

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RoseMary Love, et al.,)
)
)
)
 Plaintiffs,)
)
 vs.)
)
 Tom Vilsack, Secretary)
 The United States Department of)
 Agriculture,)
)
 Defendant.)

Case Number
1:00CV02502

Judge: Walton, J.

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**PLAINTIFFS' STATUS REPORT REGARDING MEET AND CONFER
AND EFFORTS TO AGREE ON A LITIGATION SCHEDULE**

Pursuant to the Court's Order dated October 21, 2011, and the Court's direction to the parties at the Status Conference on that same date, attorneys for Plaintiffs, proposed Intervenor, and Defendant United States Department of Agriculture ("USDA") met and conferred in an effort to agree on a proposed schedule to address the claims of female farmers who choose to litigate their claims against USDA. USDA has resisted the efforts of Plaintiffs and proposed Intervenor to develop a streamlined litigation process and schedule to litigate female farmers' claims. The parties are unable to agree as to how these cases should be handled by the Court.

On November 21, 2011, attorneys for Plaintiffs, proposed Intervenor, and USDA met to discuss the case and how to move forward in the litigation context.¹ At that meeting, Plaintiffs'

¹ Counsel for USDA has advised that the government is considering material changes in the administrative program to be offered to women farmers, and that the program has not yet been finalized. Accordingly, it is unclear at this point how many women farmers will proceed with the administrative claims program in lieu of litigation. For

counsel proposed that the parties initially try a number of test cases to the Court over a two-week period, before the bulk of the women farmers' cases proceed to trial. These test cases would enable the parties and the Court to get a handle on the types of issues, length of trial time, and types of evidence that are likely to be presented in the women farmers' cases that will go to trial. Trying these test cases over a finite period of time would enable the Court to more knowledgeably order its docket and assist both the parties and the Court in allocation of resources before the question of trial arises for the bulk of the cases that are to be tried.

Plaintiffs and proposed Intervenors presented USDA's counsel with a written litigation proposal describing a streamlined procedure whereby a limited number of cases of women farmers would be tried to the Court, without a jury. Plaintiffs' proposal is attached hereto as Exhibit A. Plaintiffs' proposal suggests that for these initial test cases, the allegations of each plaintiff would be provided to the government in writing and thereafter the parties would engage in limited discovery, including an exchange of expert reports. *Id.* At trial, the plaintiff would put on her case in chief, and the government its defense, through written testimony, and each affiant would thereafter be subject to live cross-examination and redirect. *Id.*

At the November 21 meeting, counsel for USDA stated that while they would review the proposal, they were unwilling to limit USDA's right to use all discovery and trial mechanisms available under the Federal Rules of Civil Procedure.

On November 30, 2011, USDA's counsel responded in writing to Plaintiffs' proposal. That letter, attached hereto as Exhibit B, states that Plaintiffs' proposal is "unacceptable" to the government. "As we discussed on November 21, 2011, each plaintiff must litigate her claim individually in accordance with the Federal Rules and the local rules of the appropriate district

purposes of this Status Report, Plaintiffs assume that some women farmers will wish to proceed with litigation, although it is impossible at this juncture to know how many.

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Counsel for Plaintiffs

EXHIBIT 1

**Proposal regarding Litigation of
*Love v. Vilsack***

Plaintiffs propose that they will identify specific women farmer plaintiffs who would like to proceed with litigation rather than accept the administrative process. While the first group of cases is being litigated as described below, the stay shall remain in place so as not to prejudice claimants and so that the court will not be inundated with filings. The administrative process would also proceed forward simultaneously.

- A. Summary of plaintiff's case – Each plaintiff will provide a short written summary of her allegations of discrimination.
- B. Streamlined discovery – For each case, discovery will be limited to document production, statistical and damage expert reports, and limited standardized interrogatories. There will be no depositions.
 - 1) For each plaintiff, the government will produce documents pertinent to each claimant as follows:
 - a. USDA's files on the specific plaintiff, including (if any) local files, loan files, complaints filed, Office of Civil Rights ("OCR") files, and Board of Appeals files.
 - b. The information USDA is mandated to provide pursuant to § 14012(e)(1)(A)-(B) of the 2008 Farm Bill, but applicable to women farmers, including:
 - i) a report on farm credit loans, as appropriate, made within the claimant's county (or if no documents are found, within an adjacent county), by the Department during the period beginning on January 1 of the year preceding the period covered by the complaint and ending on December 31 of the year following the period; and
 - ii) as to all persons included in the report above whose application for a loan or benefit was accepted:
 - (1) the race(s) and gender(s) of the applicant(s);
 - (2) the date(s) of application(s);
 - (3) the date(s) of the loan or benefit decision(s), as appropriate;
 - (4) the location(s) of the office(s) making the loan or benefit decision(s), as appropriate;
 - (5) all data relevant to the decision-making process for the loan(s) or benefit(s), including local and loan files, as appropriate; and
 - (6) all data relevant to the servicing of the loan(s) or benefit(s), including local and loan files, as appropriate.

- 2) To the extent that USDA does not have the information requested, the government will specify why it does not have the information and if the documentation was destroyed, when that occurred.
- 3) The parties will agree to a schedule for expert reports, with plaintiff going first, followed by USDA's expert report within 30 days thereafter, and plaintiff's rebuttal report, if any, 20 days thereafter.

C. Trial

- 1) Each side shall put on its case-in-chief through witnesses who submit written testimony in advance of the trial. Each witness will appear at trial for the purposes of cross examination and re-direct, which will be live.
- 2) Unless an individual plaintiff requests otherwise, all trials will take place in the District Court of the District of Columbia without a jury.
- 3) The parties will request an initial 2-week commitment from the Court to conduct trials of the first group of female farmers who seek to litigate.

D. Timing

- 1) Plaintiffs will provide to the government a list of plaintiffs from *Love* who wish to try their cases, and a summary of their allegations by the "opening date" agreed upon by the parties. This will be the first group of cases to be tried.
- 2) The government will produce responsive documents for the first group of cases 45 days after the opening date.
- 3) Plaintiffs' expert reports will be due 110 days after the opening date.
- 4) The government's expert reports will be due 140 days after the opening date.
- 5) Plaintiffs' expert responses, if any, will be due 160 days after the opening date.
- 6) The parties will advise the Court of the litigation plan and time table in advance of the January 6, 2012 status conference so that the Court can address the parties with any questions at the status conference. The parties will work with the Court to begin scheduling the trials to commence as soon as possible.

EXHIBIT 2

U.S. Department of Justice

Civil Division
Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Peter T. Wechsler
Trial Attorney

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November 30, 2011

Ms. Barbara S. Wahl
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Re: Love v. USDA, No. 00-2502 JR (D.D.C.)

Dear Barbara:

Plaintiffs' proposed schedule for further proceeding is unacceptable. It is weighted heavily in plaintiffs' favor, ignores the prior rulings denying class certification, and contravenes the litigation procedures established by the Federal Rules of Civil Procedure. As we discussed on November 21, 2011, each plaintiff must litigate her claim individually in accordance with the Federal Rules and the local rules of the appropriate district court.

Nonetheless, USDA is willing to agree to a generally applicable schedule to dispose of the claims that are filed in the District Court for the District of Columbia (and that are not transferred to another district court) by individuals who are represented by your firm, and who elect not to participate in USDA's voluntary administrative claims process. Our proposal for case-by-case proceedings on these lending discrimination claims is as follows:

1. Any further motions by plaintiffs to amend pleadings and/or join other parties shall be filed on or before April 2, 2012.
2. Any motions by defendant to dismiss, join other parties, and/or transfer venue shall be filed not more than 45 days after the Court rules on all motions filed by plaintiffs under paragraph 1 to amend the pleadings and/or join other parties.
3. Non-expert discovery will close 120 days after the Court rules on the motions described in paragraph 2.

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4. Plaintiffs shall provide to defendant the report of each of their experts within 45 days of the close of non-expert discovery; defendant shall provide to plaintiffs the report of each of its experts 45 days later; and within 20 days plaintiffs shall provide to defendant the report of each expert that is prepared in response to defendant's expert reports.

5. The parties shall depose their opponents' experts within 45 days after the exchange of expert reports has been completed.

6. Any dispositive motions not filed under paragraph 2 shall be filed not more than 60 days after the close of expert discovery.

8. The parties will request that the Court schedule a pretrial conference 45 days after the Court's rulings on any dispositive motions filed after the close of all discovery if those rulings do not dispose of all issues for trial, or approximately 45 days after the deadline for filing such motions, if no such motions are filed. Any motions in limine shall be filed prior to the pretrial conference.

Let me know if you have any questions.

Very truly yours,

/s/ Peter T. Wechsler

Peter T. Wechsler

