

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 (RBW)
)	
TOM VILSACK, Secretary of)	
Agriculture,)	
)	
Defendant.)	
_____)	

DEFENDANT’S STATUS REPORT

Defendant submits this status report to inform the Court that the United States Department of Agriculture (USDA) intends to announce a proposed settlement and administrative claims process that is being established to provide up to a total of \$1.33 billion to farmers – including the named plaintiffs and putative plaintiffs in this case and in Love v. Vilsack (C.A. No. 00-2502 (RBW)) – who allege discrimination based on being Hispanic, or based on being female, in making or servicing farm loans.¹ Participation in the process will be conditioned on the dismissal with prejudice of the farmer’s legal claims against USDA. Commencing on or after October 1, 2010, USDA plans to post in its field offices, and mail to Hispanic and female farmers, a summary notice and a fact sheet describing the claims process.² These documents provide information about the claims process, and they state that any inquiries can be directed to a community group or a lawyer. In connection with the announcement of the

¹ USDA is seeking a third-party contractor to administer and adjudicate claims.

² Copies of these documents are being provided to plaintiffs’ counsel and lodged in chambers.

proposed settlement and claims process, USDA also plans to issue a press release; meet with stakeholders; launch a website containing information about the claims process; and activate a call center to gather names and contact information from farmers who are interested in receiving a claims package.³

The sole remaining claims in this case are the individual claims of discrimination brought by the named plaintiffs under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f. In 2006, the D.C. Circuit affirmed the district court's denial of class certification of plaintiffs' ECOA claims. Garcia v. Vilsack, 444 F.3d 625 (D.C. Cir. 2006). In 2009, the D.C. Circuit affirmed the district court's dismissal of the claims brought under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, by the Hispanic farmers in this case, and of the APA claims brought by female farmers in Love v. Vilsack, and remanded the cases to the district court on the named plaintiffs' individual claims under ECOA. Garcia v. Vilsack, 563 F.3d 519 (D.C. Cir. 2009). In January 2010, the Supreme Court denied plaintiffs' petitions for certiorari on the APA claims in Love and Garcia.

As a result, the sole remaining claims in this case are the individual ECOA claims brought by the eighty-one (81) named plaintiffs. Other putative plaintiffs might also file complaints within the applicable statute of limitations, which has been tolled by order of this Court.⁴ Some or all of the named plaintiffs and putative plaintiffs may seek to accept the proposed settlement and participate in USDA's claims process, with such participation

³ It is anticipated that USDA will also engage in further outreach efforts in the near future.

⁴ As part of the claims process, USDA will, at a later date, request that the Court end the tolling of the statute of limitations.

conditioned on the dismissal with prejudice of his or her legal claims against USDA. Detailed information about the proposed settlement and claims process will be provided following USDA's announcement.

Plaintiffs' counsel (Howrey LLP) has objected to USDA's proposed mailing of a summary notice and fact sheet to Hispanic farmers.⁵ USDA will exclude from its mailing list the eighty-one named plaintiffs in this case. Should plaintiffs' counsel so request, USDA will also exclude any other individuals whom plaintiffs' counsel identifies as its clients. Thus, to the extent that the mass mailing implicates Rule 4.2 of the D.C. Rules of Professional Conduct ("Communication Between Lawyer and Person Represented By Counsel"), it complies with the Rule, which provides:

During the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person *known to be represented* by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.

D.C. R. Prof. Conduct 4.2 (emphasis added).

By its terms, Rule 4.2 only prohibits contacts with a person known to be represented by lawyer. Counsel for the named plaintiffs has objected to the mailing of this notice, but has refused USDA's request to identify the individuals it represents. Thus, the only individuals USDA knows to be represented by plaintiffs' counsel are the eighty-one named plaintiffs, all of

⁵ It is not clear that counsel for the eighty-one named plaintiffs has either the authority or the standing to object on behalf of farmers whom the Howrey firm does not represent. To the extent that plaintiffs' counsel represents individual farmers whom Howrey does not wish to receive a mailing from USDA advising the farmers of the settlement and claims process, counsel should identify such individuals by name and city and state of residence. Counsel has not done so.

whom USDA intends to remove from its mailing list. USDA will conduct a mass mailing of the summary notice and fact sheet to Hispanic and female farmers starting on or after October 1, 2010. Other aspects of USDA's proposed announcement program as described above will be undertaken at a later date.

Respectfully submitted,

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Dated: Sept. 27, 2010