

DENISE M. HULETT (No. 121553)
Mexican American Legal Defense and Educational Fund
915 Cole Street, No. 381
San Francisco, CA 94117
Telephone: (415) 504-6901
Facsimile: (415) 504-8901

THOMAS A. SAENZ, (No. 159430)
Mexican American Legal Defense
and Educational Fund
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014
(213) 629-2512
Fax (213) 629-0266

CHRISTOPHER HO (No. 129845)
The Legal Aid Society - Employment Law Center
1663 Mission Street, Suite 400
San Francisco, CA 94103-2449
Telephone: (415) 864-8848
Facsimile: (415) 864-8199

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL BRIONEZ, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*,

Defendants.

No. C 01 3969 CW

ORDER GRANTING
UNOPPOSED MOTION
FOR PROVISIONAL CLASS
CERTIFICATION

1
2
3 Plaintiffs have moved for provisional class certification of a class for the purpose of entering
4 settlement between defendants and a plaintiff class defined as:
5 all permanent Hispanic employees of the Forest Service, Region 5 who allege that they have applied for
6 and not been selected for a Region 5 Position based on race or national origin, or have been retaliated
7 against because of their involvement in civil rights activities. The class also includes former permanent
8 Hispanic employees who have formal EEO complaints, based on non-selection because of race,
9 national origin, or retaliation, pending on the Effective Date of this Agreement.

10
11 The Court, having reviewed the parties' moving papers, the proposed Settlement Agreement
12 between the parties, and the proposed form and method for providing class notice, finds, for good
13 cause, as follows:

14 1. Plaintiffs Michael Brionez, Peggy Hernandez, Maria Hernandez, Alan Gallegos and
15 organizational plaintiff Regional Hispanic Working Group ("RHWG") have met the Rule 23(a)
16 prerequisites to certification. Potential members of the class are sufficiently numerous such that joinder
17 of all the members of the class would be extremely difficult or inconvenient.

18 2. Because the relief incorporated in the Settlement is primarily injunctive in nature, there
19 are few if any relevant differences amongst the Class Members with respect to the relevant facts or
20 applicable law. The instant case involves Plaintiffs' claim that the employment practices of Region 5 –
21 uniform, Region-wide practices to which each Class Member was subject – constituted actionable
22 national origin discrimination within the meaning of Title VII.

23 3. The Court further finds that the claims of the class representatives involving
24 discriminatory workplace practices are typical fully typical of those of the Class Members they seek to
25 represent.

26 4. The Court further finds that Plaintiffs class representative and Organizational Plaintiff
27 Regional Hispanic Working Group have negotiated the settlement agreement at arms length and will

1 vigorously pursue its implementation, and that class counsel and their respective civil rights organizations
2 have extensive experience in litigating class action employment discrimination lawsuits, and monitoring
3 compliance with Consent Decrees.

4 5. The Court further finds that defendants in this case, through a Region-wide employment
5 selection and promotion procedures alleged by the class to be discriminatory, have acted on grounds
6 generally applicable to class members and thereby Region-wide injunctive relief with respect to the
7 class is appropriate.

8 6. The Court has reviewed the proposed form of class-action settlement notice and finds it
9 comports with the requirements of Rule 23(e) of the Federal Rules of Civil Procedure.

10 Based upon the forgoing findings of fact and conclusions of law, it is HEREBY ORDERED
11 THAT:

12 1. A Plaintiff class is provisionally certified and defined as follows: all permanent Hispanic
13 employees of the Forest Service, Region 5 who allege that they have applied for and not been selected
14 for a Region 5 Position based on race or national origin, or have been retaliated against because of their
15 involvement in civil rights activities. The class also includes former permanent Hispanic employees who
16 have formal EEO complaints, based on non-selection because of race, national origin, or retaliation,
17 pending on the Effective Date of this Agreement.

18 2. On **October 18, 2002, at 10:00 a.m.**, a hearing will be held at the United States District
19 Court, 1301 Clay Street, Courtroom 2, 4th Floor, Oakland, California, 94612, to determine the
20 fairness, reasonableness and adequacy of the terms and conditions of the Settlement Agreement
21 ("Fairness Hearing");

22 3. Any member of the settlement class may appear personally or by counsel at the Fairness
23 Hearing and may object or express his view regarding the certification of the class, and may present
24 evidence, briefs, or other papers, that may be proper and relevant to the issues to be heard and
25 determined by this Court. However, a settlement class member may not be heard at the Fairness
26 Hearing, nor be allowed to contest the certification of the class, unless, before the date set forth in the
27 settlement notice, such person files with the Clerk of this Court, with copies to counsel for plaintiffs and

1 defendants, such person's objections, in writing, together with all papers to be submitted to this Court at
2 the Fairness Hearing.

3
4 **IT IS SO ORDERED ON THIS 2nd DAY OF July, 2002.**

5
6 /s/ CLAUDIA WILKEN
7 THE HONORABLE CLAUDIA WILKEN
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28