

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.)	
_____)	

**DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTIONS TO LIFT THE STAY ON
DISCOVERY AND FOR AN ORDER TO PRESERVE DOCUMENTS**

Plaintiffs' third motion to lift the discovery stay should be rejected out-of-hand. Plaintiffs propose vast merits discovery – fifty depositions and seventy-five interrogatories per side – before the Court has decided their motion for class certification. But if the Court denies class certification, severance of each plaintiff's claims will be in order (as will changes in venue for the bulk of the plaintiffs), in which case it would be inconceivable that discovery of the type and on the scale plaintiffs propose would be reasonable in any individual case. And even if a class is certified, the discovery plaintiffs' propose would be unreasonable. After all, the typicality and commonality that would have been found to characterize the class' claims would enable discovery to be focused on the claims of a handful of representative plaintiffs. See American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 553 (1974) (purpose of Fed. R. Civ. P. 23 is to promote efficient and economical conduct of litigation). In these circumstances, the enormously costly, burdensome, and time-consuming discovery plaintiffs propose would be inappropriate.

Plaintiffs' attempt to bolster their claim for discovery on the basis of alleged anti-Hispanic discrimination by local Farm Service Agency ("FSA")¹ runs directly counter to the position they formerly advanced, viz., that the Court should not consider the merits of their claims when assessing their motion for class certification. See, e.g., Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Class Certification at 10 ("a motion for class certification is not an occasion for an examination of the merits of the case"). And plaintiffs' attempt to enhance their discovery request on the basis of alleged continuing discrimination is undermined by the fact that plaintiffs sat on their claims for almost twenty years before filing suit.

Finally, there is no factual basis for plaintiffs' contention that evidence is being lost or destroyed. Plaintiffs were aware at the time they filed their motion that USDA already had issued a nationwide directive prohibiting the destruction of documents by FSA. This directive followed the September 20, 2002 telephonic status conference held by this Court in Love v. Veneman, Case No. 00-CV-2502 (JR) (D.D.C.), during which the Court expressed concern about the maintenance of files pertaining to putative class members in that case. And just last week, Frederick Isler, USDA's Deputy Director for Programs in USDA's Office of Civil Rights testified during his deposition in Love that the Office of Civil Rights has not destroyed any documents since 1999.² Given that evidence of any wrongdoing is

¹ Plaintiffs contend that in retaliation for his participating in this law suit, Tyn Davis was told he was no longer eligible for cotton subsidies. Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Lift the Stay on Discovery, to Adopt a Discovery Plan and to Require Defendant to Preserve Documents and Tangible Things ("Pl. Brief") at 5. Plaintiffs are aware that Mr. Davis was never denied a single cotton subsidy payment and that the determination of his ineligibility was due to a computer malfunction that was corrected.

² Even viewed in the light most favorable to plaintiffs, their claim that they were told by unnamed persons that "FSA personnel [were] shredding documents subsequent to the directive from

completely lacking, and inasmuch as USDA already has taken all measures in its power to preserve all documents relating to this lawsuit, there are no grounds for a Court order preventing USDA from destroying documents.

Plaintiffs motion should therefore be denied.

Respectfully submitted,

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Dated: Nov. 27, 2002

USDA headquarters to cease all document destruction," see Pl. Mem. at 4 (emphasis in original), does not get plaintiffs where they want to be. Assuming that the unnamed witnesses exist, are unbiased, and actually observed the destruction plaintiffs describe, plaintiffs still have not made any effort to establish that whatever documents were disposed of had anything whatsoever to do with these plaintiffs, the persons who would comprise the putative class, or the claims encompassed by this suit.

CERTIFICATE OF SERVICE

I certify that on November 27, 2002, a copy of Defendant's Opposition to Plaintiffs' Motions to Lift the Stay on Discovery and for an Order to Preserve Documents was served upon counsel of record as follows:

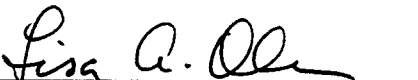
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