

# **EXHIBIT 2**



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A LIMITED LIABILITY PARTNERSHIP

**STEPHEN S. HILL**  
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July 14, 2003

BY FACSIMILE AND REGULAR MAIL

Lisa A. Olson, Esq.  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
P.O. Box 833  
Washington, D.C. 20044

Re: Garcia v. Veneman, C.A. No. 00:2445 (D.D.C. filed Oct. 13, 2000)

Dear Ms. Olson:

Having reviewed Defendant's Response to Plaintiffs' First Set of Requests for Production of Documents ("Document Response"), we find the response deficient in a number of respects. Indeed, what comes through loudly and clearly from that review is defendant's determination to limit plaintiffs' discovery to the loan files of thirty-five named plaintiffs, certain largely useless databases and materials (multiple copies of regulations and administrative announcements) that defendant has unilaterally determined to be "relevant," notwithstanding the fact that without access to the individual files of Hispanic and white male farmers, such materials are useless to show, *inter alia*, with respect to plaintiffs' disparate impact claims the reasons for loan rejections that the Court believes must be explored to determine if there is a link between the observed disparity in the ability of Hispanic and white male farmers to obtain farm credit from the United States Department of Agriculture ("USDA") and some rule policy or practice of USDA. Moreover, aside from the aforementioned materials much of which was used to lard the document production, defendant has produced nothing more than boilerplate objections and evasive responses. Such boilerplate objections and evasive responses are wholly inadequate as a matter of law. Furthermore, defendant's response makes a mockery of the Court's indulgence in allowing defendant more than four months to respond to discovery requests. As discussed more fully within, even when defendant does not purport to invoke a boilerplate objection, the response is nevertheless problematic.

Defendant's General Objections

In her "General Statement and Objections," defendant purports to object

to plaintiffs' Requests, and the instructions and definitions thereto, to the extent they are vague, unworkable or unduly burdensome in that

they purport to impose obligations beyond those established by the Federal Rules of Civil Procedure and the Local Rules of the Court [and]

. . . to the plaintiffs' Requests, and the instructions and definitions thereto, to the extent they seek any document that does not appear reasonably calculated to lead to the discovery of admissible evidence under Federal Rule of Civil Procedure 26.

Defendant's Document Request Response at 2.

Significantly, defendant does not identify a single instruction or definition which she contends is either "vague, unworkable or unduly burdensome" or that "impose[s] obligations beyond those established by the Federal Rules of Civil Procedure, and the Local Rules of this Court." Nor does defendant identify a single instruction or definition that "seek[s] any document that does not appear reasonably calculated to lead to the discovery of admissible evidence under Federal Rule of Civil Procedure 26."

#### **Defendant's Specific Objections**

Turning to defendant's specific objections and responses, defendant does not appear to interpose any objection whatsoever to Document Request Nos. 1 and 2. Instead, defendant states that "Defendant has provided plaintiffs with documents responsive to this request." Document Response at 3. Significantly, defendant does not state that she has provided plaintiffs with "all documents" in USDA's possession, custody or control responsive to the request. Indeed, it is unclear from defendant's response whether documents have been withheld from production and, if so, the basis upon which any such documents were withheld. Please state unequivocally whether any documents have been withheld from production in response to Document Request Nos. 1 and 2, and, if so, the basis for withholding each such document.

With respect to Document Request No. 3, plaintiffs requested "all documents relating or referring to each individual listed in Appendix A to the[] requests, including but not limited to, the loan and benefit files of such individual. . . with respect to each instance in which he or she applied for farm credit or to participate in a non-credit benefit program. . . ." Document Request No. 3. The request also seeks production of "the files of every white farmer within the county that applied for farm credit or to participate in a non-credit benefit program during the same year as did the individual listed in Appendix A." Ibid.

Defendant objects to the alleged "lack of specification in the term 'loan' or 'farm credit[s]' . . . which are not limited to farm programs of the type currently administered by FSA." Document Response at 4. (Emphasis added.) Defendant also objects to the alleged lack of

specification in the terms “benefit” and “non-credit benefit program.” Ibid. Defendant further objects to the request “to the extent that it seeks any information that is protected by privilege or other applicable doctrine. Ibid. As for the files of white farmers, defendant objects to the request as “overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence related to the issue of class certification.” Ibid. Finally, defendant objects to the request because the alleged “burden of identifying and producing the requested documents far outweigh any relevance that they might have to the issue of class certification.” Ibid.

Defendant has indicated that, “[s]ubject to and without waiving the foregoing specific and general objections, defendant has produced for inspection by plaintiffs the borrower files of 35 individuals identified in plaintiffs’ complaint.” Document Response at 4. (It should also be noted that while the 35 loan files were produced for inspection and in fact inspected two months ago on May 15, 2003, as of this date, we have yet to receive a copy of a single inspected file.) Defendant has also stated that she “intends to produce disaster benefit files for individuals identified in plaintiffs’ complaint.” To date no such files have been produced for inspection, notwithstanding representations to the effect that such files would be ready for inspection perhaps as early as the week of May 19<sup>th</sup>.

Defendant’s objections are unavailing and inadequate as a matter of law. First, the complaint covers the period January 1, 1981 to December 31, 1996 and from October 13, 2000 to the present. Thus, the discovery clearly cannot be limited to only those types of credit or farm loan programs “currently administered by FSA.” Furthermore, finally producing the borrower files of the 35 individuals referred to in the response would satisfy the request only if those files contained the universe of responsive documents in defendant’s possession, custody or control. That they do not is apparent from the fact that defendant also purports to produce only “certain information from FSA databases, regarding the applications, closed loans and disaster benefits of Hispanic and non-Hispanic farmers.” Ibid. Indeed, the latter response is problematic by its own terms. Defendant’s willingness to provide “certain information” is not an appropriate response to a request for all documents relating to or referring to specific individuals. Defendant is not free to choose among responsive information in her possession to determine, in the absence of a claimed privilege, what will be produced and what will be withheld.

Similarly, by interposing an objection “to the extent that [the request] seeks any information that is protected by privilege or other applicable doctrine,” defendant creates uncertainty as to whether any documents are being withheld on that basis. Clearly, to the extent that defendant has withheld or intends to withhold any documents on the basis of a claimed privilege, defendant must provide a log of such documents and include therein sufficient information to permit plaintiffs to test any privilege claims.

Defendant’s objection to producing files of white farmers is merely more boilerplate and unavailing. Defendant makes no attempt to quantify the alleged burden or to explain how the request is overbroad. Moreover, far from being “not reasonably calculated to lead to the

discovery of admissible evidence related to the issue of class certification,” the request for white borrower files is critical to the class certification determination. For example, as the Court has pointed out, “a statistical analysis demonstrating that Hispanic farmers are disproportionately disqualified on grounds of ‘character’ or ‘commitment’ . . . will support a finding of commonality as to those criteria, which are indeed subjective.” December 2, 2002 Memorandum Opinion at 15 (emphasis added). In order to determine whether Hispanics are being disproportionately disqualified on grounds of such “character” or “commitment,” one must compare the disqualification rates of Hispanic and white farmers to determine whether there is a statistically significant disparity between those rates. The only way to perform such an analysis is by reviewing the files of white farmers because, as you well know, the databases do not provide the reasons why a loan applicant was rejected.

Document Request No. 4 requires defendant to produce all documents in defendant’s possession, custody or control that “reveal or would permit one to determine for each relevant county in each relevant year during the relevant time period, the number of Hispanic farmers and Hispanic ranchers who,” in the case of Request No. 4:

- a. requested applications for USDA loan programs;
- b. received applications for USA loan programs;
- c. applied for USDA loan programs;
- d. received USDA loans;
- e. were requested for USDA loans;
- f. paid-off USDA loans;
- g. requested servicing of USDA loans;
- h. were permitted to have their loans serviced; or
- i. were denied servicing for their USDA loans.

Defendant objects to the request on the ground that it is “substantially burdensome” and that the alleged “burden of identifying and producing any responsive, non-privileged documents from these files far outweighs any relevance they might have to the issue of class certification.” Document Response at 5. Defendant also “objects to this Request to the extent that it seeks any information that is protected by privilege or other applicable doctrine.” Ibid. Furthermore, defendant objects to the alleged “lack of specification in the terms ‘USDA loans’ and ‘USDA loan programs’ used in this Request, which are not limited to farm loan programs of the type currently administered by FSA.” Ibid.

As in the case of Document Request No. 3, defendant’s objections to Document Request No. 4 are unavailing. First, other than reciting the mantra that the substantial burden of producing the requested documents outweighs the relevance they might have to the class certification issue, defendant does not, as settled authority requires, even attempt to quantify the alleged burden. In addition, it is not clear whether any documents are being withheld on the basis of an alleged privilege. Clearly, to the extent that any such documents are in fact being withheld, defendant is required to produce a log of such documents and a description of those

documents sufficient to test the validity of any privilege claims. Furthermore, inasmuch as the complaint covers the period January 1, 1981 to December 31, 1996 and from October 13, 2000 to the present, defendant's objection that the request are not limited to farm loan programs of the type currently administered by "FSA" is similarly unavailing.

Subject to the aforementioned objections, defendant purports to respond by providing "certain information from FSA databases regarding the applications, closed loans and disaster benefits of Hispanic and non-Hispanic farmers." *Ibid.* (Emphasis added.) Defendant cannot choose what parts of a request defendant will answer. Producing "certain information from FSA databases" satisfies the request only if the information produced constitutes all the documents in defendant's possession, custody or control responsive to the request. As you must know, the so-called database information does not reveal or permit one to determine for each year during the relevant time period the number of Hispanic farmers and Hispanic ranchers who (1) requested applications for USDA loan programs, (2) received applications, (3) were rejected for USDA loans, (4) paid-off USDA loans, (5) requested servicing of USDA loans, or (6) were denied servicing of their USDA loans.

Defendant's responses to Document Request Nos. 5 and 6 are essentially identical to her response to Document Request No. 4. Consequentially, those responses share the same deficiencies as defendant's response to Request No. 4. For example, with respect to Document Request No. 5, the proffered documents do not provide any information with respect to "the total number of days between the time the loan application was received by the farmer or rancher and the date when the farmer or rancher was notified that the loan was approved" or "the number of approved loans that were placed in supervised accounts or otherwise subject to supervision by USDA officials." Similarly, with respect to Document Request No. 6, the proffered data would not permit one to determine the number of Hispanic farmers and Hispanic ranchers who received an application to participate in any USDA non-credit benefit program or who participated in any such USDA farm benefit program; or who were rejected for participation in such programs.

Document Request Nos. 7-9 seek for white male farmers in each relevant county during each year of the relevant period the same information that Request Nos. 4-6. Defendant makes essentially the same boilerplate objections as were interposed with respect to Request Nos. 4-6. Similarly, Defendant's responses to these requests are also problematic. Merely stating that certain information that defendant elects to produce "will include certain information regarding white farmers" is not an appropriate response to document requests seeking specific information of the sort sought by Document Request Nos. 7-9.

Document Request No. 10 asks that with respect to each relevant county, produce the county office's sign-in sheets and logs for issuing credit and benefit applications each year during the relevant time period. Defendant has objected to this request "as overbroad, vague, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence related to the issue of class certification." Document Response at 10. Defendant also objects to

the extent that the request “is not limited to farm credit programs of the type currently administered by FSA.” Ibid.

Defendant’s assertions to the contrary notwithstanding, the request is neither overbroad, vague, burdensome nor is it not reasonably calculated to lead to the discovery of admissible evidence related to the issue of class certification. Indeed, the request is quite specific in seeking the “county office’s sign-in sheets and logs for issuing credit and benefit applications. . . .” Document Request No. 10. Moreover, the discovery being sought is well within the bounds of Rule 26(b)(1) of the Federal Rules Civil Procedure (“Fed.R.Civ.P.”), which allows “discovery regarding any matter, not privileged, that is relevant to the claim . . . of any party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” Fed.R.Civ.P. 26(b)(1).

Apart from the foregoing frivolous boilerplate objections, defendant’s response that “[d]efendant intends to provide certain information from FSA databases, regarding the applications, closed loans, and disaster benefits of Hispanic and non-Hispanic farmers” is wholly inadequate. Indeed, at no point does defendant even suggest, much less assert that the “certain information from FSA databases” would be responsive to the request.

Document Request No. 11 requires defendant to “[p]roduce all documents relating to, or concerning discrimination against Hispanic farmers in connection with their participation in USDA loan or farm benefit programs for each year during the relevant time period. In response, defendant has interposed the now-familiar mantra of boilerplate objections that the request is “overbroad, vague, burdensome and not reasonably calculated to lead to the discovery of admissible evidence related to the issue of class certification.” See Document Response at 11. “Defendant also objects . . . because the burden of identifying and producing any responsive, non-privileged documents far outweighs any relevance they might have to the issue of class certification.” Finally, defendant objects to the alleged lack of specificity in the term “USDA loan” as not being limited to “farm loans of the type currently administered by FSA” and because the term “farm benefit programs . . . is not limited to the FSA disaster relief programs. . . .”

While purporting not to waive any of the foregoing boilerplate objections, defendant directs plaintiffs to “Response to Request for Production of Documents No. 13.” There are two “Responses[s]” to Request No. 13. The first “Response” consists of defendant’s boilerplate objections to Request No. 13. The second “Response” states that “[d]efendant is aware of the following document, which has been produced to plaintiff – General Accounting Office Report GAO-2-942 entitled “Improvements in the Operation of the Civil Rights Program would Benefit Hispanic and other Minority Borrowers.” Document Response at 13. The response also states that “ a number of OIG audit reports pertaining to minority participation in FSA’s (non-loan programs) have been issued.” Ibid. The response is clearly deficient. It is not sufficient merely to state that there are a number of otherwise unidentified documents available on a website that may be responsive to the request. At a minimum, defendant is required to identify explicitly all

such documents. Furthermore, there are reports, other than OIG audit reports, of which plaintiffs are aware involving allegations of “discrimination against Hispanic farmers in connection with their participation in USDA loan and farm benefit programs” that defendant has not identified in her response. At a minimum, such omissions call into question the good faith and seriousness with which defendant undertook a search for responsive documents.

In response to Document Request No. 12, defendant again recites her boilerplate objections concerning discovery not being limited to farm loan programs of the type currently administered by FSA and the alleged lack of specificity with respect to the term “farm benefit programs.” Document Response at 12. Thereafter, defendant states that that “[s]ubject to and without waiving the foregoing general and specific objections, . . . she has provided plaintiffs with documents responsive to this request.” *Ibid.* Again, the response is problematic in that it is not clear whether defendant has made any attempt to produce all of the responsive documents within her possession, custody or control or merely some undefined subset of such documents.

With respect to Document Request No. 13, defendant, in addition to her familiar litany of boilerplate objections, objects to the request as “beyond the scope of permissible discovery relating to class certification issues in light of the fact that this court has held USDA’s alleged failure to investigate discrimination complaints ‘cannot serve as the common issue of fact necessary to a Rule 23(a) determination. . . .’” *Ibid.* Defendant’s objection is without merit. As plaintiffs have previously made clear, the discovery in question is not directed to the process by which civil rights complaints were made and investigated. *See* Plaintiff’s Reply to Defendant’s Response to Plaintiffs’ Discovery Requests, dated February 28, 2003, at 15-16. Document Request No. 13 seeks information with respect to the nature of the discrimination confronted by Hispanic farmers and ranchers in the administration and delivery of farm credit and non-credit benefit programs. Plaintiffs are clearly entitled to explore fully the nature of the discrimination that Hispanic farmers and ranchers endured as well as how that discrimination manifested itself to ascertain if there exists any common questions of law or fact with respect to such discrimination.

In response to Document Request No. 16, defendant interposes essentially the same objection that she interposed with respect to Document Request No. 13. For the same reasons discussed above in connection with Document Request No. 13, defendant’s objection with respect to Document Request No. 16 is unavailing and without merit.

With respect to Document Request Nos. 17-18 and 24-25, defendant interposes essentially the same boilerplate objections as were interposed in response to Document Request No. 3 and the responses suffer from the same deficiencies.

With respect to Document Request No. 20, defendant objects to the request as “vague, overbroad, and not calculated to lead to the discovery of admissible evidence in that it would require defendant to produce every piece of paper in each county offices that ‘contain[s]’ the name of any Hispanic farmer regardless of the content of the document.” The objection is

without merit. Plaintiffs allege that they are the victims of discrimination by USDA, FSA and the county committees in the administration of the USDA's farm credit and non-credit benefit programs. The very purpose of the FSA office is to administer farm credit and non-credit benefit programs. Presumably any "record" or "list" maintained by FSA or its predecessor agency FmHA should relate to its function of administering USDA farm credit and non-credit farm benefit programs. Moreover, under USDA's own regulations the county committees were charged with the responsibility of providing "vital information" concerning applicants. Suffice it to say that plaintiffs are not interested in having defendant produce copies of the local telephone books. On the other hand, the request is designed to avoid the situation in which relevant documents are not produced, for example, because they were not contained, either intentionally or unintentionally, in particular files.

With respect to Document Request Nos. 21-23, defendant interposes essentially the same objections as were interposed with respect to Document Request No. 13, and as a consequence suffers the same deficiencies. In addition, plaintiffs allege that they are the victims of class-wide disparate treatment. Defendant contends that "the large numbers and geographic dispersion of the decisionmakers" make such a theory difficult to prove. See Defendant's Response at 6-7. Apparently, the theory is that the existence of multiple decisionmakers makes it less likely that the decisions reflect a unified policy. But such general "theory" should not stand in the way of the law of this circuit and the facts of this case.

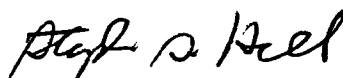
First, it is well settled in this circuit that decentralized decisionmaking does not per se preclude a finding of commonality and typicality. See, e.g., Thomas v Christopher, 169 F.R.D. 224 (D.D.C. 1996); aff'd in part rev'd in part, 139 F.3d 227 (D.C. Cir.), cert. denied, 525 U.S. 1016 (1998); Arnett v. American Nat'l Red Cross, 78 F.R.D. 73, 76 (D.D.C. 1979); Hyman v. First Union Corp., 982 F.Supp. 1, 4-7 (D.D.C. 1997).

Second, the individual decisionmakers, regardless of their number or geographic dispersion, were operating under highly subjective, uniform national regulations which have the force and effect of law and provide the means by which local USDA officials are able to discriminate against Hispanic farmers. Moreover, in the instant case, the national office of USDA has been repeatedly put on notice by reports of the U.S. Commission on Civil Rights, the Congress, the Office of Inspector General and its own Civil Rights Action Team of the long history of discrimination facilitated by its highly subjective regulations and has done nothing to correct either the regulations or the discrimination. See Declaration of Rosalind Gray, ¶ 17 ("Despite ample warnings that minority farmers were being subjected to systematic discrimination at the local level in the delivery of credit and debt servicing, USDA has failed to exercise sufficient control over its field operations to address these lingering problems.") (Exhibit 7 to Plaintiffs' Supplemental Memorandum.) Accordingly, the requests seek to elicit information that, inter alia, will show the extent to which USDA headquarters was aware of or should have been aware of the extent of the discrimination being perpetrated against Hispanic farmers and ranchers. To the extent that USDA was repeatedly put on notice of widespread discrimination against Hispanic farmers and ranchers and took no steps to end or remedy such

discrimination, USDA can be deemed to have ratified the discriminatory practices employed in the field. Such evidence should constitute a sufficient showing to allow an inference that "a common policy of discrimination. . . pervaded all of the employer's challenged decisions." Hartman v. Duffey, 19 F.3d 1459, 1472 (D.D.C. 1999).

Plaintiffs are prejudiced by the incomplete and evasive responses to discovery to date and the delay in producing files. We await your prompt response to issues raised herein. We continue to hope that these matters can be resolved without unduly burdening the Court. However, should it become necessary to involve the Court in a resolution of these discovery issues to protect plaintiffs' interests we will not hesitate to do so.

Sincerely,



Stephen S. Hill

# **EXHIBIT 3**

September 11, 2003

BY FACSIMILE & FIRST CLASS MAIL

Lisa A. Olson, Esq.  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
P.O. Box 833  
Washington, D.C. 20044

Re: Garcia v. Veneman, C.A. No. 1:00CV02445 (D.D.C. filed Oct. 13, 2000)

Dear Ms. Olson:

This letter is in reply to your August 29, 2003 letter to me concerning nine allegedly privileged documents that defendant produced to plaintiffs on July 15, 2003. First, please be advised that our reading of the case law in this circuit indicates that defendant waived any alleged privilege which may have attached the documents by producing them to plaintiffs on July 15, 2003. Therefore, plaintiffs cannot honor your request to return the documents. Moreover, insofar as defendant has asserted the attorney-client privilege with respect to four of the documents (Document Nos. 482, 540, 586 and 587), defendant has waived that privilege with respect to all other documents addressing the same subjects as those four documents. Accordingly, defendant should immediately produce to plaintiffs all such documents.

Second, in reviewing the documents and the privilege log, you may wish to start with your August 29, 2003 letter to me. In that connection, I note that, in the privilege log provided by plaintiffs, Document Nos. 523, 587 and 622 do not correspond to the page numbers set forth in your letter for those documents.

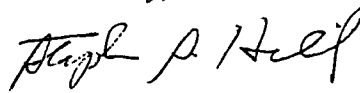
Third, defendant's offer to disclose materials that she contends are covered by the deliberative process privilege, we believe, indicates that defendant is unable to sustain her burden of demonstrating that the documents in question are, in fact, protected by that privilege. Accordingly, we request that all such documents be produced promptly without any preconditions.

Finally, our careful review of the privilege log and ongoing review of the documents lead us to believe that defendant has indiscriminately and improperly asserted various privilege claims. Moreover, we believe that the degree to which defendant has improperly asserted privilege claims calls into question the validity of all of defendant's privilege claims. Accordingly, please consider this letter plaintiffs' formal objection to defendant's withholding

Lisa A. Olson, Esq.  
August 7, 2003  
Page 2

each document listed on the privilege log as well as the scores of documents that defendant has withheld and not included on the privilege log. Unless defendant promptly withdraws her objections to producing the aforementioned documents and promptly produces them, plaintiffs intend to file a motion to compel production of the documents as to which plaintiffs believe defendant has waived privilege and to compel production of the remaining documents for in camera inspection to determine the validity of the asserted privilege claims. To avoid further delay, we would appreciate receiving your response and the aforementioned documents by 5:00 p.m. Tuesday, September 16, 2003.

Sincerely,



Stephen S. Hill

# EXHIBIT 4

**U.S. Department of Justice**

Civil Division  
Federal Programs Branch  
20 Massachusetts Ave., N.W., Room 6118  
Washington, D.C. 20530

Lisa A. Olson  
Senior Counsel

Tel: 202/514-5633

September 11, 2003

**BY TELEFACSIMILE**

Stephen S. Hill, Esq.  
Howrey Simon Arnold & White, LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
fax: (202) 383-6610

Re: Garcia v. Veneman, No. 1:00CV02445 (D.D.C. filed Oct. 13, 2000)

Dear Stephen:

Thank you for your September 11, 2003 letter regarding the above-captioned matter. The only aspect of your letter that merits a response is your assertion that a party's inadvertent disclosure of a handful of privileged documents during the course of the party's disclosure of thousands of pages of non-privileged documents in response to his opponent's document production request effects a waiver of the privilege(s) in question.<sup>1</sup> Your letter cites no authority for the assertion, and we are aware of none. If you know of any cases that support your position we would appreciate your identifying them for us. That may enable the parties to avoid the time and expense of unnecessary litigation. Otherwise, we expect you to promptly return the inadvertently disclosed privileged documents.

Very truly yours,

A handwritten signature in cursive script that reads "Lisa A. Olson".

Lisa A. Olson  
Senior Counsel  
Federal Programs Branch  
Civil Division

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<sup>1</sup> Specifically, in the present case, the federal contractor inadvertently disclosed eight documents out of approximately 900, comprising eleven pages of the approximately 126,000 pages of documents produced.

# EXHIBIT 5



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**STEPHEN S. HILL**  
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September 12, 2003

BY FACSIMILE & FIRST CLASS MAIL

Lisa A. Olson, Esq.  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, N.W.  
P.O. Box 833  
Washington, D.C. 20044

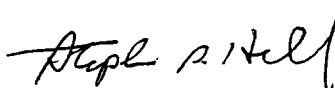
Re: Garcia v. Veneman, C.A. No. 1:00CV02445 (D.D.C. filed Oct. 13, 2000)

Dear Ms. Olson:

We received your letter of September 11, 2003, responding to our letter of the same date. Should we take from the second sentence of your letter that plaintiffs need not wait until 5:00 p.m. Tuesday to file their motion to compel? The purpose of our September 11, 2003 letter was, among other things, to afford defendant the opportunity to review what we considered to be ill-considered privilege claims and thereby to avoid the need for further litigation and the imposition of any additional burden on the court.

As for your assertion that you and your colleagues at the United States Department of Justice ("DOJ") are unaware of any authority for the proposition that the disclosure of privileged material waives the privilege, we frankly find that hard to believe. Given all the resources at your disposal, we are hard pressed to justify providing legal research for DOJ. Suffice it to say that if you and your colleagues are truly interested in "avoid[ing] the time and expense of unnecessary litigation," then you might consider spending a few minutes in the DOJ law library.

Sincerely,

  
Stephen S. Hill

# **EXHIBIT 6**

**U.S. Department of Justice**

Civil Division  
Federal Programs Branch  
20 Massachusetts Ave., N.W., Room 6118  
Washington, D.C. 20530

Lisa A. Olson  
Senior Counsel

Tel: 202/514-5633

August 29, 2003

**BY TELEFACSIMILE**

Stephen S. Hill, Esq.  
Howrey Simon Arnold & White, LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
fax: (202) 383-6610

Re: Garcia v. Veneman, No. 1:00CV02445 (D.D.C. filed Oct. 13, 2000)

Dear Stephen:

It has come to my attention that the federal contractor responsible for processing plaintiffs' class certification discovery requests has inadvertently disclosed certain privileged materials to plaintiffs. These materials are listed on defendant's privilege log but were accidentally released during discovery. Defendant hereby requests that plaintiffs return the original and all copies of the materials and that plaintiffs not use them for any purpose in this litigation or otherwise. The inadvertently produced, privileged documents to be returned are as follows:

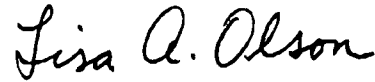
Document No. 357, p. GVL016-0395  
Document No. 437, p. GVL019-0979  
Document No. 482, p. GVL019-3328  
Document No. 523, p. GVL025-0990  
Document No. 532, p. GVL026-2862  
Document No. 540, p. GVL026-3094  
Document No. 586, p. GVL028-0999  
Document No. 587, p. GVL016-0395  
Document No. 622, pp. GVL029-0380-0383

If defendant discovers in the future that any other documents were inadvertently or accidentally disclosed, we will request that plaintiffs return the originals and all copies of these and refrain from using them as well. We are in the process of reviewing the documents and privilege log, and in the event we discover other discrepancies, we will inform you immediately.

- 2 -

We have not received a response from you regarding our August 15, 2003 offer to disclose materials protected by the deliberative process privilege in return for your agreement that the disclosures would not waive or otherwise undermine defendant's assertion of the deliberative process privilege as to any future discovery responses. We take your failure to respond and to sign the agreement as a rejection of our offer.

Very truly yours,



Lisa A. Olson  
Senior Counsel  
Federal Programs Branch  
Civil Division

# **EXHIBIT 7**



United States  
Department of  
Agriculture

Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

Kansas City  
Finance Office  
P.O. Box 200003  
St. Louis, Missouri  
63120-0003

JULY 14, 2003

Dear Debtor:

Our records indicate that you are more than 90 days past due on debt owed to the United States Department of Agriculture, Farm Service Agency (FSA). Under Federal law, we are required to offset any eligible Government payments you are to receive to resolve the delinquent debt.

Enclosed is a list of the delinquent loan(s) and the amount(s) due as of 07/11/03 .  
You have 60 days to resolve this delinquent debt.

The following options are available for settling this debt:

- Fully pay the delinquent debt outstanding on your loans at your local servicing office on or before 09/18/03 . The amount could change because of protective advances, other servicing actions, interest accrual, previous offsets, or other collections. Contact your local office for the correct amount.
- Make settlement arrangements with your local servicing office. If immediate payment would create a serious financial hardship, you may request consideration of a written repayment/settlement agreement with FSA. This request must be submitted in writing before 08/15/03 , and must state your repayment proposal, including the specific terms desired. To verify that immediate repayment of the delinquency would cause serious financial hardship, a signed financial statement must be provided with any settlement proposal or installment repayment request. The financial statement must list all income and expenses and contain a balance sheet listing all assets and liabilities. An approved repayment/settlement agreement must be in place to avoid offset.
- Inform your local servicing office of any bankruptcy proceedings. Debtors who have filed for bankruptcy, and for whom an automatic stay is in effect, may not be subject to collection actions. If this provision applies, please submit a copy of the bankruptcy petition to your local servicing office by 09/18/03 .

If the delinquent debt is not involved in a bankruptcy proceeding, or is not paid in full or settled by 09/18/03 , the United States Treasury Department will be notified to collect by offset from the following Federal government payments due you, if applicable:

- Income tax refunds
- Federal salary, including military pay
- Federal retirement, including military retirement pay
- Contract or vendor payments
- Certain Federal benefit payments, such as Social Security (other than Supplemental Security Income), Railroad Retirement (other than tier 2), and Black Lung (part B) benefits
- Other Federal payments, including certain loans to you, that are not exempt from offset

All delinquent debt is referred to commercial credit bureaus on a quarterly basis.

If, after all security has been liquidated, debt remains which has not been settled, that debt may also be referred to Treasury for potential referral to private collection agencies and possible administrative wage garnishment. The amount referred for collection will include the delinquent principal, any accrued interest, protective advances, and collection costs. The debt may also be referred to the United States Department of Justice for litigation.

You have the right to obtain a copy of the records for the listed delinquent debt. To do so, send a written request to your local servicing office. Please provide your Social Security Number or Employer Identification Number and your complete mailing address with the request.

You have the right to a review of the validity of the delinquent debt amount. Any request for review must be made in writing to your local servicing office by 08/15/03 . If you disagree with the delinquent debt amount and wish to dispute the record, please explain the reason for any challenge and include any written evidence available to support your position. You will be notified in writing of a determination.



**Additional interest is accruing daily on this debt. The amount due will continue to increase until the delinquency is paid or the account is settled. Any discharged debt will be reported to IRS on Form 1099-C, Cancellation of Debt.**

**If a joint Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local Internal Revenue Service office before filing your return to learn how to protect your spouse's share of the refund.**

**For further information, please call your local servicing office or our toll-free number, 800-428-9643.**

50-386

VASQUEZ, DELIA  
P.O. BOX 595  
FABENS

TX 79838

CASE NUMBER 49-071-0525564759

LOAN NBR.	AMOUNT DELINQUENT	DATE OF LOAN	AMOUNT OF LOAN
56	\$103,195.86	07/12/96	\$80,000.00
57	\$5,229.00	07/12/96	\$7,752.09
58	\$9,576.00	07/12/96	\$14,195.51
59	\$13,790.00	07/12/96	\$20,445.32
60	\$10,360.00	07/12/96	\$15,890.24
61	\$24,773.00	07/12/96	\$40,034.44
62	\$9,576.00	07/12/96	\$27,725.14
63	\$57,821.07	07/12/96	\$103,310.59
64	\$27,114.00	07/12/96	\$62,340.65





Vasquez, Rodolfo

September 9, 2002



United States Department of Agriculture

Foreign Agricultural Services

Service

City Office  
200003  
St. Louis, Missouri  
63103

Dear Debtor:

Our records indicate that you are more than 90 days past due on debt owed to the United States Department of Agriculture, Farm Service Agency (FSA). Under Federal law, we are required to offset any eligible Government payments you are to receive to resolve the delinquent debt.

Enclosed is a list of the delinquent loan(s) and the amount(s) due as of September 6, 2002. You have 60 days to resolve this delinquent debt.

The following options are available for settling this debt:

- Fully pay the delinquent debt outstanding on your loans at your local servicing office on or before November 22, 2002. The amount could change because of protective advances, other servicing actions, interest accrual, previous offsets, or other collections. Contact your local office for the correct amount.
- Make settlement arrangements with your local servicing office. If immediate payment would create a serious financial hardship, you may request consideration of a written repayment/settlement agreement with FSA. This request must be submitted in writing before October 29, 2002, and must state your repayment proposal, including the specific terms desired. To verify that immediate repayment of the delinquency would cause serious financial hardship, a signed financial statement must be provided with any settlement proposal or installment repayment request. The financial statement must list all income and expenses and contain a balance sheet listing all assets and liabilities. An approved repayment/settlement agreement must be in place to avoid offset.
- Inform your local servicing office of any bankruptcy proceedings. Debtors who have filed for bankruptcy, and for whom an automatic stay is in effect, may not be subject to collection actions. If this provision applies, please submit a copy of the bankruptcy petition to your local servicing office by November 22, 2002.

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You have the right to a review of the validity of the delinquent debt amount. Any request for review must be made in writing to your local servicing office by October 4, 2002. If you disagree with the delinquent debt amount and wish to dispute the record, please explain the reason for any challenge and include any written evidence available to support your position. You will be notified in writing of a determination.

50-386

VASQUEZ, RODOLFO  
BOX 942  
FABENS

TX 79838

CASE NUMBER: 49-071-0464605551

LOAN NBR.	AMOUNT DELINQUENT	DATE OF LOAN	AMOUNT OF LOAN
56	\$99,184.90	07/12/96	\$80,000.00
57	\$4,482.00	07/12/96	\$7,752.09
58	\$8,208.00	07/12/96	\$14,195.51
59	\$11,820.00	07/12/96	\$20,445.32
60	\$8,880.00	07/12/96	\$15,890.24
61	\$21,234.00	07/12/96	\$40,034.44
62	\$8,208.00	07/12/96	\$27,725.14
63	\$57,821.07	07/12/96	\$103,310.59
64	\$27,114.00	07/12/96	\$62,340.65





Vasquez, Arturo

September 9, 2002



States  
Department of  
Agriculture

Foreign  
Affairs

Office

Missouri  
200003  
03

Dear Debtor:

Our records indicate that you are more than 90 days past due on debt owed to the United States Department of Agriculture, Farm Service Agency (FSA). Under Federal law, we are required to offset any eligible Government payments you are to receive to resolve the delinquent debt.

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**Additional interest is accruing daily on this debt. The amount due will continue to increase until the delinquency is paid or the account is settled. Any discharged debt will be reported to IRS on Form 1099-C, Cancellation of Debt.**

**If a joint Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local Internal Revenue Service office before filing your return to learn how to protect your spouse's share of the refund.**

**For further information, please call your local servicing office or our toll-free number, 800-428-9643.**

50-386

VASQUEZ, ARTURO  
BOX 485  
FABENS

TX 79838

CASE NUMBER 49-071-0450621683

LOAN NBR.	AMOUNT DELINQUENT	DATE OF LOAN	AMOUNT OF LOAN
14	\$4,502.47	03/28/89	\$8,451.63
15	\$22,782.00	03/28/89	\$21,989.08
16	\$4,005.00	03/28/89	\$3,759.22
17	\$5,510.00	03/28/89	\$5,123.15
18	\$629.63	03/28/89	\$1,470.33
19	\$81,913.41	03/28/89	\$71,664.96



# **EXHIBIT 8**



1299 PENNSYLVANIA AVE., NW  
WASHINGTON, DC 20004-2402  
PHONE 202.783.0800  
FAX 202.383.6610  
A LIMITED LIABILITY PARTNERSHIP

**STEPHEN S. HILL**  
PARTNER  
202.383.6967  
hillstephen@howrey.com

October 17, 2002

HAND DELIVERY

Honorable Bob Goodlatte  
Chairman  
Committee on Agriculture  
Subcommittee on Department Operations  
Oversight, Nutrition, and Forestry  
2240 Rayburn House Office Building  
Washington D.C. 20515-4602

Re: Tyn Davis and Garcia v. Veneman

Dear Chairman Goodlatte:

We are writing on behalf of Mr. Tyn Davis one of the plaintiffs in the class action pending in the United States District Court for the District of Columbia styled *Garcia v. Veneman*, CA. No. 1:00CV 2445 to bring to your attention an egregious case of harassment and retaliation by the United States Department of Agriculture ("USDA") against Mr. Davis. As you may recall, during the hearings before your subcommittee on September 25, 2002 you read into the record portions of Mr. Davis' July 11, 2002 declaration in which Mr. Davis described the discrimination he encountered at the hands of Mr. McAnnally of the Farm Service Agency ("FSA") in Ft. Stockton, Texas, once Mr. McAnnally learned that Mr. Davis was part Hispanic. (A copy of that declaration is enclosed for your convenience.) After reading the declaration into the record, you ordered USDA to investigate the situation and report back to you.

Mr. Davis recently learned that Mr. McAnnally has instructed FSA to withdraw Mr. Davis from participation in the cotton subsidy program. Inasmuch as Mr. Davis is just now beginning to harvest his cotton, the effect of Mr. McAnnally's action is potentially devastating. The facts are as follows: In or about July 2002, Mr. Davis was advised by FSA that he was eligible again this year to participate in the cotton subsidy program. He has been participating in the subsidy program for many years. Indeed, his participation in the subsidy program both pre-date and post-date a reorganization in bankruptcy, which Mr. Davis filed approximately six years ago. (Mr. Davis is current in all of his reorganization plan payments.)

On July 11, 2002, Mr. Davis executed the declaration which was filed with the Court and served upon USDA on July 17, 2002 as part of Plaintiffs' Second Supplemental Memorandum In Support Of Their Motion For Class Certification. Approximately one month later on August 14, 2002, FSA apparently notified Mr. Davis' cotton broker, the Southwestern Irrigated Cotton

Honorable Bob Goodlatte

October 17, 2002

Page 2

Growers Association ("SWIG") that Mr. Davis was no longer eligible to participate in the cotton subsidy program. Mr. Davis did not learn of the FSA's action until he was informed by SWIG last Friday as he was preparing to harvest his cotton.

Upon inquiring as to the reason for this sudden turn of events, Mr. Davis was told by FSA personnel that Mr. McAnally had instructed FSA to declare Mr. Davis ineligible to participate in the subsidy program. The ostensible reason given was that Mr. Davis had previously filed for bankruptcy reorganization. Significantly that fact had never disqualified Mr. Davis from participation in the program in any of the prior years subsequent to his bankruptcy filing approximately six years ago. In that connection, we have spoken with Jack Langenegger, Vice President Member Relations, and Gill Jones, Senior Vice President Administration and Operation of SWIG, who have advised us that in their years of working with the subsidy program, this is the first time a farmer has been denied participation in the subsidy program because of a prior bankruptcy filing.

Currently, the price of cotton used for advancing loans by SWIG is 54 to 55 cents per pound, which includes a subsidy of 25 cents per pound. As a result of Mr. McAnally's harassment and retaliation, Mr. Davis stands to lose 25 cents a pound on this cotton the year or approximately \$100,000. Suffice it say that such a loss would be devastating to Mr. Davis and could well drive him out of farming. We think that there is simply no place in society for this type of blatant and wanton discrimination and retaliation against a farmer who has only sought to affirm his right to equal and fair treatment by USDA. We implore you to use your good offices to see to it that this injustice is immediately corrected and Mr. Davis is not further penalized for trying to seek equal treatment. In that connection, we note that while SWIG has been fully cooperative and is sympathetic to Mr. Davis' plight, SWIG advises us that there is about a two week window in which to resolve this matter before there are potential adverse financial consequences for it. After that, SWIG will be forced to process Mr. Davis' loan without the benefit of the subsidy payment to which he is clearly entitled.

Let us take this opportunity to thank you in advance for any assistance that you and your colleagues on the Committee and in Congress can give us on this matter. If you have any questions or need my further information, please do not hesitate to call us.

Respectfully,



Stephen S. Hill

Enclosure: