UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, et al., Plaintiffs, v. TOM VILSACK, Secretary of Agriculture, et al., Defendants.	Civil Action No. 00-2445 (RBW)

ORDER

Currently before the Court are the Plaintiffs' Motion to Review Defendant[s'] Proposed Notice and Terms of Class-Wide Settlement, and to Certify a Settlement Class and the Plaintiffs' Emergency Motion to Stay Publication of Defendant[s'] Proposed Notice of a Class-Wide Settlement Pending Court Review (the "Pls.' Emer. Mot."). The plaintiffs assert that because the "defendant[s'] 'proposed settlement' raises serious fairness and constitutional issues," Memorandum of Points and Authorities In Support of Plaintiffs' Motion to Review Defendant[s'] Proposed Notice and Terms of Class-Wide Settlement, and to Certify a Settlement Class (the "Pls.' Class Mem.") at 10, the Court should "certify a settlement class under [Federal Rule of Civil Procedure] 23," id. at 1, and "review the [proposed notice and settlement terms] in light of the requirements" set forth under that rule, id. at 10. Furthermore, the plaintiffs argue that the defendants have "threaten[ed] to publish the proposed notice before the briefing schedule with respect to the [plaintiffs'] pending [class certification] motion is concluded," Pls.' Emer. Mot. at 1, and thus "any public announcement or notice of the proposed class-wide settlement process" should be held "in abeyance . . . until after the [C]ourt has ruled on [the] plaintiffs'

pending [m]otion" for class certification, Memorandum of Points and Authorities In Support of Plaintiffs' Emergency Motion to Stay Publication of Defendant[s'] Proposed Notice of a Class-Wide Settlement Pending Court Review at 2. After carefully considering the arguments raised by the plaintiffs in their motions,[1] the Court concludes for the following reasons that it must deny their request for certification of a settlement class, and, consequently, it must also deny as moot their request for emergency relief.

Federal Rule of Civil Procedure 23 sets forth several prerequisites the plaintiffs must satisfy in order to obtain class certification. The plaintiffs must first establish each of the four requirements listed under Rule 23(a); specifically, that

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative party will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). If the plaintiffs satisfy these four requirements, then the Court may certify the class if it finds, inter alia, "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b). The Court may "probe behind the pleadings," Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 160 (1982), in assessing whether the plaintiffs have met their burden of proof as to each of the requirements prescribed in Rule 23, McCarthy v. Kleindienst, 741 F.2d 1406, 1414 n.9 (D.C. Cir. 1984).

On December 2, 2002, Judge James Robertson, a former member of this Court, issued a memorandum opinion and order addressing a prior motion for class certification by the plaintiffs, who were seeking to certify a class of

[1] The defendants have yet to file an opposition to either of the plaintiffs' motions that are currently before the Court.

> [a]ll Hispanic farmers and ranchers who farmed or ranched or attempted to do so and who were discriminated against on the basis of national origin or ethnicity in obtaining loans, including the servicing and continuation of loans, or in participating in disaster benefit programs administered in the United States Department of Agriculture, during the period from January 1, 1981 through December 31, 1996, and timely complained about such treatment, or who experienced such discrimination from the period of October 13, 1998 through the present.

Garcia v. Veneman, 211 F.R.D. 15, 18 (D.D.C. 2002). In his opinion, Judge Robertson concluded that the plaintiffs have failed "to establish that there are questions of law or fact common to the class[,] or that such questions predominate over any questions affecting only individual members." Id. at 17. Relying on the District of Columbia Circuit's decision in Hartman v. Duffey, 19 F.3d 1459, 1472 (D.C. Cir. 1994), Judge Robertson concluded, inter alia, that the plaintiffs failed to "'make a significant showing to permit the [C]ourt to infer that members of the class suffered from a common policy of discrimination that pervaded all of the employer's challenged employment decisions,'" Garcia, 211 F.R.D. at 19, because the purported discrimination suffered by the plaintiffs could not be "correlate[d] . . . with subjective loan qualification criteria," id. at 22; see also Falcon, 457 U.S. at 159 n.15 (opining that "[s]ignificant proof that an employer operated under a general policy of discrimination conceivably could justify a class . . . if the discrimination manifested itself in [an] entirely subjective decision[-]making process" (emphasis added)), and that the "farmers' allegations of discrimination" would require "individualized inquiries regarding the practices of the various county committees" across the country that interacted with these farmers, Garcia, 211 F.R.D. at 22. Judge Robertson also concluded that any common questions of fact would not predominate in this action because "[e]ven if the presence of class-wide discrimination were established, individual issues would be much more important to any claimant's recovery." Id. at 24. The District of Columbia affirmed Judge Robertson's ruling on the commonality issue, Garcia v. Johanns, 444 F.3d 625, 631 (D.C.

Cir. 2006), but it found no need to address his holding regarding the predominance issue, id. at 631 n.6.

The plaintiffs now assert that "the government's offer to settle all of the pending cases on a class basis constitutes a sufficient[ly] changed circumstance to permit the [C]ourt to revisit the question of class certification," Pls.' Class Mem. at 22, "and to certify a class for settlement purposes," id. at 23. This argument is without merit. It is true that the prospect of a "[s]ettlement is relevant to . . . class certification," Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 619 (1997), but that factor does not always weigh "in favor of certification," as "proposed settlement classes sometimes warrant more, not less, caution on the question of certification," id. at 620 n.16, to ensure that "a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives," id. at 621. And here, Judge Robertson has already ruled that the proposed class in this case lacks such unity, and the District of Columbia Circuit has affirmed that decision. To meet the requirements of Rule 23, therefore, the plaintiffs would have to explain how the administrative procedure proposed by the government for resolving claims of purported discrimination sufficiently changes the factual landscape of this case as to cure the commonality defects found by Judge Robertson. The plaintiffs have made no such showing in their filing,[2] and thus the undersigned member of the Court concludes that it

[2] Even assuming that the defendants' desire "to settle this case on a class-wide basis" is sufficient to constitute a common question of fact under Rule 23(a), Pls.' Class Mem. at 23, any common interest shared by the plaintiffs in obtaining a fair settlement is insufficient to satisfy the predominance requirement of Rule 23(b)(3), see Windsor, 521 U.S. at 623 (concluding that "[i]f a common interest in a fair compromise could satisfy the predominance requirement of Rule 23(b)(3)," then the prescriptions of Rule 23 to "assure the class cohesion that legitimizes representative action in the first place . . . . would be stripped of any meaning in the settlement context"). Indeed, as Judge Robertson recognized,

> [t]he instant case, if allowed to proceed as a class action, would quickly devolve into hundreds or perhaps thousands of individual inquiries about each claimant's particular circumstances. No individual plaintiff could prevail without scrutiny of his or her individual loan application to determine whether the application was "feasible" in terms of such objective criteria as an applicant's financial qualifications and repayment ability. Even if the presence of class-wide

(continued . . .)

would be inappropriate to disturb the conclusions reached by Judge Robertson in his December 2, 2002 memorandum opinion.[3] See Lemmons v. Georgetown Univ. Hosp., 241 F.R.D. 15, 22 (D.D.C. 2007) (Walton, J.) (quoting Judicial Watch v. Dep't of Army, 466 F. Supp. 2d 112, 123 (D.D.C. 2006) (Urbina, J.)) ("[W]here litigants have once battled for the Court's decision, they should neither be required, nor without good reason permitted, to battle for it again.").

Accordingly, it is

ORDERED that the plaintiffs' motion for class certification is **DENIED**. It is further

ORDERED that the plaintiffs' emergency motion to enjoin the defendants from publishing notice of their proposed administrative procedure for settling potential discrimination claims is **DENIED** as moot.

SO ORDERED this 20th day of October, 2010.

REGGIE B. WALTON
United States District Judge

(. . . continued)

> discrimination were established, individual issues would be much more important to any claimant's recovery.

Garcia, 211 F.R.D. at 24 (internal citation omitted).

[3] As a result of the Court's resolution of the plaintiffs' motion for class certification, the plaintiff's motion to enjoin the defendants from publishing notice of their proposed administrative procedure for resolving claims of purported discrimination is moot.