53852 A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

George B. Keepseagle
P.O. Box 509
Fort Yates, ND 58538-0509

and

Luther Crasco
HC 63 Box 5040
Dodson, MT 59524

and

John Fredericks
P.O. Box 509
Halliday, ND 58636

and

Gene Cadotte
P.O. Box 200
McLaughlin, SD 57642

and

Basil Alkire
Star Route Box 129
Fort Yates, ND 58538

and

Keith and Claryca Mandan
P.O. 70
New Town, ND 58763

and

ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,
INCLUDING, BUT NOT LIMITED TO
THE FOLLOWING INDIVIDUAL
PLAINTIFFS:

Gary Alkire
1031 100 Street
Fort Yates, ND 58538

RECEIVED
JUN 20 2001
NA... ...ER
ON POVERTY LAW

Case Number: 1:99CV03119

Judge William B. Bryant

FOURTH **AMENDED** CLASS
ACTION COMPLAINT

(Containing 715 Plaintiffs)

and

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and :

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and :

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and

Mary Jane Anderson
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and

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and

Lyman M. Young
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Plaintiffs,

vs.
:

DAN GLICKMAN, Secretary
THE UNITED STATES DEPARTMENT
OF AGRICULTURE
14th and Independence Avenue, S.W. :
Washington, D.C. 20250

Defendant.

FOURTH AMENDED CLASS ACTION COMPLAINT
(FOR DECLARATORY JUDGMENT, REVIEW OF AGENCY
ACTION, VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT,
VIOLATIONS OF TITLE VI OF CIVIL RIGHTS ACT OF 1964
AND OTHER RELIEF)

The representative and individual plaintiffs listed in the caption ("plaintiffs"), on behalf of themselves and all others similarly situated, some 715 of whom are listed above, complain of defendant as follows:

NATURE OF THE CASE

Since 1981, when processing applications for Native American farmers and ranchers (hereinafter collectively "farmers") for farm credit and farm programs, (referred to hereinafter as, generally, "farm programs") defendant willfully discriminated against them. Loans *were* denied, provided late, or provided with less money than needed to adequately farm. Further, when, in response, plaintiffs filed (in writing or orally) discrimination complaints individually or through their Tribal Council with defendant, defendant failed, although required by, *inter alia*, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act, to investigate the complaints. For example, when Native American farmers and ranchers filed complaints of discrimination with defendant, defendant willfully either (1) avoided processing or resolving the complaints (2) stretched the review process out over

many years; (3) conducted a meaningless, or "ghost" investigation, or (4) failed to do anything.

These two acts: (1) the discrimination in denial of the application to participate in the farm program and (2) the failure to properly and timely investigate the discrimination complaints, deprived Native American farmers, inter alia, of equal and fair access to farm programs, and due process, resulting in Substantial damages to them.

In May 1997, defendant's officials admitted that, in early 1983, the Reagan administration had quietly disbanded and dismantled the civil rights enforcement arm at the United States Department of Agriculture ("USDA") and that discrimination complaints had not been properly investigated since 1983. Two federal reports, issued in February, 1997, verified these facts.

Plaintiffs, who number 715 allege that this discriminatory treatment was imposed on Native Americans in a manner as egregious as, if not worse than, that visited upon African-Americans. See Pigford, et al. v. Glickman, Civil Action No. 97-1978 (PLF), and 185 F.R.D. 82 (D.D.C. 1999)(approving Consent Decree).

JURISDICTION

1. Jurisdiction is founded upon 15 U.S.C. § 1691, § 1691e(a), 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 42 U.S.C. § 2000d, 5 U.S.C. § 706 and 7 U.S.C. § 2279.

VENUE

2. Venue lies in this judicial district because the claim arose in this judicial district, and pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff and proposed Class Representative, George B. Keepseagle, is a Native American rancher and resident of Fort Yates, North Dakota, located on the Standing Rock Reservation. He is a member of the Sioux Tribe. Mr. Keepseagle's relationship with defendant's Farmers' Home Administration ("FmHA") began in the early 1980's when Mr. Keepseagle applied to borrow funds to purchase land. Keepseagle describes this relationship as a "beg to borrow" relationship that has caused him great stress, worry and financial harm.

4. Keepseagle has accumulated an insurmountable FmHA debt and involuntarily lost his land. He contends that these losses are the result of the discriminatory service provided by the FmHA - discriminatory because white farmers received better and more complete services.

5. Before Mr. Keepseagle travels over 30 miles to meet with an FmHA official, he must undertake certain tasks: (1) He must complete a series of complicated forms, by himself, then mail the forms to the FmHA official. He is not siven any assistance in completinq the forms and (2) He must complete a

Farm Home Plan and a 5-Year Plan, by himself, again, without assistance, then mail the forms to the FmHA official. Keepseagle must have these steps completed before receiving any assistance from an FmHA official. Unfortunately, this is a common roadblock not only for him but for many Native Americans dealing with his FmHA office who have become used to negative and stressful procedures when trying to in conduct business with FmHA.

6. In 1995, Mr. Keepseagle lost about 50 calves due to scours; in 1996, Mr. Keepseagle lost about 50 calves due to a blizzard. Both years, his region was declared a disaster area; but in both years, no Native American rancher, including Keepseagle, was awarded emergency disaster loans in order to make it through these crises; most white farmers were awarded emergency loans. When Mr. Keepseagle applied for disaster assistance, he was told that he was not eligible, without being given an explanation.

7. Even though FmHA officials are aware of the annual deadlines for grazing leases to be paid in Mr. Keepseagle's county, local FmHA officials often held his loan funds so that his leases could not be paid on time, often leading to the loss of some of his grazing permits. Also, FmHA officials often returned his loan applications without explanation, or set the

applications aside until he inquired about the loan processing. To his knowledge, white farmers did not receive this treatment.

8. In 1998, a private lending institution was willing to allow Mr. Keepseagle to borrow funds if FmHA subordinated its lien (which FmHA routinely does for eligible white farmers). However, Jim Flimmer, Short Ridge County Supervisor at the time, stated that he was "too busy" and "could not drop everything in order to process Mr. Keepseagle's application". As a result, Mr. Keepseagle lost the opportunity for a loan from a private lender and had to sell 380 acres of land in order to operate his ranch.

9. Mr. Keepseagle has found that FmHA officials are not there to help him as they should; instead, FmHA officials have a "we're going to get you sooner or later" attitude with him because he is a Native American. His loan accounts, and the accounts of other Native Americans he knows, are not managed for success or graduation to the next credit level, but for failure, that is, foreclosure. Mr. Keepseagle does not know of any Native American farmer who has graduated to another credit level (commercial credit). The amount of land owned by Mr. Keepseagle continues to decrease, while his debt to FmHA grows. He is indebted to FmHA in excess of $300,000.

10. Mr. Keepseagle timely filed, either directly or through his Tribal Council, complaints to the defendant

regarding these acts of discrimination, which were never acted on pursuant to the applicable law, causing him substantial damage.

* * *

11. Plaintiff and proposed Class Representative, Luther (Luke) Crasco ("Crasco") is a Native American rancher who resides in Dodson, Montana. Crasco is a member of the Assiniboine/Gros Ventre Indian Tribes on the Fort Belknap Indian Reservation. Crasco was born and raised on a ranch, where he honed his skills as a rancher under the tutelage of his father. Crasco entered the ranching business in 1974. Mr. Crasco owned 685 acres of land and leased 2,500 acres of land.

12. Crasco first applied for a FmHA loan in 1981. Although Crasco timely applied for loans in 1981 and in successive years, he was the subject of willful and continuous discrimination, because he was a Native American: FmHA (1) refused to process Crasco's loan requests in a timely manner while processing loans of white farmers on time, (2) failed to adequately advise Crasco of loan credit services, (3) subjected Crasco to overtly racist and demeaning remarks, and (4) refused to act upon his complaints of discrimination, all of which caused him substantial damages.

13. In the Fall of 1981, Crasco went to the Phillips County FmHA office in Malta, Montana, to apply for a farm

ownership and a farm operating loan. Crasco submitted a complete and timely application and met all of the eligibility requirements, yet did not receive any FmHA funding until the Spring of 1982. Further, it was only through the intervention of Senator Melcher that Crasco was able to eventually receive his money at all.

14. Melvin Nielson, Phillips County FmHA County Supervisor at that time, vehemently opposed Crasco's request for the sprinkler method of irrigation, even though such a system would have allowed Crasco to properly and efficiently irrigate his ranch land. Nielson insisted that Crasco use gated irrigation pipe on his ranch, even though it was less effective for his ranching operation, given its jagged and hilly terrain. Mr. Crasco would have reduced his operating expenses significantly - by at least $15,000 per year - had he had been able to purchase the sprinkler irrigation system. With sprinkler irrigation he could have increased his hay production. Without it, he was required to make annual supplemental purchases of hay in excess of $15,000, during the entirety of his business dealings with FmHA.

15. Crasco's relationship with Melvin Nielson was also strained by Nielson's overtly discriminatory conduct. Specifically, Nielson made disparaging remarks directed towards Crasco as a Native American.

16. Unfortunately, even though Nielson left in 1983 and the faces of the supervisors changed at the Phillips County FmHA office, the discriminatory treatment towards Crasco and other Native American ranchers remained. In 1983, Daryl Seely became the supervisor of that office. He made loosely veiled threats against Crasco, such as "any more cattle prices like this and we're gonna sell you out."

17. Prior to 1984, Crasco never was able to obtain loans for the full amount needed. Usually, he got enough money to purchase additional cattle but never enough for family and living expenses.

18. In addition, excessive loan delays prevented Crasco from making timely payments for his leased land. Typically, loan funds were available as early as December, yet they were not actually disbursed to Crasco until late April or early 'May. FmHA was fully aware that these monies were critical for making timely lease payments due in January, however, they withheld these funds. This practice wreaked financial havoc on Crasco. Also, Crasco was unable to purchase cattle in the Fall months 'when prices and selection were much better. Instead, Crasco was forced to purchase cattle in the Spring, at much higher prices.

19. Like his predecessors, LaVern Hellyer, Phillips County FmHA Supervisor, from 1984 to 1987, made clear to Crasco his

dislike for Native Americans. Hellyer often reminded Crasco that he was assigned to that office for two reasons:

1. "to watch FMHA's money" and
2. "to sell you people out"

20. In 1990, Crasco and other Native American ranchers in Phillips County were required to go to Hill County, Montana, for loan servicing. This office was located 110 miles from the Reservation. Although Crasco hoped that a different office and a different group of individuals would result in better treatment, he was disappointed. Under the leadership of Daryl Munson and J.T. Corcorell, County Supervisor and Assistant County Supervisor, respectively, the Hill County FmHA office maintained the same level of insensitivity towards the Native American ranching community, and Crasco was subjected to derogatory comments and inefficient and untimely loan processing.

21. There was no Native American representation in either the Hill County or Phillips County FmHA office, at any level, despite the disproportionately high number of Native American ranchers that it was required to serve.

22. By 1991, the systematic and deliberate delays in loan processing, undercapitalization of Native American farm operations, and overt acts of discrimination had taken their toll on Crasco -- he could no longer keep his farm operation

afloat. 'In November 1992, Crasco received a letter from FmHA notifying him that his loans were delinquent. Crasco sought primary loan servicing from FmHA, requesting to have his debt restructured in the form of a "write-down." Debt restructuring was a commonly used FmHA program, including, literally, thousands of white farmers and ranchers. Crasco's request was denied.

23. Crasco encountered numerous difficulties and no cooperation from FmHA while trying to service his debt after notice of his delinquency, which culminated in 1993 when he received a letter from FmHA notifying him of the decision to initiate a foreclosure action against him.. Crasco appealed this decision to the county board in Glasgow, Montana. The appeal was denied. Crasco then appealed the denial of that decision to the district office in Great Falls, Montana. Again, his appeal was denied. Next, Crasco appealed the district office's denial to the State office in Bozeman, Montana, and the denial was upheld. Finally, Crasco appealed to the National Appeals Division ("NAD"), where the previous decisions were <u>overturned</u>. The local county supervisor was directed by the National office to provide "normal loan servicing:" However, despite this favorable ruling and mandate from the agency, the Hill County <u>FmHA never complied</u>.

24. In 1995, Crasco, faced with no alternatives, was forced to file for Chapter 12 bankruptcy protection. A schedule of payments was ordered for the period of 1995-1998; Crasco had to sell all of his livestock to make these payments. As a result, Crasco currently has no livestock on his ranch land and still owes FmHA for outstanding debt.

25. Crasco timely filed, either directly or through his Tribal Council, complaints to the defendant regarding these acts of discrimination, which were never acted on pursuant to the applicable law, causing him substantial damage.

* * *

26. Plaintiff and proposed Class Representative, John Fredericks, is a Native American rancher living on the Fort Berthold Indian Reservation in Halliday, North Dakota. He is a member of the Three Affiliated Tribes. Fredericks timely applied for various FmHA loan programs beginning the late 1970s and continuing until the early 1990s. He was the subject of blatant discriminatory practices of FmHA, including (1) refusal to provide appropriate loan services that were routinely accorded to white farmers, (2) delay in reviewing of his applications, while review of white farmers' applications were timely, and (3) refusal to review his timely filed complaints of discrimination, which complaints were never acted upon pursuant

to the applicable law, all of which caused him substantial damages.

27. From 1978 through 1980, Fredericks obtained FmHA emergency loans (disaster and economic emergency) and an FmHA operating loan. At that time, Mr. Fredericks owned approximately 500 cows and 300 to 400 yearlings and planned to expand his operation to 500 yearlings, which would be sold and replaced each year. The loans obtained during this time period were subject to FmHA securing Mr. Fredericks cows without his consent and, in turn, resulted in severe financial difficulty.

28. Mr. Fredericks had to travel over 100 miles to meet with FmHA officials when there was an FmHA office approximately 35 miles away from his home. Mr. Fredericks did not receive assistance with any of his loan applications (even though part of FmHA mission is to assist its farmer clients in completing their loan applications). He was given the applications and told to return them when they were completed. Secondly, Mr. Fredericks' applications were not always timely reviewed. For example, in 1987, Mr. Fredericks hand-delivered an application to the FmHA office, but the application was not opened until after the deadline for consideration of applications for that operating cycle, which left Mr. Fredericks with no funds to operate for that cycle.

29. Mr. Fredericks was not assisted by FmHA officials in taking advantage of FmHA programs available to him. In 1989, Mr. Fredericks inquired about FmHA limited resource loans, but the FmHA County Supervisor, Odell Ottmar, did not allow Fredericks and other Native American ranchers to participate in this program.

30. Mr. Fredericks faced discriminatory treatment in his attempt to obtain primary loan servicing from FmHA. Mr. Fredericks first applied for loan servicing under the Agricultural Credit Act of 1987 ("1987 Act") on January 15, 1989 (having first been notified of his right to apply for this program seven weeks earlier). The application was rejected as "incomplete," a common FmHA response to Native Americans' applications in his locality and an widely-used method of preventing Native American farmers and ranchers from participating in FmHA programs.

31. On May 5, 1989, Fredericks appealed the decision to reject his application for primary loan servicing. On July 31, 1989, a hearing officer of the North Dakota Branch of the National Appeals Staff, upheld defendant's decision. However, Fredericks appealed the hearing officer's decision to the Director of the National Appeals Division which, on December 7, 1989, reversed defendant's decision.

32. On January 5,' 1990, Fredericks resubmitted his application for primary loan servicing. Fredericks' application was then rejected again by FmHA on March 15, 1990. Frustrated by FmHA's stone-walling techniques, Fredericks had to abandon his efforts to get the loan servicing he was entitled to under the 1987 Act.

33. All of these FmHA events caused Mr. Fredericks devastating financial losses, a strain on his health (depression, sugar diabetes and weight gain) and a loss of faith in his government.

34. Mr. Fredericks timely filed, either directly or through his Tribal Council, complaints to the defendant concerning these acts of discrimination, which were never acted on pursuant to the applicable law causing him substantial damage.

* * *

35. Plaintiff and proposed Class Representative, Gene Cadotte ("Cadotte"), is a Native American rancher who resides in McLaughlin, South Dakota. Cadotte is a member of the Sioux Tribe located on the Standing Rock Indian Reservation.

36. Cadotte was born into a ranching family and has continued a ranching operation throughout his adult life. Mr. Cadotte leased 6,000 acres of ranch land and, at the height of his operation (1996), acquired and maintained a herd of 300 cattle.

37. Cadotte first started applying for FmHA loans in 1993. Although Cadotte timely applied for loans in 1993 and in successive years, he was the subject of willful and continuous discrimination, including FmHA's (1) refusal to process Cadotte's loan requests in a timely manner, (2) failure to adequately advise Cadotte of loan credit services, and (3) failure to honor Cadotte's emergency loan requests, when assistance was clearly warranted, while white farmers were able to receive these services.

38. After an excessive delay in the processing of his first loan application, Cadotte finally received his operating loan approval in the Spring of 1994, subject to the condition that Cadotte purchase an additional 60 to 70 head' of cattle. However, because of the delay, reasonably priced cattle were not available locally. Instead, Cadotte was forced to purchase cow/calf pairs for $1400 per pair. The exorbitant price for these cattle quickly depleted Cadotte's loan funds and required him to borrow even more funds, with his land and machinery as collateral.

39. Cadotte applied for further FmHA operating loans in 1996 and 1997, but was denied.

40. Like other ranchers in South Dakota, Native American and non-Native American, Cadotte's operation was adversely affected by a blizzard in 1996. South Dakota was declared a

disaster area, and in February of 1996, Cadotte applied for an FmHA disaster emergency loan. Cadotte had lost a substantial percentage of his herd - 35 calves and 25 cows - and his barn was nearly destroyed, due to the blizzard. He was determined to be eligible for emergency loans in June 1996 but then ran into a number of obstacles. Cadotte sought assistance from U.S. Senator Tom Daschle. After Daschle's intervention, FmHA approved a $30,000 emergency loan for Cadotte. However, FmHA later reneged on the approved amount and froze a portion of the money, holding that Cadotte's loan application was deficient.

41. In contrast to FmHA's treatment of Cadotte and similar treatment of other Native American ranchers, neighboring white ranchers received emergency loan funding, as well as operating loans, without difficulty.

42. Because Cadotte had annual land lease payments of $23,000, but FmHA never gave him a loan to cover this operating cost, Cadotte sought to subordinate his FmHA loans. He was allowed to do so, but only on condition that he sell his existing cattle. This unwise, yet required, practice dried, up Cadotte's cash flow, resulting in his operation being saddled with FmHA debt he could not service. Currently, Cadotte estimates his FmHA debt to be in excess of $200,000.

43. Cadotte's efforts to obtain loan servicing from FmHA were unsuccessful. He was met with resistance by the local FmHA

office, which insisted that he needed to have certain training courses completed to qualify for services. Neither Cadotte nor other Native American ranchers had been adequately advised of this requirement for loan servicing options in advance, and such training appeared to be irrelevant to his operation.

44. As a result of FmHA's discriminatory treatment towards Cadotte, his ranching operation is riddled with debt and all but destroyed, his physical and mental health has deteriorated, and his spirit is broken.

45. Mr. Cadotte timely filed, either directly or through his Tribal Council complaints to the defendant regarding these acts of discrimination, which complaints were never acted on pursuant to the applicable law, causing him substantial damage.

* * *

46. Plaintiff and proposed Class Representative, Basil Alkire, is a Native American rancher and resident of Fort Yates, North Dakota, on the Standing Rock Indian Reservation; Mr. Alkire timely applied for various FmHA farm loan programs with defendant between 1982 and 1987, but was the subject of willful and continuous racial discrimination, including denial of his applications for loans, and inappropriate loan servicing, causing him substantial damages.

47. In 1982, when Mr. Alkire began applying for FmHA loans. He was informed by the FmHA loan officer that he could

qualify for a low interest (3%) loan that was available to ranchers, like him, who were first-time applicants. However, when Alkire completed the loan application, he was told that he could only receive a high-interest subordination loan. In addition, he was never told about the FmHA programs available to limited-resource farmers/ranchers like himself. The County Supervisor routinely provided this farm program information to white borrowers.

48. In the Fall of 1982, Alkire sold his calves in order to pay off the FmHA loan. When he took the proceeds to FmHA, the official would not accept the check, though no reason was given for this. To prevent interest on his outstanding loan from accruing, Mr. Alkire insisted that the FmHA accept the check. The check was then accepted, but never properly credited to his existing account. Instead, FmHA issued a new loan to Mr. Alkire for the same amount ($11,000), thereby causing his FmHA debt to remain the same. Alkire never consented to this arrangement.

49. In the Fall of 1986, due to a drought that swept through his county, Mr. Alkire was told by an FmHA official that he should sell his cattle, then attempt to repurchase the cattle the following Spring. Mr. Alkire sold his calves; but when Mr. Alkire returned to FmHA in February 1987, FmHA officials refused to release the check for Mr. Alkire to repurchase the cattle.

50. Due to these questionable FmHA practices. Mr'. Alkire's financial situation deteriorated and he was left with a $31,000 annual lease obligation on his ranch land but no cows to put on the land. Moreover, FmHA refused to provide Alkire with primary loan servicing, resulting in his debts escalating to $644,641, in 1986.

51. Mr. Alkire was then forced to file for Chapter 7 bankruptcy protection. Meanwhile, FmHA intensified its collection efforts. Ultimately, in 1987, FmHA confiscated Alkire's machinery and cattle and he was forced to abandon his ranching operation.

52. No white farmers in Mr. Alkire's county received similar treatment.

53. Mr. Alkire timely filed, either directly or through his Tribal Council complaints to the defendant regarding these acts of discrimination, which complaints were never acted on pursuant to the applicable law, causing him substantial damage.

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54. Plaintiffs and proposed Class Representatives, Keith and Claryca Mandan, are Native American Ranchers and residents of Mandaree, North Dakota, located on the Fort Berthold Reservation. They are members of the Hidatsa Tribe. Their relationship with USDA began in 1979, when they obtained their first joint operating loans and applied to participate in a non-

credit benefits program through the Agricultural Stabilization and Conservation Service ("ASCS") in Dunn County, North Dakota.

55. The Mandans farmed nearly 1000 acres and had approximately 250 head of livestock. In the early 1980s, the Mandans enrolled portions of their cropland in the Crop Deficiency Payment Program.

56. In 1981, in response to a serious drought in North Dakota that damaged many hay crops, the ASCS office announced disaster funding through an emergency hay program to give relief to farmers for their ailing crops. The program was on a cost share basis and reimbursed producers for a percentage of their approved level of hay purchases. The Mandans purchased hay from Washington State, and provided the necessary documentation to the ASCS office to receive the approved level of reimbursement. The payment was disbursed to the Mandans.

57. On or about the fall of 1982, the Mandans were expecting to receive the program deficiency payment, on their durum, which was crucial to the repayment of their operating loans.

58. To their dismay, however, they received a letter stating that the local committee had reexamined their participation in the emergency hay program and determined that they should not have been eligible for the program because the Bureau of Indian Affairs ("BIA") grazing permit proved they had

winter grazing pasture --which meant that they had no need for the emergency assistance.

59. Their deficiency payments were offset against the *emergency* hay program payment that had already been received. All of these actions were the result of discriminatory treatment by USDA employees.

60. This was the beginning of the end for the Mandans. Without the deficiency payment, the Mandans could not cash flow to meet their scheduled loan payment obligations. This put them in default with USDA and left them ineligible for farm operating loans.

61. In 1981, under the insistence of a FmHA loan officer, Larace Hakason, they enrolled in the Federal Crop Insurance Program ("FCIP") . But, because their land was on the reservation and they had no crop history, the FCIP would not pay them enough benefits to meet the cost of the premium.

62. The Mandans then asked, David Hileren, a FmHA loan officer, if they could sell their cows and repurchase them in the spring. The FmHA loan officer agreed, recommending that the Mandans put the money into a supervised certificate ,of deposit - they did.

63. The Mandans took a terrible loss on the cattle during the fall of 1982 due to falling markets. When the certificates of deposit matured, Mr. Hileren told the Mandans that FmHA could

not allow them to keep the proceeds from the cattle sale and that the proceeds had to be applied to their operating loans. He assured the Mandans that they would be able to replace their livestock through a new loan in the spring. The Mandans signed over the payment. Of course, the Mandans were found ineligible and unable to receive a loan in the spring.

64. In 1982, the all-white county committee withdrew the Mandans' eligibility (after-the-fact) from the emergency hay program because they are Native Americans living on a reservation.

65. By the fall of 1983, the Mandans were delinquent on their loans and no longer had a livestock herd. USDA had demonstrated to them that it was pointless to farm on the reservation.

66. The Mandans noticed that white farmers and ranchers received better treatment from FmHA, and that white farmers and ranchers survived the drought during the early 1980s and continued to prosper, while the Mandans and their Native American neighbors were essentially put out of business through the discriminatory treatment of USDA.

67. Between 1983 and 1990, the Mandans complained of discriminatory treatment to the ASCS staff, FmHA staff, Odell Ottmar - Chief of Reservation Programs, Bob Zimmerman - North Dakota Head of Farm Loan Programs, Ralph Leet - State Director

of FmHA, Marshall Moore - State Director of FmHA, U.S. Congressmen Byron Dorgan, Kent Conrad and Glen English, Al Spang - BIA Superintendent, and Jerry Jaeger - BIA Area Director.

68. Defendant, Dan Glickman, is Secretary of the United States Department of Agriculture ("USDA"), and is the federal official responsible for the administration of the statutes, regulations and programs which are the focus of this action.

HOW DEFENDANT IS ORGANIZED AND,
GENERALLY, THE GOVERNMENT PROGRAMS AT ISSUE

69. USDA's Farm Service Agency ("FSA") provides commodity program benefits (such as deficiency payments, price support loans, conservation reserve program ("CRP") benefits), disaster payments, farm loans and other farm credit benefits to U.S. farmers. The agency was created in 1994, as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS", which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services) with the Farmers' Home Administration ("FmHA", which previously had provided farm loans and other farm credit benefits).

70. FmHA was created decades ago to provide loans, credit and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by private,

commercial 'lenders. These loans included "farm ownership", "operating", and "continuing assistance" loans, as well as loans that "restructure" existing loans and "emergency disaster" loans. FmHA's key responsibilities were to work with small, minority and disadvantaged farmers - farmers who could not get credit elsewhere, and to assist these farmers in developing their financial plans and loan applications.

71. ASCS was an agency of USDA created to provide services to U.S. farmers under the price support, deficiency payment, CRP, and related programs to stabilize farm income and prices, and to assist in the conservation of land.

72. Defendant Glickman is responsible for the administration of the Farm Service Agency (FSA) and previously FmHA & ASCS. FSA, like FmHA and ASCS before it, administers the federal farm programs through a three-tiered review system consisting of (1) county offices and committees, (2) state offices and committees, and (3) a federal level of review in Washington, D.C., the National Appeals Division ("NAD"). The local county committees consist of producers from a county who have been elected by other producers in that county; they oversee the county offices. The state committees consist of producers from each state selected by the Secretary of USDA; they oversee the state offices. At the federal level NAD renders final determinations of administrative appeals. (Prior to the 1994 consolidation, FmHA had its own

administrative appeal process).

73. The Native American Programs Office within USDA has the primary responsibility for coordinating USDA programs serving American Indians and Alaska Natives. The Director of Native American Programs is USDA's primary contact with tribal governments and their members.

HOW FARMERS (1) APPLIED FOR LOANS AND CREDIT WITH FmHA AND (2) APPLIED FOR PARTICIPATION IN OTHER FARM PROGRAMS WITH ASCS

74. Traditionally, when a farmer applied for any FmHA loan or program, he went to his county office (formerly the FmHA office), and filled out a Farm and Home Plan ("FHP", a financial plan for the farm), along with his or her loan application, which required the assistance and guidance of defendant's officials to complete. Assistance and guidance was critical because of the complexity of the programs and forms. This application process was done pursuant to regulations found at 7 C.F.R. § 1910, et seq. If the farmer needed an ASCS-type benefit or assistance, he worked with his County Executive Director ("CED") (who is an employee of the county committee paid by USDA) and county committee in applying for participation or benefits. The process was and is done pursuant to ASCS regulations (7 C.F.R. Part 700, et seq.) and Commodity Credit Corporation ("CCC") regulations (7 C.F.R. Part 1400, et seq.)

75. When the FmHA loan application with its supporting documents was completed, it was presented to the county committee. If approved, the loan was processed. The Equal Credit Opportunity Act ("ECOA") prohibits discrimination in credit based on sex, marital status, race, color, age, or national origin, religion, etc. (15 U.S.C. §1691(a)). If an FmHA loan, or loan services, was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA, the FmHA - Equal Opportunity ("EO") office or with the Office of Civil Rights Enforcement and Adjudication ("OCREA"), or both.

76. With respect to ASCS-type programs, the application was reviewed by the CED and then presented to the county committee. If approved, the ASCS benefits were awarded. Title VI of the Civil Rights Act of 1964 prohibits exclusion from participation in federal programs based on race, color or natural origin. With respect to ASCS-type applications, if a farm program application was denied on discriminatory grounds, the farmer could file a complaint of discrimination with the Secretary of USDA or OCREA.

HOW PLAINTIFFS AND MEMBERS OF THE CLASS WERE DAMAGED --
WHAT DEFENDANT DID IN RESPONSE TO COMPLAINTS OF DISCRIMINATION

77. Unbeknownst to plaintiffs and members of the Class, defendant disbanded the enforcement ability of EO and OCREA in 1983, leaving defendant with no ability to investigate discrimination complaints. In a May 25, 1997, Richmond News Dispatch

article and interview of Lloyd Wright, Director of USDA Office of Civil Rights, Mr. Wright stated that (1) no systematic Drobes or investigations had been taken since 1983, when the Reasan administration disbanded the Civil Rights investigative staff, and (2) that asencv resulations and the provisions of the Civil Rights Act of 1964, et al. had been violated. In a January 5, 1999, New York Times article, Rosalind Gray, who succeeded Wright as head of the Office of Civil Rights, stated that USDA "would agree that its procedures in handling bias claims had been flawed." Further evidence of defendant's willful failure to investigate discrimination complaints is evident in the February 27, 1997, Office of Inspector General Report ("OIG Report"), and the February, 1997 Civil Rights Action Team Report ("CRAT Report"), both explained below.

78. The Department of Justice ("DOJ") was required to ensure that Federal agencies met their Title VI enforcement obligations and provide civil rights protection to persons filing discrimination complaints in the FSA programs. DOJ failed to ensure that defendant met its Title VI obligations.

79. Within USDA, The Policy Analysis and Coordination Center ("PACC"), an agency under the Assistant Secretary for Administration, was responsible for civil rights compliance and developing regulations for processing program discrimination complaints at USDA. See OIG Report at 4. OCREA was responsible

for processing program discrimination complaints received by USDA from participants in FSA programs. See OIG Report at 4.

80. OCREA was required to forward written complaints from USDA program participants of discrimination to the appropriate agency within USDA asking the agency to attempt conciliation of the complaint. If conciliation was not successful, the agency was to be instructed to perform a preliminary inquiry and make a recommendation of a finding of "discrimination" or "no discrimination". OCREA was to perform its own analysis of the complaint and the preliminary inquiry and make a recommendation to the Assistant Secretary for Administration on the finding of "discrimination" or "no discrimination". This process never occurred during the relevant period covered by this lawsuit. See OIG Report at 4.

81. FSA's Civil Rights and Small Business Utilization Staff (CR&SBUS) was responsible for handling program discrimination complaints within FSA. CR&SBUS never followed proper procedure pursuant to the law during the relevant period covered by this lawsuit. See OIG Report at 5.

82. The applicable State Civil Rights Coordinator in FSA was responsible for obtaining a conciliation agreement or performing a preliminary inquiry and forward it to CR&SBUS. If a conciliation agreement was reached with the complainant, CR&SBUS was to forward the agreement to OCREA and recommend the discrimination complaint

be closed. If a preliminary inquiry was performed, CR&SBUS would analyze the information and determine if discrimination was found; CR&SBUS was to forward the preliminary inquiry and its analysis to OCREA with its determination. These procedures were never properly followed.

83. USDA has codified regulations, 7 C.F.R. Part 15 - "Nondiscrimination," which states USDA's policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs; however, defendant admits the regulations have long been and still are outdated and never reflected the departmental agencies, programs and laws. See OIG Report at 5.

84. USDA Regulation 4330-1, which is over 13 years old, dated June 27, 1986, set the departmental policy for program civil rights 'compliance reviews, but did not provide policy and guidance for processing program discrimination complaints. See OIG Report at 5.

85. On December 12, 1994, in a management alert to the then Office of Civil Rights Enforcement, defendant's Office of Inspector General (OIG) reported problems with how USDA received, processed, and resolved program discrimination complaints. OIG recommended that "a departmental regulation be promulgated 'that

sets forth the authorities of the Office of Civil Rights Enforcement and that written procedures and controls be established governing the receipt, processing, and resolution of program discrimination complaints within established timeframes". OIG Report at 5.

86. The regulation was never published.[1]

87. After years of abuse and neglect of both Black and Native American farmers, OIG finally undertook an investigation and review; the results of which were released on February 27, 1997, of defendant's program discrimination complaints within FSA as well as 10 other agencies within USDA. OIG found, inter alia, that the discrimination complaint process within FSA lacked "integrity," and "accountability" was without a tracking system, was in "disorder," did not resolve discrimination complaints, and had a massive backlog:

[1] The U.S. Commission on Civil Rights issued a report in June 1996, titled Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs. This report also had specific findings and recommendations critical of the USDA discrimination complaints processing system.

> The program discrimination complaint process at FSA lacks integrity, direction and accountability. The staff responsible for processing discrimination complaints receives little guidance from management, functions in the absence of any current position descriptions or internal procedures, and is beset with its own personnel EEO problems. The staff also processes discrimination complaints without a reliable tracking system to determine the status of the complaints and, apparently, without deadlines to resolve the complaints. The resultins climate of disorder has brousht the complaint system within FSA to a near standstill. Little gets accomplished to resolve discrimination complaints or to make program managers aware of alleged problems within their programs. After developing our own data base of unresolved cases, we determined that as of January 27, 1997, FSA had an outstanding backlog of 241 complaints. OIG Report at 6 (emphasis added).

88. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people:

> The FSA staff responsible for processing discrimination complaints, the Civil Rights and Small Business Utilization Staff (CR&SBUS)" has two full-time program specialists working to resolve program complaints. These program specialists are supplemented by an administrative assistant who provides secretarial support and two staff assistants who maintain case files and the tracking system. The two program specialists and the two staff assistants transferred to FSA from the civil rights staff of the former Farmer's Home Administration (FmHA) during the Department's reorganization in October 1995. The staff assistants have been performing analvses of the preliminary inquiries conducted on the complaints, althoush they are not trained or otherwise qualified to do so. None of the former FmHA employees with CR&SBUS have position descriptions to reflect their current duties and responsibilities, and none have received performance appraisals for fiscal year 1996. OIG Report at 6 (emphasis added).

89. OIG found a "massive backlog" of unprocessed FSA complaints. OIG Report at 6.

90. OIG found the FSA files "disorganized" and unaccountable:

> CR&SBUS was unable to provide us with an accurate number of outstanding complaints or their status. We reviewed the case files and found them generally disorsanized. It was difficult for us to readily determine the date of the complaint, the reason it was brought, and the status of its resolution. OIG Report at 7 (emphasis added).

91. OIG found hundreds of FSA cases unresolved:

> Our review at the CR&SBUS and CREA disclosed that, between them, they had listed a total of 272 cases as being active. The oldest case listed dates back to 1986 ... After resolving all duplications and determining the actual status of the 272 cases, we found that FSA had 241 cases of program discrimination complaints that had not been resolved. OIG Report at 7 (emphasis added).

92. OIG found repeated unaccountability and missing files:

> During our reconciliation of the two agencies' lists, we noted that some cases were listed by one or the other agency but could not be found in its filing system. CR&SBUS listed 32 cases that we could not find in its filing system, and CREA listed 28 cases that we could not find in its filing system. We also noted that CR&SBUS listed cases unknown to CREA. CR&SBUS listed 19 cases that CREA did not list. OIG Report at 7.

93. OIG found there was no reliable method to the processing:

> CREA had officially closed 30 of the 272 cases with findings of no discrimination. CREA had also closed one case with a finding of discrimination, and the complainant was compensated. The case involved the FSA disaster program, and the complainant received the benefits which were at first denied by FSA. Four of the remaining 24 cases had findings of discrimination as determined by CREA and are pending resolution. One of the four

complainants has not responded to the Department's written notice regarding filing a claim for compensation. Office of Operations officials are negotiating a settlement with the remaining three complainants. OIG Report at 7-8.

94. OIG found improperly closed files and improper reviews, and many files with no documentation:

> We found that FSA improperly closed and forwarded 30 complaints to program managers, without notifying the Department (26 of 30 cases were closed under the old FmHA agency management). The civil rights staff concluded without first receiving concurrence from the Department that these cases were the result of "programmatic discrepancies" (i.e., agency error rather than civil rights violations). Without departmental concurrence with its findings, the agency may not have addressed the legitimate cases of discrimination. CREA has the responsibility to make final determination of program discrimination. FSA may recommend to CREA that cases be closed, but it.does not have the authority to close these cases without concurrence from CREA. For example, we noted that in one instance FSA (the former FmHA) incorrectly concluded that a case had only programmatic concerns and closed the case without forwarding it to the Department. Only after a civil rights staff member complained, did FSA process the case as a civil rights discrimination case. The civil rights staff stated in a letter that the allegation of racial discrimination was overlooked. The mix-up was discussed with the Department, which determined that the case should be processed by the civil rights staff. For most of the <u>remaining cases, we found no documentation in the case files at FSA that the Department has reviewed these cases</u>. OIG Report at 8 (emphasis added).

95. OIG found 58% of the FSA civil rights complaint case files were over 1 year old and over 150 cases were almost two years old:

> [T]he average age of the 241 cases we consider open because they were not officially closed by the Department.

No. of Cases	Program	Average Age
151	Ag. Credit (Farm Loans)	703 Days
40	Disaster	485 Days
50	Others	482 Days

Of the 241 open cases, 139 (58 percent) were known to be over 1 year old. Of the 241 cases, 129 (54 percent) are awaiting action in FSA; the remaining 112 cases (46 percent) are in the hands of the CREA staff in USDA's Office of Operations. Sixty-five of the cases at FSA (50 percent) need a preliminary inquiry. Some of these date back to 1993. OIG Report at 8.

96. OIG found no system within FSA for reconciliation or tracking of civil rights complaint cases:

> CR&SBUS has no procedures in place to reconcile or track the status of complaints after they are forwarded to CREA. Therefore, CR&SBUS could not tell us the status of complaints at CREA. As noted above, both CR&SBUS and CREA had different numbers and were not aware of all the outstanding complaints. OIG Report at 8 (emphasis added).

97. OIG found no management oversight within FSA with respect to the handling of civil rights complaints:

> "CR&SBUS also does not prepare management reports to inform FSA program managers of alleged problems of discrimination within their programs. Without this information, program managers may not be aware of potential discrimination in the programs they are responsible for administering." OIG Report at 9.

98. With respect to defendant's Office of Operations, Civil Rights Enforcement and Adjudication, OIG found repeated inaccuracies and unaccountability:

[T]he listing of outstanding cases provided by CREA contained inaccurate information. In some instances we were unable to locate the case files at CREA that were on its outstanding case list. Without reviewing the case files, we were unable to verify the status of the complaints. Also, CREA and FSA had not reconciled their cases, and neither could inform us of the correct number of outstanding cases.

> CREA does not have controls in place to monitor and track discrimination complaints. When complaints are received they are logged in, given a case number, and after the agency forwards the preliminary inquiry to CREA, the case is assigned to one of its seven program specialists. There are no procedures to require the program specialists to follow up on overdue responses from the agency. We have found that CREA is not following up on discrimination cases it returned to FSA for conciliation or performance of a preliminary inquiry. CREA advises the agency that it has 90 days to complete its review, but it does not follow up with the agency to determine the status of the complaint. OIG Report at 9.

99. OIG surveyed 10 other USDA program agencies in addition to FSA, to determine the procedures used for processing program discrimination complaints and found the same problems. See OIG Report at 10-11.

100. OIG compiled a list of outstanding ("open") program discrimination complaints, as late as 1996, within the Department, totaling 271. See OIG Report at Attachment A.

101. At the same time that OIG released its report, a USDA Civil Rights Action Team released its report, dated February 1997, condemning defendant's lack of civil rights enforcement and accountability which, inter alia was a cause of the drastic decline in the number of minority farmers:

According to the most recent Census of Agriculture, the number of all minority farms has fallen -- from 950,000 in 1920 to around 60,000 in 1992. CRAT Report at 14.

102. CRAT found that minority and limited-resource farmers look to USDA's discrimination in managing benefit programs as responsible for their involuntary loss of land:

> These farmers blame USDA's program delivery system, with its wide-ranging and relatively autonomous local delivery structure. They charge that USDA has long tolerated discrimination in the distribution of program benefits and misuse of power to influence land ownership and farm profitability. They blame farm program regulations that - intentionally or not - shut out minority and limited-resource farmers and ranchers from the benefits of the programs that have helped larger nonminority producers survive the changes in agriculture in the last 50 years. And they blame USDA's insensitivity to the differing needs of minority and limited-resource customers and neglect of its responsibility to reach out and serve all who need USDA's assistance. CRAT Report at 14.

103. CRAT found a common problem involved minority or small farmers applying to defendant for loans:

> The minority or limited-resource farmer tries to apply for a farm operating loan through the FSA county office well in advance of planting season. The FSA county office <u>misht claim to have no applications available</u> and ask the farmer to return later. Upon returning, the farmer might receive an application <u>without anv assistance</u> in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check on the loan processing. <u>By the time processinq is completed, even when the loan is approved, plantinq season has already passed</u> and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan

> to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced. CRAT Report at 15 (emphasis added).

104. CRAT found systematic mistreatment of minority farmers:

> If the farmer's promised FSA loan finally does arrive, it may have been arbitrarilv reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making'it impossible for the farmer to earn any money from the farm. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials. CRAT Report at 16 (emphasis added).

105. CRAT found insufficient oversight of farm credit to minorities:

> Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services. CRAT Report at 16 (emphasis added).

106. CRAT found a lack of diversity in FSA program delivery structure:

> Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversitv in its program delivery structure. Federal EEO and Affirmative Employment laws and policies do not govern the FSA non-Federal workforce except by agency regulation. CRAT Report at 18 (emphasis added).

107. CRAT found a lack of minority employees in FSA county offices:

> A recent GAO study indicated that in the 101 counties with the largest concentration of minority farmers, one-quarter had no minority employees in their offices. CRAT Report at 18.

108. CRAT found lower participation rates and lower approval rates for minorities in FSA programs:

> Recent studies requested by Congress and FSA have found lower participation and lower loan approval rates for minorities in most FSA programs. Participation rates in 1994 in programs of the former Agricultural Stabilization and Conservation Service (ASCS), particularly commodity programs and disaster programs, were disproportionately low for all minorities. The GAO found that between October 1, 1994 and March 31, 1996, 33 percent of minority applications but only 27 percent of non-minority applications in the Agricultural Conservation Program (ACP) were disapproved. During the same period, 16 percent of minority but only 10 percent of non-minority loans in the direct loan program were disapproved. CRAT Report at 21 (emphasis added).

109. CRAT found minorities endured longer loan processing times, including in FSA's Northwest region where Native American farmers and ranchers are active:

> Again, however, some States showed consistently longer processing times for minorities. In the Southeast, for example, in several States it took three times as long on average to process African-American loan applications as it did non-minority applications. Similar disparities between non-minority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region. CRAT Report at 21 (emphasis added).

110. CRAT found discrimination complaints at USDA were often ignored:

> Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where, even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the toll these ongoing battles with USDA has taken on their families, and on their health. CRAT Report at 22-23.

111. CRAT found decisions favoring farmers routinely not enforced by USDA:

> However, many farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply 'not enforced.' CRAT Report at 23.

112. CRAT found a lack of USDA regulations for discrimination complaint processing:

> Program discrimination complaints generally fall within two categories: (1) programs conducted directly by a USDA agency, such as USDA loan programs, and (2) federal assisted programs, where USDA does not directly offer services to customers, but recipients of USDA funds do. The recipients must obey civil rights laws, and USDA can be sued under such laws as Title VI, the Rehabilitation Act, Title IX, the Equal Credit Opportunity Act, and others. CRAT members were informed by OGC that USDA presently has no published regulations with clear guidance on the process or time lines involved in program discrimination complaints. When a farmer does allege discrimination, "preliminary investigations" are typically conducted by the agency that has been charged with violating her or his right. CRAT Report at 24.

113. CRAT found discrimination complaints often are not responded to by USDA, including those of American Indian farmers:

> USDA doesn't respond even when they do file complaints. In Tulsa, OK. [sic] an advocate representing black and American Indian farmers said, "we have filed 72 civil rights complaints. Not one complaint has even been answered." CRAT Report at 24.

114. CRAT found record-keeping on discrimination complaints "non-existent" and that a backlog existed:

> The CRAT was unable to gather historical data on program discrimination complaints at USDA because <u>record keeping on these matters has been virtually nonexistent</u>. Complaints filed with the agencies are not necessarily reported to USDA's Civil Rights office. Some figures are available however, for cases that were open as of December 3 1, 1996. The largest number of pending discrimination complaints, as comments at the listening sessions suggests, are concentrated in three agencies at USDA. There were 205 case pending, representing 42 percent of the total, against the FSA: 165, or 33.3 percent against the Rural Housing Service (RHS): and 62, or 12.5 percent against the Food and Consumer Services. Sixty-three cases, or 12.7 percent of the total, were pending against other agencies. The Department had a total of 495 pending program discrimination complaints. Approximately one-half of the pending cases are 2 years old or older, verifying farmers' contention that complaints are being processed slowly, if at all. According to the Complaints Processing Division at the Office of Operation (OO), which processes complaints that make it to the Department level. USDA averages about 200 new program discrimination complaints each year. However, in fiscal year 1996, an average of only 9 cases were closed per month, or 108 during the year -- increasing a backlog of program complaints. CRAT Report at 24-25 (emphasis added).

115. CRAT found that a lack of diversity in FSA county offices combined with a lack of outreach to small and limited-resource farmers directly affects the participation of minorities in USDA programs:

Lack of diversity in the FSA county office delivery system directly affects participation of minority and female producers in USDA programs. Underrepresentation of minorities on county committees and on county staffs means minority and female producers hear less about programs and have a more difficult time participating in USDA programs because they lack specific information on available services.

However, outreach efforts have failed on a much broader front than just the county committee system in FSA. USDA does not place a priority on serving the needs of small and limited-resource farmers and has not supported any coordinated effort to address this problem. The many mission areas and agencies within the Department have developed their own separate programs that may or may not be successful in responding to the real differences in scale and culture presented by minority and limited-resource customers.

Minority and limited-resource farmers and ranchers reported they are not receiving the technical assistance they require. They said they are not receiving basic information about programs for which they might be eligible.- They are not being helped to complete complicated application forms. They are not being helped to understand and meet eligibility requirements for programs. They are not receiving information about how their applications are handled and, if they are denied participation, why they were denied and how they might succeed in the future. When they do receive loans or other program benefits, they are not being helped to use those benefits most effectively to improve their operations.

Some outreach efforts, like the consolidated Service Center approach to providing comprehensive services to USDA customers, have created new barriers. Their locations have not considered the needs of minority and limited-resource customers who may have difficulty in reaching more distant centers than customers with greater resources. Their services have not provided for cultural and language differences that make USDA programs inaccessible or less relevant to minority customer needs. And their services have failed to recognize the different needs of small-scale

enterprises, be they' farms, businesses, communities, or families. CRAT Report at 26-27.

116. CRAT found that cultural insensitivity interferes with minority participation:

> USDA program outreach efforts have not made sufficient use of partnerships with community-based organizations, land-grant and other educational institutions, and program diversity initiatives that understand the specific needs of minority and limited-resource customers. These organizations and institutions can help USDA agencies address discriminatory program rules, develop appropriate special programs, and target outreach in the most effective ways to reach minority communities and other groups with special needs.
>
> Customers at the recent listening sessions reiterated the special needs of different minority and socially disadvantaged communities. All communities agreed that they are overlooked when information is released about available USDA programs. USDA agencies do not make use of minority community organizational and media outlets to be sure all eligible participants know about their programs. Cultural barriers prevent the communication necessary for good service by USDA programs. CRAT Report at 27.

117. CRAT emphasized the special needs of Native Americans on Tribal lands, and the lack of consideration of these needs by USDA:

> A special case exists among American Indians on Tribal lands. USDA programs have not addressed their special status as sovereign nations and have not accommodated the special needs of their ownership of land in trust. The county delivery system ignores the political boundaries of Tribal governments. Lack of cooperation between the Department of the Interior, with responsibility for Indian Affairs, and the USDA, with its responsibilities for agricultural, rural, and food and nutrition programs, interferes with delivery of needed services to American Indians. Program rules

specifying particular forms of land ownership for eligibility prevent American Indians from access to assistance they need to develop their agriculture and conserve their land. CRAT Report at 28.

118. CRAT uncovered neglect of and bias against minorities by USDA, resulting in a loss of farmers' land and income.

> The recent Civil Rights listening-sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK. [sic] observed that minority farmer are not sure which condition "was worse -- being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses." Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination of FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some kind of compensation for their loses.' CRAT Report at 30.

119. CRAT found USDA the fifth worst (of 56 government agencies) in hiring minorities:

> , According to the US Department of Labor, between 1990 and 2000, women, minorities, and immigrants will account for 80 percent of the United States labor force growth. The "Framework for Change: Work Force Diversity and Delivery of Programs," a USDA report released in 1990, found that USDA had a need to remedy under-representation in its workforce by providing equal employment and promotion opportunities for all employees. When this statement was made, USDA ranked 52 out of 56 Federal agencies in the employment of minorities, women, and individuals with disabilities. CRAT Report at 33.

120. CRAT found the lack of diversity at USDA adversely affects program delivery to minorities:

USDA's workforce does not reflect the diversity of it customer base. The lack of diversity in field offices adversely affects program delivery to minority and women customers of USDA. CRAT Report at 45.

121. CRAT found a lack of resources at USDA to ensure fair and equitable (non-discriminatory) program delivery to farmers:

> The Assistant Secretary for Administration is USDA's senior official responsible for civil rights. Although that position has the responsibility for civil rights policy and compliance, it does not have the authority or resources necessary to ensure. that programs are delivered and employees are treated fairly and equitably. CRAT Report at 46.

122. CRAT found enforcement of civil rights at USDA in program delivery lacking:

> Another problem with enforcing civil rights in program delivery is fragmentation. Agency civil rights directors have a number of responsibilities. For example, USDA agencies each perform some complaint processing functions. However, the Commission noted that the respective roles of OCRE and the agencies were not clearly defined. The Commission also found that OCRE was providing technical assistance to agencies on civil rights statutes, not proactively, but only when requested. CRAT Report at 51.

123. CRAT found a lack of civil rights specialists and . knowledge for prosram-related civil rights issues at USDA:

> The Civil Rights Commission's report on the lack of Title VI enforcement also pointed to USDA's lack of civil rights specialists in program-related civil rights issues. Many of the Department's civil rights resources are devoted to processing of employment discrimination complaints. Of the current staff in the Department's two civil rights offices, two-thirds work on EEO complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery. According to the Commission, the 1994 civil rights reorganization was

deficient because OCRE did not separate internal and external civil rights issues into separate offices. The Commission predicted that "a probable consequence is that USDA's Title VI enforcement program may suffer as OCRE responds to pressures to improve USDA's internal civil rights program." It recommended that USDA establish "two separate units, with different supervisory staff," one for internal and one for external civil rights issues. CRAT Report at 54.

124. CRAT found defendant's counsel hostile to civil rights, if not racist:

> The perception that the Office of the General Counsel [at USDA] is hostile to civil rights has been discussed earlier in this report. OGC's legal positions on civil right issues are perceived as insensitive at the least, and racist at worst. Correcting this problem is critical to the success of USDA's civil rights program. CRAT Report at 55.

125. CRAT found defendant's counsel, often have 'no civil rights experience or education:

> However, the CRAT has found that attorneys who practice civil rights law at [USDA'S] OGC are not required to have specialized experience or education in civil rights when they are hired. They acquire their civil rights experience on the job. In addition, most of OGC's lawyers working on civil rights issues work on non-civil-rights issues as well. CRAT Report at 55.

126. In sum, CRAT concluded that defendant does not support or enforce civil rights:

> USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks. There has been instability and lack of skilled leadership at the position of USDA Director of Civil Rights. Dividing up the Department's Civil Rights office between policy and complaints has further exacerbated the problem. The division of

responsibility for civil rights among different USDA offices and agencies has left confusion over enforcement responsibilities. Finally, OGC is perceived as unsupportive of civil rights. CRAT Report at 56.

127. Neither the OIG nor CRAT Report thoroughly analyzed any counties where substantial numbers of Native Americans farm However, both reports indicate that the discrimination problems at USDA were not limited to a specific group of farmers but victimized minorities in seneral.

128. The magnitude of the problem is greater than reflected in the OIG and CRAT studies. The process of resolving claims under the Pisford settlement has shown that literally thousands of discrimination complaints filed at the local level never made it into the FSA/OCREA system. Further, while the OIG and CRAT reports reviewed the situation prior to 1997, later USDA reports indicate that the problems persist.

129. On September 29, 1997, USDA's Office of Inspector General issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs - Phase II", which found inter alia that (a) defendant has resolved only 32 of the 241 outstanding discrimination complaints reported in the OIG Report (back in February, 1997) and (b) that the backlog of discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

130. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues - Phase V" [hereinafter "OIG Report V"], which states, *inter alia*:

> a. We found that the Department [USDA], through CR [Office of Civil Rights], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998. OIG Report V, cover letter to the Secretary.
>
> b. The backlog is not being resolved at a faster rate because CR itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. <u>The office is still in disarrav, providinq no decisive leadership and makins little attempt to correct the mistakes of the past</u>. We noted with considerable concern that after 20 months, CR has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations. OIG Report V at i (emphasis added).
>
> c. Most conspicuous among the uncorrected problems is the <u>continuinq disorder within CR</u>. The data base CR uses to report the status of cases is <u>unreliable and full of error</u>, and the files it keeps to store needed documentation are <u>slovenlv and unmanased</u>. Forty complaint <u>files could not be found</u>, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. <u>Manasement controls were so poor</u> that we could not render an opinion on the quality of CR's investigations and adjudications. OIG Report V at iii (emphasis added).
>
> d. Of equal significance is the absence of written policy and procedures. OIG Report V at iii.
>
> e. The absence of formal procedures and accurate records raises questions about due care

> within the complaints resolution process. We found critical quality control steps missing at every stage of the process. Staff members with little training and less experience were put to judging matters that carry serious legal and moral implications. Many of CR's adjudicators, who must determine whether discrimination occurred, were student interns. Legal staff members with the Office of General Counsel (OGC), who review CR's decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis. We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit. OIG Report V at iii (emphasis added).

131. Defendant's willful disregard of, and failure to properly investigate, Native American ranchers' discrimination complaints began with the disbanding of civil rights enforcement functions back in 1983. Even after February, 1997, when the current administration reorganized and reestablished the enforcement staff of the civil rights office, the situation has gotten worse, as evidenced by the massive increase of backlogged, unresolved cases and overall disarray in the USDA Office of Civil Rights as reported in the most recent OIG Report.

132. On March 10, 2000, USDA's Office of Inspector General released its audit report "Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints - Phase VII" ("OIG Report VII"), which states, *inter alia*:

a. This is our <u>seventh</u> attempt to provide CR with constructive ways to overcome its inefficiencies. Based on the results of our review and on the operating environment we observed at CR, we cannot report encouraging news. OIG Report VII at Viadero letter.

b. Many other critical issues remain unresolved. Most notably, CR did not reenigineer its complaints resolution process. Although CR officials had previously agreed that the system they used to process complaints was neither effective nor efficient and although we recommended a major transformation of this system, no *significant changes in how complaints are processed have been made.* As a result, we cannot conclude that all complaints are processed with due care. OIG Report VII at i.

c. Since February 1997, we have issued six reports on civil rights issues relating to the program complaints process administered by CR. Those six reports contained 67 recommendations, 54 of which were directed at CR (the remaining 13 were directed at the Farm Service Agency). During the current review, we found that 41 recommendations (all directed at CR) have not been adequately addressed by CR, based on the actions taken as of December 1, 1999. . . . As a result, we still have concerns that CR may not be providing due care when processing complaints alleging discrimination in USDA programs. <u>Id.</u> at 14.

133. In sum, the Office of the Inspector General cannot report that the USDA Office of Civil Rights has made ***any*** meaningful progress - <u>OIG initiated these corrective measures over three years ago (February 1997).</u> Furthermore, USDA's inability to even marginally improve its operating procedures

shows the Agency's reluctance to adequately address past civil rights violations and ensure that the present system will effectively protect the rights of Native American and other minority farmers and ranchers.

EQUAL CREDIT OPPORTUNITY ACT AND
ADMINISTRATIVE PROCEDURE ACT

134. The Equal Credit Opportunity Act ("ECOA") is a detailed and exhaustive legislative directive unequivocal in its statutory intent to stamp out discrimination by any lender, anywhere, whether private, public, governmental or quasi-governmental.

ECOA states, inter alia:

> It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided, the applicant has the capacity to contract);... 15 U.S.C. § 1691(a)(1).

ECOA provides for monetary relief to both individuals and class members who are damaged by creditors who violate the statute:

> Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class. 15 U.S.C. § 1691e(a) (emphasis added).

Third, district courts are vested with the authority to provide equitable and declaratory relief:

> Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter. 15 U.S.C. § 1691e(c) (emphasis added).

Fourth, the prevailing party can recover costs and reasonable attorneys fees:

> In the case of any successful action under subsection (a), (b), or (c) of this section, the cost of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection. 15 U.S.C. § 1691e(d) (emphasis added).

135. In sum, this court has jurisdiction to grant actual damages, equitable and declaratory relief, costs and attorneys fees, and ECOA contains a waiver of United States sovereign immunity.

136. When class members filed discrimination complaints, they fell four-square under the umbrella of ECOA. It is plaintiffs' belief that ninety-five percent of class members filed complaints of discrimination with respect to USDA's loan application process. Only five percent have claims for denial of disaster applications.

137. While ECOA covers farm "credit" programs, but not disaster and other non-credit farm programs, the Administrative

Procedure Act provides an avenue of relief for farmers who have been denied equal access to the non-credit programs.

138. Further, the implementation of USDA's credit programs and the non-credit programs were closely intertwined and the violation of plaintiffs' rights were equally egregious in both areas. Discrimination existed under both credit and non-credit programs, and neither offered Native American farmers an opportunity to appeal to a civil rights enforcement body to obtain relief. Further, in many instances, the calculation of loans under the credit program and payments or benefits under the non-credit programs were interdependent. For example, the amount of non-credit program benefits or program allotments that a farmer could receive for the crop of a commodity [such as cotton, corn, wheat, rice, peanuts, or tobacco) in a year required a review of his or her farming history, which, in turn, was directly related to the yield per acre the farmer cultivated, which was dependent on the amount of operating credit made available to the farmer.

STATUTE OF LIMITATIONS IS WAIVED

139. On October 21, 1998, the President signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-277, Div. A, § 101(a) [§ 7411, 112 Stat. 2681 (Codified at 7 U.S.C. § 2279). This legislation contains the following provisions:

Sec. [741]. Waiver of Statute of Limitations.

(a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by any statute of limitations.

(b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act. The Department of Agriculture shall-

(1) provide the complainant an opportunity for a hearing on the record before making that determination;

(2) award the complainant such relief as would be afforded under the applicable statute from which the eligible complaint arose notwithstanding any statute of limitations; and

(3) to the maximum extent practicable within 180 days after the date a determination of an eligible complaint is sought under this subsection conduct an investigation, issue a written determination and propose a resolution in accordance with this subsection.

(c) Notwithstanding subsections (a) and (b), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal Court of competent jurisdiction seeking a review of such denial.

(d) The United States Court of Federal Claims and the United States District Court shall have exclusive original jurisdiction over—

(1) any cause of action arising out of a complaint with respect to which this section waives the statute of limitations; and

(2) any civil action for judicial review of a determination in an administrative proceeding in the Department of Agriculture under this section.

(e) As used in this section, the term "eligible complaint" means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996-

(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.) in administering-

(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(B) a housing program established under title V of the Housing Act of 1949; or

(2) in the administration of a commodity program or a disaster assistance program.

(f) This section shall apply in fiscal year 1999 and thereafter.

(g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. Chapter 5 of title 5 of the United States Code shall apply with respect to an agency action under this section with respect to an eligible complaint, without regard to section 554(a) (1) of that title.

CLASS ACTION ALLEGATIONS

140. Plaintiffs bring this Class action *on* behalf of themselves, and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis. Plaintiffs' proposed Class is defined as all Native American participants in **FSA's** farm programs who petitioned USDA at any time between January 1, 1981, and November 24, 1999, for relief from acts of racial discrimination visited on them, as they tried to participate in such farm programs and who, because of the failings in the USDA civil rights complaint processing system described above, were denied equal protection under the laws of the United States and deprived of due process in the handling of their discrimination complaints.

141. During the period January 1, 1981 to November 24, 1999, plaintiffs and members of the Class either directly or through their Tribal Councils, filed discrimination complaints for not less than 19,000 farmers.

142. This action is brought and may properly be maintained as a Class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a) (1)-(4) and, as appropriate, 23(b) (1), (b)(2) and/or (b) (3). This action satisfies the numerosity, commonality, typicality, adequacy and predominance and superiority requirement of those provisions.

143. Numerosity of the Class. Fed. R. Civ. P. 23(a)(1). The Class is so numerous that the individual joinder of all its members is impracticable. FSA has approximately 2,750 county offices throughout the United States; they process applications for approximately 1,400,000 farmers. Plaintiffs believe, from plaintiffs' research and travel to county offices throughout the country, interviews with hundreds of farmers and ranchers, and review of defendant's reports, that during the period January 1, 1981, to November 24, 1999, USDA received at least 19,000 discrimination complaints on behalf of class members. Accordingly, plaintiffs are informed and believe, and on that basis allege, that the Class includes not less than 19,000 members. However, plaintiffs and members of the Class contend that many written complaints of discrimination were never properly docketed in defendant's "system" and therefore were never acknowledged by or responded to by defendant. For example, many complaints filed years ago in local and state offices are (because of the publicity generated in Pisford v. Glickman) only now being forwarded to USDA's offices in Washington, D.C. While plaintiffs believe the minimal number of cases is 19,000, without access to defendant's computerized list, plaintiffs have no further specific knowledge as to the exact number of complaints. Class members may be informed of the pendency of this Class action by published and broadcast notice; in addition, defendant has each Class member's

farm number, address, application date and payment results on computer, and thus readily available.

144. Existence and Predominance of Common Questions Of Law and Fact. Fed. R. Civ. P. 23(a) and 23(b)(3). Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual questions arise from one central issue, which does not vary from Class member to Class member and which may be determined without reference to the individual circumstances of any particular Class member: defendant's institutional and systematic course of conduct in denying civil rights complainants due process of law in the handling of their complaints. These common legal and factual questions include, but are not limited to, the following:

a) Whether and when defendant's officials discriminated against plaintiffs and Class members in failing to process discrimination complaints;

b) Whether and when defendant's officials discriminated against plaintiffs and Class members in granting credit and providing other program benefits;

c) Whether defendant's officials failed to provide plaintiffs and Class members equal opportunity for and access to credit or other program benefits;

d) Whether defendant's institutional and systematic failure to provide plaintiffs and Class members equal opportunity for and access to credit or other program benefits was arbitrary, capricious, an abuse of discretion, and in excess of statutory jurisdiction;

e) Whether defendant's actions violated plaintiffs' and Class members' rights under the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a);

f) Whether plaintiffs and Class members are entitled to (1) a declaration of their eligibility to receive damages or other monetary relief, (2) costs, (3) attorneys fees and (4) interest from the date they should have been paid to the actual date of payment; and

g) How any and all payments plaintiffs are declared eligible to receive. should be equitably allocated among the Class.

These questions of law as to each Class member arose at the same time - following the release of the OIG Report and CRAT , Report, in February, 1997, exposing for the first time, the institutional and systematic failure of the discrimination complaint process at USDA.

145. Typicality of Claims. Fed. R. Civ. P. 23(a)(3).

Plaintiffs' claims are typical of the claims of the members of the Class, all of whom have been denied equal access to credit or other program benefits and due process in the enforcement of

their discrimination complaints, and have been subject to defendant's institutional and systematic failure to enforce the civil rights laws intended to benefit plaintiffs and members of the Class, due to defendant's arbitrary and unlawful actions.

146. Adeauacv of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interests of the members of the Class they seek to represent. They have retained competent counsel experienced in the prosecution of complex agricultural disputes involving review of adverse agency action, experienced in civil rights litigation, and experienced in class action litigation,, and they intend to prosecute this action vigorously for the benefit of the Class. Mr. Pires, after 7 years at the U.S. Department of Justice, has spent 17 years in private practice representing farmers; he has been Lead Counsel in over 50 lawsuits filed on behalf of farmers in federal courts throughout the country. Mr. Fraas has been in private practice representing farmers for 11 years. Prior to that, he was Chief Counsel of the House Agriculture Committee, responsible for all USDA programs and laws. Mr. Pires and Mr. Fraas were Lead Counsel in Pigford v. Glickman, a similar class action lawsuit in which over 20,100 Black farmers are participating under a Consent Decree, and are Lead Counsel in this case. Joining them as Of Counsel, are J. L. Chestnut of Chestnut,

Sanders, Sanders & Pettaway, a nationally known civil rights lawyer, with 38 years of experience in discrimination law and class action litigation; and Gerard R. Lear of Speiser Krause, an internationally known lawyer with extensive experience in complex litigation and class actions. Mr. Chestnut and Mr. Lear were Of Counsel in Pisford. Sarah M. Vogel of the Wheeler Wolf Law Firm, is an experienced attorney in the field of agricultural and Tribal Law and has been practicing for nearly 30 years. James WM. Morrison of Wood, Bohm, Francis & Morrison has been practicing law for 25 years and is an experienced attorney in the field of civil rights. Finally, Joseph D. Gebhardt is an experienced attorney in the field of civil rights law and class action lawsuits involving discrimination of USDA employees. The interests of the members of the Class will be fairly and adequately protected by plaintiffs and their Lead Counsel and Of Counsel. Counsel for plaintiffs have signed retainer agreements with plaintiffs stating that in the event of a successful settlement or judgment (1) 100% of all monies received will go to plaintiffs and Class members; and (2) counsel will seek recovery of legal fees, expenses and costs under the Equal Credit Opportunity Act and the Equal Access To Justice Act.

147. Superiority. Fed. R. Civ. P. 23(b)(3). A Class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of

Class members' claims regarding the defendant's institutional and systematic deprivation of their civil rights as described in this Complaint is impracticable. Even if any Class members could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of the facts of not less than 19,000 cases would proceed. Individual litigation further presents a potential for inconsistent or contradictory judgments and increases the delay and expenses to all parties and the court system in resolving the legal and factual issues of the case. By contrast, the Class action device presents far fewer management difficulties and provides the benefits of single adjudication of what essentially is one problem, economies of scale, and comprehensive supervision by a single court. Notice of the pendency of any resolution of this Class action can be provided to Class members by publication and broadcast; in addition, defendant has each Class member's farm number, address, application date and payment results on computer, readily available.

148. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1) and 23(b) (2) because:

a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or

varying adjudications with respect to individual Class members, thus establishing incompatible standards of conduct for defendant;

b) The prosecution of separate actions by individual Class members would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or would substantially impair or impede the ability of such non-party Class members to protect their interests; and

c) Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final declaratory relief with respect to the Class as a whole.

COUNT I
(Declaratory Judgment)

149. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

150. An actual controversy exists between plaintiffs and Class members and defendant as to their rights with respect to defendant's farm programs.

151. Plaintiffs and the Class pray that this Court declare and determine, pursuant to 28 U.S.C. § 2201, the rights of plaintiffs and Class members under defendant's farm programs including their right to equal credit, equal participation in farm programs,

and their right to full and timely enforcement of racial discrimination complaints

COUNT II

(Violation of Equal Credit Opportunity Act)

152. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein

153. Defendant's acts of denying plaintiffs and Class members credit and other benefits and systematically failing to properly process their discrimination complaints was racially discriminatory and contrary to the requirements of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a).

154. Plaintiffs and the Class pray defendant's actions be reversed as violative of the Equal Credit Opportunity Act.

155. Plaintiffs and the class pray for money damages for plaintiffs and Class members of $19,000,000,000.[2]

COUNT III

(Violation of the Administrative Procedure Act)

156. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

157. Defendant's acts of denying plaintiffs and Class members credit and other benefits and systematically failing to

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[2] 19,000 Class members x $1,000,000.

properly process their discrimination complaints was racially discriminatory and contrary to the requirements of applicable law.

158. Plaintiffs and the Class pray defendant's actions be reversed as arbitrary, capricious, and abuse of discretion, and not in accordance with the law, pursuant to 5 U.S.C. § 706(2)(A), and in excess of defendant's statutory jurisdiction, pursuant to 5 U.S.C. § 706(2)(C).

159. As a direct and proximate result of defendant's acts, plaintiffs and the Class members sustained damages, including payments rightfully due plaintiffs and the Class members.

160. Plaintiffs pray for appropriate relief under the Administrative Procedure Act, including (1) compensation to plaintiffs and Class members for there having been no proper investigation of their complaints, and (2) specific performance with respect to their program benefits.

COUNT IV

(Violation of Title VI of the Civil Rights Act of 1964)

161. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

162. Defendant's acts constitute a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

163. As a direct and proximate result of defendant's acts, plaintiffs and the Class members sustained damages.

164. Plaintiffs pray for appropriate relief under the Civil Rights Act of 1964, 42 U.S.C. § 2000d, including (1) equitable relief, and (2) specific performance of their program benefits.

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, request that this Court enter judgment against defendant as follows:

(1) An Order certifying the Class, and any appropriate subclass thereof, under the appropriate provisions of Fed. R. Civ. P. 23, and appointing plaintiffs (class representatives) and Alexander J. Pires, Jr. and Phillip L. Fraas as Lead Counsel to represent the Class;

(2) An Order declaring, pursuant to 28 U.S.C. § 2201, that plaintiffs and the Class members were denied equal credit and other farm program benefits and full and timely enforcement of their civil rights discrimination complaints.

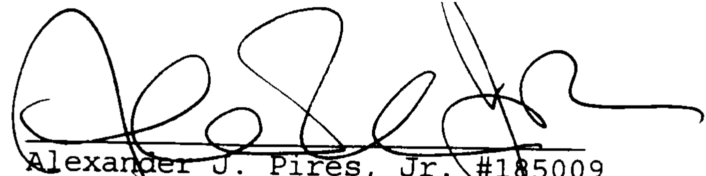
(3) An Order declaring defendant's actions to be a breach of plaintiffs' rights under the Equal Credit Opportunity Act and the Administrative Procedures Act and declaring plaintiffs and the Class members eligible to receive monetary and other relief of not less than $19,000,000,000.

(4) An Order declaring defendant's actions to be a breach of plaintiffs' rights under the Civil Rights Act of 1964 and declaring plaintiffs and Class members eligible to receive equitable and other relief.

(5) An Order granting plaintiffs' and the Class members' attorneys' fees and expenses pursuant to the Equal Credit Opportunity Act, and the Equal Access to Justice Act, costs of suit, and interest from date when plaintiffs and the Class members should have been paid to actual date of payment, and all other relief that the Court determines proper and fair.

Respectfully submitted,

October 11, 2000

By: 

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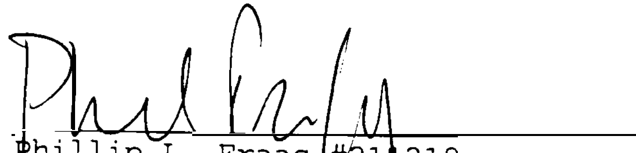
By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Fourth Amended Class Action Complaint was delivered by certified mail, this 11th day of October, 2000 to Neil Koslowe, U.S. Department of Justice, Special Litigation Counsel, Civil Division - Room 1036, P.O. Box 883, Washington, DC 20044.

ALEXANDER J. PIRES, JR.