

Let this be filed.

*Paul L. Friedman*  
PAUL L. FRIEDMAN  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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H. MAYER WHITTINGTON  
CLERK

Civil Action No. 97-1978 (PLF)  
Honorable Judge Friedman

FILED

FEB 25 1999 *fm*

Clerk, U.S. District Court  
District of Columbia

DATE: 2/25/99 )  
TIMOTHY PIGFORD, *et al.* )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DAN GLICKMAN, Secretary, )  
United States Department of Agriculture )  
 )  
Defendant. )

OBJECTION TO PROPOSED CONSENT DECREE

I, John W. Boyd, Jr. of 68 Wind Road, Baskerville, Virginia 23915, am an African-American farmer and a class member in this case. Additionally, I serve as President of the National Black Farmers Association, Inc (NBFA). The membership of NBFA is comprised of class members in this action. I verily believe that my interest may be adversely affected by the approval of the Consent Decree as currently drafted. As such, I hereby formally object to the settlement as set forth in the Consent Decree filed with the Court on January 5, 1999, in the instant case. Please find my objections stated below.

I. CLASS-WIDE INJUNCTIVE RELIEF IS INADEQUATE, UNREASONABLE AND UNFAIR AS DRAFTED.

Section 11 of the Consent Decree is entitled, "CLASS-WIDE INJUNCTIVE RELIEF." This Section contains the exclusive class-wide injunctive relief offered under the proposed settlement. As offered, the injunctive relief is woefully inadequate, unfair and unreasonable. As currently drafted, the injunctive relief offers the class member no protection against the primary offending discriminatory practices by the Defendant as alleged in the class complaint.

If the Consent Decree is approved as currently proposed, I shall—as well as similarly situated class members herein—be severely and adversely affected in my ability to continue to engage in farming in my community, whereupon, I must depend on the U.S. Department of Agriculture’s Farm Service Agency (hereinafter, “FSA”). Therefore, I must object to the Consent Decree as now drafted.

As negotiated by the attorneys for the class and for the Plaintiff—absent any class member being part of the negotiation team—the Consent Decree completely overlooks and fails to address: (1) the real problems underpinning the systemic racial discrimination confronting myself and each African-American who attempts to secure technical support, assistance or financial consideration from FSA; (2) the total insensitivity by USDA staff toward African-American farmers; and (3) the conspicuous absence of any USDA agency-wide sensitivity training or nondiscrimination standards. Additionally, FSA does not have established agency-wide disciplinary standards for its thousands of federal and nonfederal personnel who work in the local FSA county offices. These personnel have consistently been and continue to be the primary source of the unlawful discrimination against African-American farmers. In fact, the uncorrected behavior of these individuals formed the primary reasons for the civil action now before this Court. When I—and other similarly situated African-American farmers—complained to USDA officials about the systematic discriminatory practices and patterns by these nonfederal workers, USDA advised that no action could be taken as these individuals were not subject to the civil rights laws imposed against federal employees. To date, discipline against these individuals remains almost unheard of. I—and indeed other similar class members herein—have been advised that irrespective of the fact that these individuals are paid from federal funds and control the very federal dollars and credit programs that I—and other similarly situated farmers—depend

on for our very economic livelihood, there is nothing USDA could do to discipline their agents. Since no mechanism to address these problems exist in the Consent Decree as now drafted , I object.

The unbridled acts of FSA's employees and nonfederal agents have caused economic devastation to the ranks of African-American farmers to the extent that our ranks are lower than anytime since the Civil War. By any other definition, African-American farmers are, indeed, an endangered species. The unlawful discrimination by FSA's employees and nonfederal agents is at an epidemic level. USDA—heretofore—has claimed to be without controls to arrest this unlawful discrimination. Based on USDA's inaction, our only hope for redress is in a fair, reasonable and adequate standards of considerations imposed by this Court to systematically hold USDA accountable for this course of open and obvious violations of law. To date, no such language exist in the Consent Decree. Thus, I object.

I—and other similarly situated class members—placed our trust in our class counsel that the Consent Decree would contain clear and unambiguous requirements for USDA to establish standards to ensure conformity with federal law which protects my, and my fellow similarly situated African-American farmers', civil rights against continued violations of federal law by FSA and its nonfederal agents. Our reliance was misplaced as the proposed Consent Decree is completely silent as to mechanisms crafted to address these issues. Thus, I object to the Consent Decree as drafted because my—as well as other similarly situated class members'—interests as a class member and as a person desiring to continue to engage in farming will certainly be adversely affected if the Consent Decree is approved as drafted.

To be fair, adequate and reasonable, the Consent Decree must include injunctive and other relief which requires USDA to institute remedial action to bring its employees and non-

federal agents under the ambit of the federal civil rights laws. This Consent Decree must include clear language to guarantee us fair treatment when we seek loans, technical advice and/or services from USDA. As drafted, the Consent Decree offers none of the protections. Again, I must object.

To accomplish this, the Consent Decree must contain provisions compelling USDA to adopt agency-wide standards prohibiting discrimination. The Consent Decree should compel USDA to convert all of its non-federal FSA county level positions into federal positions. Once the positions have been converted, job descriptions and standards should be established within the very near future. Thereafter, non-discriminating personnel should be employed. The entire process should be monitored for compliance for the next five years under the supervision of this Honorable Court or an independent body approved by the Court.

Heretofore, USDA has not provided agency-wide sensitivity training, diversity training or nondiscrimination training for FSA employees. The Consent Decree must contain requirements to establish standards and training modules to effectuate these goals. In the absence of these requirements, the Consent Decree should not be approved because it could never meet the standard of review of fairness, reasonableness or adequateness.

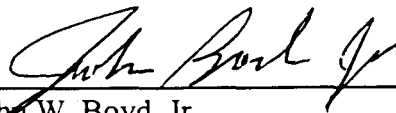
Lastly, the class-wide Injunctive Relief is unreasonable and inadequate because, as now drafted, it only applies only to class members who “. . . prevail[s] under ¶¶ 9(a) or 10. . . .” Each class member—and indeed each FSA customer—should be entitled to services and technical assistance from USDA irrespective of whether they have prevailed as a litigant under this class. The mere fact that they are a customer of FSA should enable them to fair, sensitive and humane treatment when applying for Equal Credit Opportunity Act (ECOA) loans or for any other services provided by USDA. The Consent Decree does not include such protections.

It is absolutely unfair for the Consent Decree to be approved as drafted. If so, all class members who filed claims but did not prevail through no fault of their own or those who—through fear of intimidation and/or reprisals—did not file claims are clearly at risk to be adversely affected by this Consent Decree. The Consent Decree offers no review of the decisions of the facilitator, arbitrator or the adjudicator. This is unfair, unreasonable and inadequate. It must be changed. Thus, the class-wide Injunctive Relief must be modified to include standards of sensitivity training for all FSA employees. Otherwise, the Consent Decree cannot and never shall be fair, adequate or reasonable.

I do desire to be heard in person upon oral argument at the Fairness Hearing. My comments and objections at the Fairness Hearing will be presented by me.

Signed this 16th day of February, 1999 in the District of Columbia.

Respectfully submitted,

  
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John W. Boyd, Jr.  
Class Member and President  
National Black Farmers Association, Inc.  
68 Wind Road  
Baskerville, VA 23915

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of February, 1999, I have caused to be served on lead counsel for the parties herein a true of copy of my "Objections To Proposed Consent Decree" by U.S. mail with proper postage thereon and addressed to:

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John W. Boyd, Jr.