

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 00-2445 (JR)
	:	
ANN V. VENEMAN, Secretary,	:	
United States Department of	:	
Agriculture,	:	
	:	
Defendant.	:	

**FILED**

MAR 20 2002

NANCY MAYER WHITTAKER, CLERK  
U.S. DISTRICT COURT

MEMORANDUM ORDER

Plaintiffs are Hispanic farmers who complain of discrimination in the administration of U.S. Department of Agriculture loan and disaster benefit programs.<sup>1</sup> The government moves to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), arguing that the Court lacks jurisdiction over several claims and that plaintiffs have failed to allege a cognizable claim under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et seq., the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. For the reasons set forth below and in Love v. Veneman, Civ. No. 00-2502, mem. op. (D.D.C. Dec. 13, 2001), the motion will be denied in part and granted in part.

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<sup>1</sup> The ten named plaintiffs also sue on behalf of others similarly situated, including 92 individuals named but not described in the second amended complaint. The plaintiffs' motion for class certification and the government's motion to strike class action allegations and to dismiss the putative class members are in abeyance pending further briefing by the parties.

(N)

### Background

This case is one of a number of class actions filed by minority and women farmers in the wake of several reports documenting discriminatory practices in local USDA offices and the dismantling of the Department's civil rights enforcement program in the early 1980s. In 1998, concerned that farmers had relied to their detriment upon USDA's (inoperative) internal mechanisms to investigate their discrimination complaints, Congress extended the statute of limitations until October 21, 2000, to allow farmers who had filed administrative complaints concerning USDA discrimination between 1981 and 1996 to bring suit in U.S. District Court. 7 U.S.C. § 2279 Note. USDA has settled a class action filed on behalf of African American farmers, Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), aff'd, 206 F.3d 1212 (D.C. Cir. 2000). This action by Hispanic farmers, however, as well as suits by Native American farmers, Keepseagle v. Veneman, Civ. No. 99-3119, and female farmers, Love v. Veneman, Civ. No. 00-2502, continue in litigation.

The Garcia plaintiffs allege that from January 1, 1981, to the present, the Farmers Home Administration and its successor, the Farm Service Agency, discriminated against Hispanic farmers and ranchers in awarding disaster benefits and operating, farm ownership, and emergency loans. They also allege

that the USDA acted arbitrarily in failing to investigate and resolve their discrimination complaints.

### Analysis

The government's motion to dismiss raises the same legal arguments advanced in its motion to dismiss in Love v. Veneman. For the reasons set forth in a memorandum issued in the Love case on Dec. 13, 2001, (1) the Garcia plaintiffs are entitled to bring ECOA claims for discrimination in lending transactions without administrative exhaustion; (2) at least some of the named plaintiffs' lending claims satisfy the statute of limitations<sup>2</sup>; and (3) plaintiffs' allegations of failure to

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<sup>2</sup> Plaintiffs Guadalupe Garcia and Gloria Morales satisfied the special statute of limitations for USDA claims by bringing suit on "eligible [administrative] complaints" that they had filed prior to July 1, 1997, asserting discrimination in USDA lending and disaster benefit programs between 1981 and 1996. Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, Pub. L. 105-277, § 741, 112 Stat. 2681-30 (codified at 7 U.S.C. § 2279 Note). However, Mr. Garcia's "eligible complaint" only appears to have concerned his 1986 loan application. The plaintiffs' second amended complaint does not describe any discrimination complaint meeting the requirements of 7 U.S.C. § 2279 as having been filed concerning his 1988 and 1994 credit applications, so those claims are now time barred.

It is unclear from the face of the complaint whether Tony and Patricia Jimenez, Beatrice and Rodolfo Garza, and Edward and Normal Flores filed complaints within the USDA that specifically asserted discrimination as required by 7 U.S.C. § 2279 Note. Love v. Veneman, Civ. No. 00-2502, mem. op. at 10-12. It is also unclear whether Mr. Garcia, Mr. and Mrs. Jimenez, and Larry and Robert Chavarria meet ECOA's general two-year statute of limitations as to their claims based on 1998 credit transactions. 15 U.S.C. § 1691e(f). Since the special statute of limitations does not apply to USDA discrimination after 1996 or administrative complaints filed after July 1, 1997, the 1998

investigate civil rights complaints do not state claims under ECOA or the APA.

The only legal issue requiring further discussion arises from plaintiffs' claims for discriminatory administration of disaster benefit programs.<sup>3</sup> A disaster benefit decision is not a "credit transaction" within the meaning of ECOA. 15 U.S.C. § 1691(a). A final agency action denying a disaster benefit is, however, reviewable under the Administrative Procedure Act, 5 U.S.C. §§ 702, 704. Plaintiff Gloria Morales asserts that she was denied disaster benefit payments for losses to her grape crop in 1993 and that she filed a discrimination complaint with the USDA prior to July 1, 1997, concerning that denial. Although the effectiveness of APA relief is questionable - the APA does not waive the government's sovereign immunity with regard to money damages, 5 U.S.C. § 702 -- Ms. Morales has satisfied the special statute of limitations approved by Congress and has standing to assert her claim before this court. 7 U.S.C. § 2279 Note.

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claims are barred unless they concern transactions occurring within two years of the filing of this action on October 13, 2000. Because 12(b)(1) motions must be generously construed in the plaintiffs' favor, the motion to dismiss these plaintiffs will be denied at this time. Love v. Veneman, Civ. No. 00-2502, mem. op. at 12 & n.8. However, the government is free to renew its motion if these plaintiffs cannot demonstrate that they satisfy the statute of limitation requirements.

<sup>3</sup> Such claims were dismissed in Love because the only named plaintiff who alleged the unlawful denial of disaster benefits was successful on her administrative appeal. Love v. Veneman, Civ. No. 00-2502, mem. op. at 13.

It is accordingly this 20<sup>th</sup> day of March 2002,

ORDERED that defendant's motion to dismiss [#5] is **denied** in part and **granted** in part. And it is

FURTHER ORDERED that plaintiffs' motion to for leave to file a second amended complaint [#16, #19] is **granted**. And it is

FURTHER ORDERED that defendant's motion to strike plaintiffs' motion to certify the class [#21] is **denied**. And it is

FURTHER ORDERED that plaintiffs' motion to strike defendant's notice of filing [#33, #34] is **granted**. And it is

FURTHER ORDERED that the Court's order of January 23, 2001 [#14] is modified as described in open court on February 21, 2002, to permit further briefing on the motions to certify a class [#18] and to strike class action allegations [#5].



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JAMES ROBERTSON  
United States District Judge

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