN VENEMAN, Secretary of Agriculture,

Defendant.

Case No. 1:00CV02445  
Judge Robertson

RANCY M.  
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U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO FILE A  
SURREPLY TO PLAINTIFFS' SECOND SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Pursuant to LCvR 7.1 (b), plaintiffs hereby oppose defendant's motion for leave to file a surreply to plaintiffs' second supplemental memorandum in support of their motion for class certification. First, neither of the rules cited by defendant provides for a surreply. Second, defendant's motion continues the deceit and misstatement of fact that lately appear to be hallmarks of defendant's filings.

Defendant claims that the government needs to file a surreply because "plaintiffs have consistently obstructed defendant from learning what their expert did and how he did it." Defendant's Motion at 1. Defendant further alleges that "plaintiffs only made selective, piecemeal disclosures to support various briefs" and "[i]t is solely because of plaintiffs" obfuscation that defendant now needs to be able to respond to Dr. Hausman's latest assertions."

Ibid

Plaintiffs respectfully submit that each of defendant's quoted assertions is demonstrably false and merely a cynical pretext to advance an additional, untimely response to a statistical study that was presented April 8, 2002. Significantly, defendant's first and only request for any data concerning Professor Hausman's regression was not made until June 6, 2002, two months after the study was filed with the Court and five weeks after defendant filed the government's

response to plaintiffs' supplemental memorandum in support of their motion for class certification on April 29, 2002. See Letter of Stephen S. Hill to Jean Lin, Esq., dated June 6, 2002, at 1-2. (Ex. 3 to Defendant's Response to Plaintiffs' Second Supplemental Memorandum In Support Of Their Motion For Class Certification.)

Moreover, far from engaging in either obfuscation or obstruction, plaintiffs merely stated that defendant's request for data concerning Professor Hausman's regression "should be made in the course of formal discovery." Id. at 2. Inasmuch as that statement was made in connection with then-ongoing discussions mandated by the Court concerning the scope and timing of class discovery, defendant is simply disingenuous in suggesting that such a statement constitutes either obstruction or obfuscation. This is particularly so when at the time of the statement, the parties were and, indeed, remain subject to a discovery stay, and defendant had expressly opposed plaintiffs' motion to lift that stay. See Plaintiffs' Reply To Defendant's Response To Plaintiffs' Second Supplemental Memorandum In Support Of Their Motion For Class Certification at 2 n. 2.

Finally, the claim that plaintiffs have made "selective, piecemeal disclosures" of Dr. Hausman's analysis is, like the rest of the assertions supporting defendant's motion, demonstrably false. Dr. Hausman described his analysis and conclusions in his initial declaration which was filed with plaintiffs' supplemental memorandum in support of their motion for class certification on April 8, 2002. While plaintiffs have certainly cited the declaration in subsequent filings, there has been no piecemeal disclosure of the analysis. As for Professor Hausman's second declaration filed with plaintiffs' reply to defendant's opposition to plaintiffs' second supplemental memorandum in support of class certification, that declaration merely responds to issues raised by Dr. Freedman's initial declaration. Such rebuttal is clearly appropriate and in no way attempts to expand or in any way alter Professor Hausman's initial analysis. Having initially contented itself to limit its criticisms of Professor Hausman's analysis to those set for the in defendant's April 29, 2002, opposition to plaintiffs' supplemental memorandum, the government, along with its expert Dr. Freedman, has had nearly five months

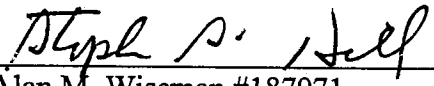
to critique Professor Hausman's analysis. Now that Professor Hausman has promptly and properly answered the government's belated criticisms, defendant finds it necessary to concoct a wholly fallacious pretext to respond to Professor Hausman's rebuttal. Indeed, defendant is concocting a fallacious pretext in order to protract improperly and needlessly the very battle of experts that settled authority relied upon by defendant holds is improper at this stage of these proceedings. See Caridad v. Metro-North Commuter R.R., 191 F. 3d 283, 292-293 (2d Cir. 1999).

For the foregoing reasons, plaintiffs request that the Court reject defendant's motion to file a surreply to plaintiffs' second supplemental memorandum.

Respectfully submitted,

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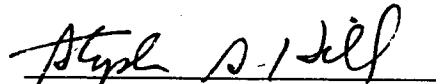
Date: September 17, 2002



## CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of September, 2002. I caused a true copy of the foregoing Plaintiffs' Opposition To Defendants Motion for Leave To File A Surreply and the accompanying proposed Order to be served by hand delivery upon:

Lisa Olson, Esq.  
U.S. Department of Justice  
Civil Division  
Federal Programs Branch  
901 E Street, N.W. Room 1052  
Washington, D.C. 20530

  
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Stephen S. Hill