

GARCIA PLAINTIFFS DEMAND THAT RULE 23 BE APPLIED TO ADMINISTRATION OF ANY SETTLEMENT

Request Courts Intervene to Prevent Government's Continued Discrimination Against Hispanic Farmers

Washington, DC, October 11, 2010...Lawyers for the plaintiffs in the Hispanic farmers case against the USDA (Garcia V. Vilsack) have filed a motion with the US District Court requesting that the court review the Government's proposed settlement and require the Government to observe Rule 23 in the administration of any settlement. The motion also requests that because of the unfairness of the Government's proposed administrative process, the government should not be permitted to move forward without court oversight.

"The settlement proposed by the Government is a prime example of the pernicious discrimination Hispanic farmers have had to endure for decades," says Stephen Hill, of Howrey LLP, lead lawyer for the plaintiffs. "The Government wants to portray this class-wide settlement as fair, but it is discriminatory on its face and follows a discriminatory process that is inherently unfair and designed to suppress claims so that the victims of the discrimination will not be properly compensated. The process that the government proposes discriminates against Hispanics as compared to how the government settled claims with African American farmers and how it proposes to settle with Native American farmers. It provides for inadequate notice, and a claims process that is designed to suppress claims so that the government in fact does not have to pay the victims of the discrimination that the settlement is designed to redress. The government admits that it should settle the claims of the victims of discrimination on a class wide basis, but refuses to do so under the supervision of the court. Why does the government not want the court to supervise the settlement?"

"For some unknown reason, the Government has chosen to ignore the protections of 'Rule 23', the accepted, fair and customary method of administering such claims, instead proposing its own process to short-circuit the notice, review and adjudication of the plaintiffs' claims. We have asked the court to require the Government to adhere to Rule 23. Our plaintiffs, who are American citizens and taxpayers, expect nothing less than equal justice from their government. The proposed settlement does not deliver on that basic American promise of justice."

In his brief to the Court*, Mr. Hill cites significant precedent for the court's requiring the use of Rule 23.

1. The Supreme Court recognizes that class action proceedings present "opportunities for abuse," and that courts have "both the duty and the broad authority" to exercise control over class actions to prevent such abuse. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981); *Manual for Complex Litigation*, § 21.12 (4th ed. 2004).

2. The court should also prevent any communication of a settlement offer that would mislead or confuse the putative class members. See *Keystone Tobacco Co. v. U.S. Tobacco Co.*, 238 F. Supp. 2d 151, 154 (D.D.C. 2002); *Jenifer v. Delaware Solid Waste Auth.*, Civ. A. Nos. 98-270MMS, 98-565MMS, 1999 W L 117762, at *2 (D. Del. Feb. 25, 1999).

3. When evaluating a defendant's proposed settlement offer to putative class members, a court must ensure that the putative class members have sufficient information to fairly evaluate the settlement offer. *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1139-49 (7th Cir. 1978).

4. Before giving its approval, the Court must provide adequate notice to all members of the class, . . . conduct a "fairness hearing," and find, after notice and hearing that the "settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Pigford v. Glickman*, 185 F.R.D. at 98 (quoting *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998)); *accord Equal Rights Ctr. v. Wash. Metro. Area Transit Auth.*, 573 F. Supp. 2d 205 (D.D.C. 2008); *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 104 (D.D.C. 2004).

Rule 23 thus clearly authorizes the court to review and approve both the form and manner of notice. As set forth more fully herein, defendant's proposed notice and "proposed settlement" will mislead and confuse putative class members and encourage vulnerable minority farmers to compromise valuable rights on the basis of insufficient and misleading information.

Under a Rule 23 settlement, "claims, issues, or defenses . . . may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Moreover, with respect to any "proposed settlement, voluntary dismissal, or compromise [,] . . . [t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1).

In his brief, Mr. Hill points to what many consider the most unfortunate element of the current settlement offer- the requirement that plaintiffs dismiss any claims against the Government BEFORE their claim is reviewed and adjudicated.

Under a Rule 23 process, “claims . . . may be settled [or] voluntarily dismissed . . . only with the court’s approval.” Fed. R. Civ. P. 23(e). Under defendant’s proposal, claimants must “dismiss [] with prejudice . . . [their] legal claims against USDA” without any court approval and before they have any idea of how much they will receive in the proposed administrative process. They must also dismiss their claims before they know by what standard, if any, their claims will be considered by an adjudicator who will be selected unilaterally by defendant, and whose decisions will be unreviewable. It is also unclear whether there will be any cap placed upon the fees that the adjudicator may charge for reviewing the claims, or the cost of processing the claims prior to adjudication. By requiring farmers to dismiss their claims against USDA before any of these essential facts are disclosed, defendant prevents the farmers from obtaining the information required to adequately assess the settlement offer. See *In re Gen. Motors*, 594 F.2d at 1139-40.

In the conclusion of his brief, Mr. Hill states a straightforward request for equal administration of justice for Hispanic farmers, “For the foregoing reasons this court should review the proposed settlement in light of the Rule 23, require defendant to comply with Rule 23 in order to ensure a fair and just settlement, and certify a class for settlement purposes.”

Equal Justice before the law requires no less.

* The full text of Mr. Hill’s brief may be found at www.garciaaction.org. (Dockets and Filings)

For further information www.garciaaction.org.

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