

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | |
|--|------------------------------|
| _____) | |
| GUADELUPE L. GARCIA, JR., et al.) | |
|) | |
| Plaintiffs,) | |
|) | |
| v.) | Civil Action No. 1:00CV02445 |
|) | Judge Robertson |
|) | |
| ANN M. VENEMAN, Secretary of the) | |
| United States Department of Agriculture,) | |
|) | |
| Defendant.) | |
| _____) | |

DEFENDANT'S RESPONSE TO PLAINTIFFS' DISCOVERY REQUESTS

INTRODUCTION

During the January 15, 2003, hearing in this matter, the Court authorized plaintiffs to undertake discovery focused on the "commonality" criterion for class certification under Federal Rule of Civil Procedure 23. But the discovery plaintiffs served pursuant to that authorization dramatically exceeds the scope of any discovery that legitimately might be deemed relevant to that inquiry. See Fed. R. Civ. P. 26(b)(1). Instead, plaintiffs seek vast numbers of documents from defendant, her trial counsel, other agencies, and other Branches of the government that have no bearing on any issue relevant to class certification, and seek to repeat the precise document production and depositions obtained by the plaintiffs in Rosemary Love, et al. v. Ann Veneman, Civil Action No. 00-CV-2502 (D.D.C.), who share counsel with plaintiffs here. Defendant has previously informed plaintiffs that she is willing to produce certain materials, including materials maintained in USDA's central databases and various USDA operational manuals and related documents, that could conceivably have a bearing on plaintiffs' class claims and are responsive, at least in part, to plaintiffs' requests. Defendant is further willing to produce relevant, non-privileged documents from the Farm Service Agency ("FSA") files of the ten named class

representatives. This Court should not, however, indulge discovery of the magnitude proposed by plaintiffs on their bare assertion that “fishing” through voluminous USDA files, including files that relate exclusively to merits issues, may enable them somehow to demonstrate the eligibility for class certification that, to date, has eluded them.

BACKGROUND

On December 2, 2002, this Court denied plaintiffs’ motion for class certification, finding that plaintiffs “have yet to establish that there are questions of law or fact common to the class or that such questions predominate over any questions affecting only individual members.” Dec. 2, 2002, Order at 1. The Court’s denial of class certification was based on three determinations: (1) that at least 11 criteria guide the decision-making process of the Agency’s county committees, “at least eight of which . . . cannot be properly considered subjective,” *id.* at 12; (2) that plaintiffs had failed “correlate the discrimination they allege with subjective loan qualification criteria,” *id.* at 17; and (3) that plaintiffs’ claims of commonality were also defeated by the “large numbers and geographic dispersion of the decision-makers.” *Id.*

Following issuance of the Court’s order, plaintiffs petitioned the Court to allow them to take discovery relating to the issue of class certification. Defendant objected to this request, largely on the grounds that plaintiffs had failed to specify the scope, kind or quantity of discovery they sought, or to explain what purpose it would serve. The Court, following a hearing on January 15, 2003, ordered that plaintiffs serve all of their intended discovery related to class certification, and provided that defendant would have until February 14, 2003, to file this response outlining her objections.¹

¹ Defendant did not understand the Court to require responses to plaintiffs’ discovery requests until the Court had assessed the various demands and ruled on defendant’s general objections to their scope and breadth. Accordingly, defendant does not intend to provide specific

ARGUMENT

PLAINTIFFS' IRRELEVANT, OVERBROAD, AND BURDENSOME DISCOVERY REQUESTS SHOULD BE SUBSTANTIALLY NARROWED TO ALLOW DEFENDANT TO PRODUCE REASONABLE RESPONSES RELATED TO THE "COMMONALITY" CRITERION FOR CLASS CERTIFICATION.

As described in Part A, *infra*, plaintiffs' discovery requests are not limited to locating evidence related to the commonality requirement for class certification, stray into areas that bear no relationship to demonstrating that all putative class members have claims against defendant that raise common issues of law and fact, and are staggeringly overbroad and burdensome.² Thus, in order to comply with the Court's directive regarding the appropriate scope of this discovery and plaintiffs' own in-court representations regarding their discovery needs, plaintiffs' requests should be substantially narrowed. As described in Part B, *infra*, defendant is willing to produce reasonable discovery information that might conceivably have a bearing on plaintiffs' final attempt to demonstrate the commonality of their claims so as to render them eligible for class certification under Federal Rule of Civil Procedure 23(a).

A. Plaintiffs' Discovery Requests Vastly Exceed Their Approved Scope In Numerous Respects.

1. The discovery requests are not targeted at uncovering evidence of commonality.

Despite the plain direction of this Court that discovery at this stage of the proceedings be limited to requests that are focused on the issue of commonality, plaintiffs' requests are not even

objections and responses to plaintiffs' discovery requests by February 24, 2003, as specified in their demand. Instead, defendant reserves the right to make further and specific objections to plaintiffs' discovery requests, and will be prepared, subject to those objections, to begin production of responsive, non-privileged documents and information on a rolling basis within 30 days of the Court's order clarifying the scope of permissible discovery.

² Plaintiffs' First Set of Document Requests to Defendant and Plaintiffs' First Set of Interrogatories to Defendant are attached as Exhibits A and B hereto, respectively.

limited to Rule 23 matters, but rather seek disclosure of materials and information relating exclusively to merits issues. Plaintiffs' discovery requests are, quite simply, not limited at all. Instead, they seek documents relating to every farmer, white or Hispanic, who has received, or even applied for, credit from USDA in over three dozen counties in at least eight states.³ They seek every document maintained by USDA that refers to these farmers and broadly concerns multiple stages of the lending process. Each of these requests seeks records spanning more than 20 years of time, and each purports to apply to "USDA" or "lending practices" as a whole, and not simply to Farmers Home Administration ("FmHA") farm credit programs as currently administered by FSA. Plaintiffs also seek documents and information relating to all "non-credit benefit programs," a descriptor that would include programs for commodity subsidies, conservation programs, and deficiency payments, despite the fact that their requests should be limited to FSA's disaster relief programs, which are the only non-credit benefit programs encompassed within their own proposed class definition. See Pltfs' Reply to Deft's Resp. to Pltfs' Second Supp. Mem. in Support of Their Mot. for Class Cert., at 3 n.3 (proposed class definition includes those "Hispanic farmers and ranchers . . . who were discriminated against . . . in participating in disaster benefit programs administered by the United States Department of Agriculture. . . ."). The lack of tailoring in plaintiffs' requests, despite the admonition from this

³ Plaintiffs' Appendix B lists 27 counties in 8 states that are defined as "relevant counties" for purposes of their discovery requests. Yet, there is very little overlap between those counties and the counties where the individual farmers and ranchers identified on plaintiffs' Exhibit A, as to whom plaintiffs also request voluminous amounts of information, are reported to have resided. It is plain from this lack of congruence that plaintiffs have either cherry-picked the counties from which they seek information in the hopes that they can identify some statistical disparity allegedly attributable to discrimination, or that plaintiffs simply are fishing through as many documents as possible in the hope that they can identify a pattern or practice of discrimination sufficient to meet the commonality and typicality requirements of Rule 23(a). Such tactics should not be indulged, particularly given the tremendous burden to the Agency of identifying and producing the files that plaintiffs demand.

Court that it would not allow an “open season” on the files of all the FSA offices in the six states that plaintiffs had originally proposed, see Dec. 19, 2002, Tr. at 12, much less from eight states as they have now demanded, demonstrates that they lack any basis for making a colorable claim of either commonality or typicality.

Facially overbroad and irrelevant requests of the sort served by plaintiffs here are simply not tailored to identify those documents that might serve to bolster plaintiffs’ so-far inadequate claims of commonality and typicality. “[C]lass certification under Rule 23 . . . [can] only be granted after a rigorous analysis of whether adjudication of the named plaintiffs’ claims and those of the class would indeed share common issues of fact and law.” Hartman v. Duffey, 19 F.3d 1459, 1469 (D.C. Cir. 1994); see also Fed. R. Civ. P. 23(a)(2). In order to demonstrate suitability for class certification, plaintiffs must make “a significant showing to permit the court to infer that members of the class suffered from a common policy of discrimination that pervaded all of the [Agency’s] challenged [] decisions.” Hartman, 19 F.3d at 1472 (emphasis added). The showing must demonstrate the existence of an actual practice, not simply an “abstract policy of discrimination.” Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 159 n.15 (1982). None of plaintiffs’ discovery requests targets any particular USDA policy or practice that touches all potential class members commonly and that allegedly had discriminatory effects.

As this Court has noted, under Falcon, the existence of an “entirely subjective decisionmaking process” might “conceivably” justify class certification. Dec. 2, 2002, Order, at 11 (citing Falcon, 457 U.S. at 159 n.15). Plaintiffs allege that the various county committees responsible for making initial loan determinations acted “entirely subjectively.” This Court, however, has found that “[t]he presence of at least some mandatory objective criteria in the decision-making process take this case out of the purview of the Falcon exception, and

distinguish this case from McReynolds [v. Sodexo Marriott Servs., Inc., 208 F.R.D. 428 (D.D.C. 2002)]”; see Dec. 2, 2002, Order, at 12-13 (listing objective criteria that guide the FSA decision-making process). Plaintiffs’ unfocused and overbroad proposed discovery could not possibly make a contrary showing.

The clearest demonstration of the lack of tailoring apparent on the face of plaintiffs’ discovery requests is their scattershot approach; plaintiffs seek documents relating to half a dozen different FSA processes,⁴ each governed by its own particularized set of policies and procedures. As in Falcon, however, plaintiffs face an uphill struggle in attempting to identify a sufficient “basis for concluding that the adjudication of [a] claim of discrimination in [one of these processes] would require the decision of any common question” concerning FSA’s alleged discrimination against Hispanic farmers with respect to some other decision-making process. See Falcon, 457 U.S. at 147 (finding that plaintiffs’ complaint about discrimination in promotion decisions did not justify expanding the class to those who complained about discrimination in hiring decisions). Plaintiffs here seek discovery concerning not just one or two different decisions in FSA credit and benefit processes, but rather concerning at least six. Their boundless approach to the various decisions FSA made in the administration of its credit and non-credit benefit programs, particularly in light of this Court’s finding regarding the “large numbers and geographic dispersion of the decision-makers,” Dec. 2, 2002, Order at 17, has little, if any,

⁴ Plaintiffs’ discovery requests seek documents regarding (1) decisions relating to the distribution of loan funds throughout the geographic area served by FSA, see Document Request No. 18; Interrogatory No. 5; (2) the point at which individual applications for loans are granted or denied, see Document Request Nos. 3, 4, 5, 6, 7, 8, 9, 10, 17; Interrogatory Nos. 1, 2, 6, 7; (3) the decision made as to the amount of the loan to be granted, see id.; (4) the manner in which loans are serviced over their terms, see id., (5) the placement of certain loan monies in supervisory accounts, see id.; and (6) the process by which civil rights complaints are made and investigated. See Document Request Nos. 11, 16, 19, 21, 22, 23; Interrogatory Nos. 8, 12, 13, 14.

chance of identifying any common policy or practice that infected all of these decisions so as to allow a finding that all putative class members share common claims, rather than individualized complaints relating to a particular decision. See Hartman, 19 F.3d at 1472 (plaintiffs’ “significant showing” must allow inference that “a common policy of discrimination . . . pervaded all of the employer’s challenged decisions”) (emphasis added). For defendant to produce the multitude of documents responsive to plaintiffs’ overbroad requests, on the other hand, would be a task of gargantuan proportions, one that would far outweigh any relevance the information and documents plaintiffs demand might have to issues of class certification.

2. Many of the discovery requests are not directed at class certification at all.

Many of plaintiffs’ requests are relevant, if at all, to merits of this case, not to the immediate issue of class certification. For example, beyond the statistical information USDA is willing to provide that is available in various centralized databases, see infra, plaintiffs seek information contained in the individual, and in many cases, extremely voluminous, files relating to every white farmer in the counties in which Hispanic farmers also reside. See, e.g., Document Request Nos. 3, 7, 8, 9, 17; Interrogatory Nos. 2, 7. Miscellaneous, individualized, information pertaining to white farmers has no bearing on whether the putative Hispanic class members have claims against defendant that raise common issues of law and fact.

Other discovery requests stray equally far afield. For example, plaintiffs request information regarding one individual farmer’s participation in a cotton subsidy program. See Interrogatory No. 16. While this information may support an individual disparate treatment claim, it is irrelevant to class certification, since subsidy programs are not encompassed within plaintiffs’ own proposed class definition. Some requests are patently transparent attempts to recruit additional putative plaintiffs rather than to identify common questions of law or fact they

might share. See, e.g., Interrogatory No. 12 (which requires the identification of any Hispanic farmer that complained about any aspect of the Agency's credit or benefit programs over the course of twenty years), and Document Request No. 20 (a dramatically overbroad request that would require the FSA offices in each "relevant county" to produce every document in their possession that "contain[ed]" the name of a Hispanic farmer, regardless of its content).

Similarly, plaintiffs' requests for the identification and production of personnel files of all USDA employees against whom "any Hispanic farmer has filed a discrimination complaint," Document Request No. 19; Interrogatory No. 13, or "who investigated or worked on discrimination complaints filed by Hispanic farmers or ranchers," Document Request No. 22, far exceed any reasonable discovery necessary to support their claims of commonality. The personnel files of individual employees, which contain the most sensitive and personal information about the employees, cf. 5 U.S.C. § 552(b)(6) (disclosure of such information presumptively causes a "clearly unwarranted invasion of personal privacy"), may be of some voyeuristic interest to plaintiffs, but it will produce nothing of use to plaintiffs' attempt to identify a common policy or practice that allegedly resulted in discrimination against Hispanic farmers and ranchers.

Finally, many of plaintiffs' requests seek documents that have already been determined by this Court to be completely irrelevant to the issue of class certification. For example, plaintiffs make multiple requests for documents and information relating to USDA's processing of civil rights complaints. See, e.g., Document Request Nos. 16, 19, 21, 22, 23; Interrogatory Nos. 8, 12, 13, 14. However, the Court has found that USDA's alleged failure to investigate discrimination complaints "cannot serve as the common issue of fact necessary to a Rule 23(a) determination, after [the Court's] ruling on March 20, 2002, that plaintiffs' allegations of failure to investigate

civil rights complaints did not state a claim under the Equal Credit Opportunity Act or the Administrative Procedure Act.” Dec. 2, 2002, Order, at 9. None of these requests focuses on the question of whether the putative class representatives share the types of common claims that are a prerequisite for certification of a class.

3. The discovery requests are unduly burdensome and overbroad

Many of plaintiffs’ requests are staggeringly burdensome and overbroad. For example, other than information contained in FSA’s centralized databases, as described infra, many of plaintiffs’ requests seek aggregated details regarding farmers that can be derived only by painstakingly identifying, reviewing and/or producing hundreds of thousands of documents maintained in individual files relating to hundreds, if not thousands, of farmers and ranchers. See Document Request Nos. 2, 3, 4, 5, 6, 7, 8, 9, 17, 24; Interrogatory Nos. 1, 2, 6, 7, 12. Defendant should not be required to shoulder that burden in light of plaintiffs’ scattershot approach to discovery and their failure to identify any particular targeted practice or policy of discrimination.

Equally overbroad is plaintiffs’ demand that defendant identify “each analysis, investigation, audit or review or your lending practices and your administration of non-credit farm benefit programs undertaken by any entity, including, but not limited to, you, the USDA or subdivision thereof, . . . the Senate or U.S. House of Representatives, Government Accounting Office or the Office of the Inspector General or any consultant, undertaken during the relevant time period.” See Interrogatory No. 17. Compelling a federal agency the size of USDA to comply with this request would require the Agency, for example, to identify and review virtually every document submitted to or obtained from Congress over the last twenty years in the course of entirely ordinary and routine appropriations reviews and oversight.

Highlighting the burdensomeness of plaintiffs' requests, plaintiffs seek a multitude of documents that have already been provided to the plaintiffs in Love, et al. v. Veneman, see, e.g., Document Request No. 1, who share counsel with plaintiffs here.⁵ Defendant should not be required to re-produce, at considerable burden to the government, documents that have already been produced to counsel in their capacity as counsel for the Love plaintiffs, another suit that raises similar claims, during the same period, as those raised by plaintiffs here. Plaintiffs also seek to repeat depositions of witnesses, including 30(b)(6) witnesses, that have already been taken by the Love plaintiffs.⁶ For example, Frederick Isler, the subject of one of plaintiffs' notices of deposition was deposed over two days by counsel for the Love plaintiffs as a Rule 30(b)(6)-designated witness regarding the operation and procedures of USDA's Office of Civil Rights. Particularly in light of this Court's finding that USDA's alleged failure to investigate discrimination complaints "cannot serve as the common issue of fact necessary to a Rule 23(a) determination," Dec. 2, 2002, Order at 9, plaintiffs have nothing to gain from seeking to re-depose Mr. Isler, and his testimony has no bearing on the class claims that were intended to be the focus of this discovery. The deposition notice for Mr. Isler should be quashed.⁷

⁵ Both the Love plaintiffs and the present plaintiffs are represented by Alexander J. Pires, Jr., and Philip Fraas.

⁶ Plaintiffs' deposition notices are attached hereto as Exhibit C.

⁷ For similar reasons, plaintiffs' deposition notice for Tony Califa, also an employee of USDA's Office of Civil Rights, should also be quashed. As noted, the operations, procedures, and investigations of the Office of Civil Rights "cannot serve as the common issue of fact necessary to a Rule 23(a) determination," Dec. 2, 2002, Order at 9, and thus, plaintiffs' proposed deposition of Mr. Califa does not relate to any issue relevant to class certification and does not fall within the scope of the discovery authorized by the Court. Moreover, plaintiffs' interest in Mr. Califa stems from an investigation that he began, but did not complete, in his capacity as an employee of USDA. See Document Request No. 23. Since that investigation was not completed, many of Mr. Califa's documents, as well as his own testimony regarding the investigation, constitute materials subject to protection pursuant to the deliberative process privilege, and defendant does not intend to waive that privilege.

In the same vein, USDA identified and produced for deposition three separate witnesses for questioning by the Love counsel in response to a 30(b)(6) notice seeking information regarding USDA's recordkeeping procedures relating to loan applications, closed loans, and servicing – subjects that are mirrored in the present plaintiffs' 30(b)(6) notice. The depositions of these witnesses were exhaustive, and, as a result, complete and accurate sworn statements of agency representatives on these topics already exist. A repeat performance would merely be duplicative and inefficient, and no further discovery in this area should be allowed.

In sum, responding to plaintiffs' requests would impose an extraordinary burden on defendant that far outweighs plaintiffs' interests in conducting discovery that is overbroad and irrelevant. See Dec. 19, 2002, Tr. at 10. Thus, there is no justification for permitting plaintiffs to proceed with their proposed discovery in the form it has been propounded. Instead, plaintiffs should be directed to propound discovery that actually conforms to the narrow issues for which it has been authorized, viz., Rule 23's commonality requirement.

**B. Defendant is Willing to Provide Reasonable Discovery
Materials Potentially Relating To The Issue Of Commonality.**

Notwithstanding defendant's objections to the breadth and burdensomeness of plaintiffs' discovery requests, defendant is willing to produce certain documents and information as a gesture of good faith and in an effort to allow plaintiffs to make their final bid for class certification so that the issue may be resolved once and for all. These documents and information include materials that are responsive, at least in part, to many of the requests that plaintiffs have propounded, subject to defendant's reasonable objections to their scope and breadth, but do not require defendant to undertake the burdensome task of reviewing hundreds, if not thousands, of individual files. For example, in partial response to plaintiffs' Document Requests Nos. 1 and 12, defendant will produce FmHA and FSA documents including

Administrative Notices (“ANs”), Farm Credit Notices (“FCs”), and Farm Loan Program Notices (“FLPs”) on various topics regarding the loan making and loan servicing components of the FmHA and FSA farm loan programs in effect from 1981 to the present, to the extent such documents exist and may be located. Defendants will also produce an index of relevant provisions from the Code of Federal Regulations (“CFR”) governing farm loan programs, as well as handbooks applicable to Farm Loan Program loan making and servicing, including 1-FLP, FLP General and Administrative; 3-FLP FLP Direct Loan Issues; 6-FLP FLP Special Servicing; 1-APP Appeal Rights and Processes; and 25-AS Records Management Issues. These documents, read together, constitute the policies and procedures governing the relevant FSA credit and benefit programs⁸ and thus constitute the pool of information from which plaintiffs must be able to make their “significant showing” sufficient to “permit the court to infer that members of the class suffered from a common policy of discrimination that pervaded all of the [defendant’s] challenged . . . decisions.” Hartman, 19 F.3d at 1472.

Similarly, in partial response to Document Requests Nos. 3, 4, 5, 6, 7, 8, 9, and Interrogatory Nos. 1 and 2, defendant will produce information derived from FSA’s centrally-maintained databases that are a source for global information concerning Hispanic farmers and white farmers as groups, at least to the extent farmers can be reliably identified as members of either group. Defendant objects, however, to being put to the massive task of deriving information that does not exist in these centralized databases from the individualized information located in each farmers’ credit and benefit files. The databases contain information concerning loan applicants and those farmers to whom loans were actually made. With respect to loan

⁸ Many of these documents were produced to counsel for the Love plaintiffs and defendant respectfully requests that the Court spare defendant the expense and burden of reproducing them to plaintiffs in this case, who share counsel.

applicants, defendant will provide, to the extent relevant and adequate information is available, a listing from FSA's Management of Agricultural Credit (MAC) database, from 1998 through February 8, 2001.⁹ This listing will contain, for each individual entry, an "Id. No.," the state and county (limited to those states and counties plaintiffs have designated as "relevant"), the fund code, the assistance code, the date the application was first received by the local FSA office; the date the application was considered complete, the date a decision was made on the application, the decision made on the application; the date the loan closed, if applicable; the loan amount granted; and the loan amount requested.

With respect to closed loans, or loans actually made, defendant will provide information maintained in the Program Loan Accounting System (PLAS), to the extent adequate and relevant data is available, for all loans closed from January 1, 1981 through February 8, 2001. This listing will contain, for each individual entry, an "Id. No.," state and county (limited to those states and counties plaintiffs have designated as "relevant"), fund code, loan number, loan closing date, and loan amount. These centralized sources of information, which are the only such sources USDA has, provide the best pool of information from which plaintiffs may draw any statistical data they might deem useful to support their motion for class certification.

Finally, in partial response to Document Request No. 3, defendant will also produce non-privileged documents contained in the relevant FSA credit and non-credit benefit files for each of the ten named class representatives.¹⁰ These files contain detailed and specific information

⁹ February 8, 2001, is the date on which the Second Amended Complaint was filed and, thus, database information extending beyond that date has no bearing on any allegation made in the Complaint. Defendant objects to any class definition or discovery instruction that would require her to continue to provide plaintiffs with updated information on an infinite basis.

¹⁰ The Second Amended Complaint lists ten named plaintiffs who have made claims against defendant. The Complaint lists scores of additional names and addresses of purported

regarding each farmers' participation in the relevant FSA credit and benefit programs,¹¹ and are a more-than-adequate source from which the named plaintiffs can attempt to demonstrate commonality within their own claims. Unless the named plaintiffs can demonstrate that their own individual claims share common issues of law and fact – a showing they have thus far been unable to make based on their own personal information and experiences with FSA – they have no standing to represent the claims of any putative class. Defendant objects, however, to the production of voluminous individual files for Hispanic ranchers and farmers other than the ten named class representatives, or for any other farmer or rancher, on the grounds that the burden of identifying and producing such files far exceeds any relevance they may have to the preliminary issue of class certification.¹²

Defendant anticipates that she will be in a position to begin production of these materials – which reasonably address plaintiffs' discovery needs while balancing defendant's interests in avoiding fruitless and burdensome discovery – within 30 days of this Court's order clarifying the scope of plaintiffs' discovery demands relating to class certification. Moreover, defendant continues to review and investigate plaintiffs' discovery demands and anticipates that she will be in a position, subject to appropriate objections and limiting constructions, to provide additional relevant, non-privileged information in response to certain of plaintiffs' requests, in particular to some of those interrogatories that do not require review of voluminous individual files.

class members but does not make specific allegations with respect to them, nor has a class been certified. Hence, these individuals cannot be properly deemed parties to this case.

¹¹ Documents from these files can be produced only after the Court has entered an appropriate Privacy Act Protective Order.

¹² Defendant could not, in any event, produce any relevant, non-privileged information from such files absent the entry of the afore-mentioned Privacy Act Protective Order, and without further identifying information, such a social security number, for any person for whom a file is demanded.

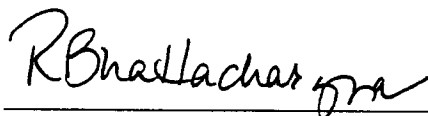
CONCLUSION

In light of the considerations outlined herein, defendant respectfully requests that plaintiffs' voluminous discovery requests be substantially narrowed so that defendant may produce the documents and information outlined herein for the purposes of allowing plaintiffs' to make their final attempt at proving their eligibility for class certification. Defendants anticipate that they will be in a position to begin producing the documents outlined herein within 30 days of this Court's order clarifying the scope of plaintiffs' discovery requests.

RESPECTFULLY SUBMITTED,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney



MICHAEL SITCOV
LISA A. OLSON
RUPA BHATTACHARYYA
Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 833, 20 Massachusetts Ave., N.W.
Washington, D.C. 20044
Telephone: (202) 514-5633
Facsimile: (202) 616-8460
E-mail: lisa.olson@usdoj.gov
Counsel for Defendant

Dated: February 14, 2003

CERTIFICATE OF SERVICE

I certify that on February 14, 2003, a copy of Defendant's Response to Plaintiffs'

Discovery Requests was served upon counsel of record as follows:

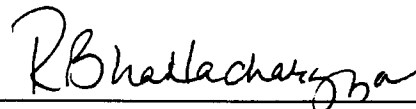
BY FIRST-CLASS MAIL, POSTAGE PREPAID:

Alexander J. Pires, Jr., Esq.
Conlon, Frantz, Phelan & Pires, LLP
Suite 700
1818 N Street, N.W.
Washington, D.C. 20036

Philip L. Fraas, Esq.
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007-5108

BY HAND-DELIVERY:

Alan M. Wiseman, Esq.
Stephen S. Hill, Esq.
Robert L. Green, Jr., Esq.
Kenneth C. Anderson, Esq.
Howrey Simon Arnold & White, LLP
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004



RUPA BHATTACHARYYA
Trial Attorney, Federal Programs Branch
Civil Division