

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
)	
ANN VENEMAN, Secretary of)	Judge: James Robertson
Agriculture,)	
)	
Defendant.)	
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DEFENDANT'S NOTICE OF RECENT DECISIONS

Plaintiffs' motion for class certification has been fully briefed and, in light of two recent decisions, should be denied. The first decision, that of the Court of Appeals for this Circuit in In re: Veneman, No. 02-5021, 2002 WL 31414127 (D.C. Cir. Oct. 29, 2002), did not address the class certification questions before this Court and hence provides no reason for further delay. In Veneman, the Court of Appeals declined to address an issue that already has been eliminated from this case, viz., whether the Department of Agriculture properly processed plaintiffs' discrimination complaints. Id., 2002 WL 31414127, at *4; see March 20, 2002 Order at 3-4. The Court of Appeals also declined to consider whether a class may be certified under Fed. R. Civ. P. 23(b)(2) solely for purposes of equitable relief without first determining if the plaintiffs' claims for monetary relief predominate over the equitable claims. In re: Veneman, 2002 WL 31414127, at *5. Instead, the Court of Appeals remanded the matter for further briefing without opining as to the likely outcome. Id., 2002 WL 31414127, at *5, 6. Thus, nothing in the Court of Appeals' Veneman opinion should prevent this Court from considering on the merits – and denying – plaintiffs' motion for class certification.

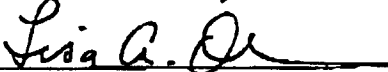
The second recent decision was issued by the Court of Appeals for the Sixth Circuit in Coleman v. General Motors Acceptance Corp., 296 F.3d 443 (6th Cir. 2002). In that case, the circuit court held that a district court abused its discretion in certifying a class under Fed. R. Civ. P. 23(b)(2), where the plaintiffs' claims for injunctive relief under the Equal Credit Opportunity Act ("ECOA") did not predominate over their monetary damages claims due to the highly individualized determinations that would be required to ascertain those damages. Coleman, 296 F.3d at 447. The same problem exists in this case: plaintiffs' demand for billions of dollars in damages under the ECOA clearly predominates over their boilerplate request for APA-type injunctive relief, and those damage claims would require individualized class-member by class-member determinations. See, e.g., Defendant's Opposition to Plaintiffs' Motion for Class Certification at 32-35.

To the extent there may have been any doubt about the propriety of denying plaintiffs' motion for class certification prior to Veneman and Coleman, those cases remove the doubt entirely and mandate denial of plaintiffs' motion.

Respectfully submitted,

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Dated: Nov. 8, 2002

CERTIFICATE OF SERVICE

I certify that on November 8, 2002, a copy of Defendant's Notice of Recent Decisions was served upon counsel of record as follows:


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