

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR.,
FOR HIMSELF AND ON BEHALF OF
G.A. GARCIA AND SONS FARM
9301 Highway 85
Las Cruces, New Mexico 88005

and

TONY AND PATRICIA JIMENEZ
367 1 Old Toll Road
Cathey's Valley, California 95306

and

EDWARD AND NORMA FLORES¹
P. O. Box 963
Chimayo, New Mexico 87522

and

GLORIA MORALEZ
17 17 S. Minnewowa
Fresno, California 93727

and

BEATRICE AND RODOLFO GARZA
109 N. Avenue C
Crystal City, Texas 78839

and

LARRY CHAVARRIA
AND ROBERT CHAVARRIA FOR
THEMSELVES AND ON BEHALF OF
CHAVARRIA FARMING CO.
P.O. Box 386
Lemoore, California 93245

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

FEB 6 11 30 AM '01
H.
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Civil Action No. 1 :00CV02445

Judge: Louis F. Oberdorfer

SECOND AMENDED CLASS ACTION
COMPLAINT

Containing 98 Plaintiffs /
Class Representatives

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¹ Edward and Norma Flores were listed as Mr. and Mrs. X in the original Class Action Complaint and in the First Amended Class Action Complaint. They have chosen to disclose their identity.

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and

Mr. David L. Hinojosa, Sr.
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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.

FIRST AMENDED CLASS ACTION COMPLAINT
(FOR **DECLARATORY** JUDGMENT, REVIEW OF AGENCY ACTION,
VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT, AND OTHER RELIEF)

The representative and individual plaintiffs listed in the caption (“plaintiffs”), on behalf of themselves and all others similarly situated, complain of defendant as follows:

NATURE OF THE CASE

Since 1981, when processing applications for Hispanic American farmers and ranchers (hereinafter collectively “farmers”) for farm credit and farm programs, (hereinafter, 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 with defendant, defendant failed, although required by federal law, including the Civil Rights Act of 1964 and the Equal Credit Opportunity Act, to investigate the complaints. For example, when Hispanic 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 meaningless, or “ghost” investigations, 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 Hispanic farmers 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 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. Further, defendant’s own Office of Inspector General has stated that, since then, the defendant’s civil rights oversight agency, the Office of Civil Rights, has failed to adequately deal with the problems in effectively processing civil rights complaints.

Plaintiffs allege that this discriminatory treatment was imposed on Hispanics 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, 15 U.S.C. § 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 Guadalupe L. Garcia, Jr., is an Hispanic American farmer and resident of **Dona Ana** County, New Mexico. He and his father and brother, also Hispanic American farmers, farmed together as G.A. Garcia and Sons Farm. They produced cotton, peas, alfalfa, and hay on their farm. They owned two farms in **Dona Ana** County, one with 550 acres of arable land and the other with 78 acres of arable land. They also leased land occasionally for their farm operation.

4. In 1986, plaintiff Garcia worked with the assistance of the Farmers Home Administration (“**FmHA**”) personnel to develop a farm and home plan and an application for direct loans, but **FmHA** rejected the application. In 1988, plaintiff applied for primary loan servicing but was denied this servicing after a two-year delay. Again, in 1994, the Farm Service Agency (“**FSA**,” formerly **FmHA**) refused to work with plaintiff on a farm debt restructuring with guaranteed loans. Finally in 1998, when plaintiff needed to sell part of the land to service delinquent debt and had found a buyer for some of the farm land, **FSA** refused to provide financing to allow the sale to take place. In each instance, plaintiff timely filed for the **FSA** financial assistance programs or loans and was qualified for the assistance and loans, but, due to willful and continuous racial/ethnic discrimination by the local and state **FSA** offices, was denied the assistance and loans. In each instance, similarly situated white farmers received more favorable treatment. As a result, plaintiff suffered severe economic losses, including a farmer’s ultimate penalty – their farms were sold at a foreclosure sale in 1999.

5. Plaintiff filed several complaints to USDA about this treatment. Guadalupe L. Garcia, Jr., registered a complaint regarding the discrimination with the FSA official that assisted plaintiff prepare the farm and home plan/loan application in 1986. Again, in the early 1990s, he filed a complaint with the office of Senator Dominici. In 1998, he filed an additional complaint with USDA's Office of Civil Rights. These complaints were never acted on, causing plaintiffs further damages.

* * *

6. Plaintiffs and proposed Class representatives Tony and Patricia Jimenez are Hispanic American ranchers and residents of Mariposa County, California. They operate a 299 acre cattle ranch. Tony Jimenez has lived on a cattle ranch since he was 9 years old, and has life-long experience operating dairy and beef cattle ranches.

7. After having received a \$200,000 farm ownership loan from FmHA to acquire the ranch in 1989, the Jimenezes sought an operating loan at the same time. The operating credit was absolutely essential to enable them to operate the ranch at full and efficient capacity, which was necessary so that they could service the large ownership debt. They were denied the operating loan without explanation. They re-applied for operating credit in 1990 but were turned down again. Once more in 1991, they sought operating funds and servicing benefits, but were denied. In 1992, they applied for an emergency loan, but were turned down. In 1992, they also requested a 60-day extension on their loan because cattle prices were at a 20-year low and they needed to sell cattle to make their loan installment to FmHA. This too was denied. In December 1995, the Jimenezes paid FSA (formerly FmHA) more than \$52,000 to bring the mortgage on the ranch up to date, and at the same time they asked for a loan deferral and an adjustment in the interest rate on the remainder due on the mortgage loan to reflect substantial reduction in interest

rates since 1990. FSA did not provide them the application for this servicing for four months. Then, after holding the application for two years, FSA denied it in October of 1998.

8. This extended pattern of denial of loans and services -- treatment different than that received by similarly situated white farmers -- was a series of acts of willful and continuous racial/ethnic discrimination, and as a result of the discrimination, the ranch operation has suffered severe economic losses and the Jimenezes are on the verge of losing their farm to foreclosure. They filed civil rights complaints to USDA and members of Congress in a timely fashion, but these complaints have never been acted on, causing them further damages.

* * *

9. Mr. and Mrs. Edward and Norma Flores come from a long tradition of farming. They began farming in 1972. For 16 years, Mr. and Mrs. Flores farmed over 300 acres. Their crops included chili peppers, cotton and cabbage.

10. Between 1985 and 1988, USDA discriminated against Mr. and Mrs. Flores on at least four separate occasions. Their experience is typical of other Hispanic American farmers in their area.

11. In January 1985, Mr. and Mrs. Flores applied at their local FmHA office for an operating loan of approximately \$100,000. They needed the loan to prepare for planting their crops by March, but funding was delayed until late May, well after planting season.

12. A similar incident occurred a year later in 1986. They again applied for an operating loan in January, which they did not receive until late May. In addition, FmHA demanded excessive collateral for the loan. Mr. and Mrs. Flores were required to put up their land (valued at \$4 13,000) and equipment (valued at \$60,000) for a loan in the amount of \$80,000.

13. In 1987, Mr. and Mrs. Flores sought assistance from FmHA to refinance their farm, because they were facing foreclosure by the Federal Land Bank. Mr. and Mrs. Flores needed to take advantage of the lower interest rate offered by FmHA, as opposed to the high 14% interest they were paying. When the Flores inquired with the local FmHA agent about refinancing, he replied “You’re in a real mess,” and refused them an opportunity to apply.

14. Mr. and Mrs. Flores believe they were discriminated against because they were Hispanic American farmers. Similarly situated white farmers did not receive such treatment. In 1987, Mr. Flores complained to the County Commissioner regarding this discriminatory treatment.

15. In 1988, Mr. Flores returned to the local FmHA office to attempt again to refinance his farm. Contrary to FmHA regulations, the local FmHA office agent refused to discuss refinancing with Mr. Flores until Mr. Flores father had cleared a separate unrelated debt with FmHA.

16. 1988 was the last year the Flores family farmed. As a result of FmHA discrimination, the Flores’s lost everything, including 8 farm leases - all of which were taken over by white farmers.

* * *

17. Plaintiff and proposed Class representative Gloria Palacios Moralez is an Hispanic American farmer and resident of Fresno County, California. Her parents were sharecroppers for 25 years, including when she was growing up; and she learned farming from them. Also, she took college courses in agricultural economics, and was selected to be a Kellogg fellow. She owned and operated an 80-acre farm from 1980 to 1998. Up until 1994, she grew

various field crops and grapes on the land. In 1998, after repeatedly being denied loans and services from FSA, her land was sold by court order and she lost it.

18. Moralez acquired her farm land in 1980 with a \$200,000 limited resource farm ownership loan she got from FmHA. However, even in this instance, FmHA engaged in discriminatory conduct against her by working hard to prevent her from getting the loan; she got it only through her own dogged persistence and hard work. Originally, FmHA would not even let her apply for the loan even though she clearly had the background and training to qualify for FmHA farm financing. However, after she refused to take no for an answer, she was allowed to apply-but only after she was forced to write a special essay and make special presentations to the Fresno County FmHA staff and county committee. These unusual requirements were never applied to white farmers who sought to apply to FmHA for farm ownership loans. Further, the Chairman of the county committee told her to her face that farming was “not a proper business for a woman, much less a Mexican woman with two kids.” Once she filed her application for the loan, it was improperly rejected two times before it finally was accepted. One of the rejections was based on the premise that the property she was trying to acquire did not have sufficient water to farm it correctly. However, this same land was being farmed at that time by two white farmers whose farming operations were being financed with FmHA operating loans. Another reason her application was initially rejected was that the FmHA county office asserted that she was proposing to pay too much for the land. However, at the same time, the county office was making farm ownership loans to white farmers to buy similar land in the area her farm was located at even higher prices than she proposed to pay.

19. In 1981, Gloria Moralez applied to the Fresno County FmHA for an equipment loan of \$50,000. She was only approved for \$26,300. As a result, she could only acquire used

equipment in poor condition that caused her severe problems in growing her crops and reduced her production. She also received an operating loan of \$3 1,200 to plant cotton. Her loan funds were put in a supervised bank account. To her information and belief, no similarly situated white farmers in her area were subject to this sort of treatment regarding reduced funding for equipment loans and the supervised account. Further, the Fresno county FmHA staff told her at that time that she should never apply for another FmHA loan, because they would make sure she never got one. In fact, she never did get another FmHA loan.

20. She continued throughout the years up to 1998 to seek FmHA and FSA loans, services, and benefits, but was always unfairly discouraged or denied. Her applications included ones for restructuring her debt, so-called "195 1-S" servicing, and disaster payments. The 195 1-S servicing is an example of the unfair discouragement she received. FmHA valued her farm low for 195 1 -S purposes so she couldn't benefit from 195 1 -S restructuring; but just six months later when she was in bankruptcy, FmHA insisted that the farm had much greater value for purposes of the bankruptcy action.

21. In another case, she applied for disaster payments for losses to her grape crop in 1993 caused by a grape disease known as phomopsis. This disease reduced her yield by 69 percent. The Fresno county office told her that such a disease did not exist. However, this disease in fact has become epidemic in California in recent years and a threat to the grape industry statewide, with the state and Federal governments spending millions on its eradication. Also, the county office accused her of fraudulently submitting two claims for payments on the loss. In fact, what happened was that she had submitted her disaster application in September of 1993, then in December of that year checked with the Fresno county office to see where it stood. At that time, she was told that they could not locate the September application, and that she must

fill out a second application, which she did. Further, when she appealed the denial of disaster benefits to the county committee, she attempted to have a court reporter transcribe the meeting. However, the county committee refused to allow the reporter to attend the meeting, stating that she had to give notice 7 days in advance. The problem was that they had scheduled the meeting one day in advance.

22. As a result of FmHA/FSA's unfair discouragement and denials, Gloria Moralez could never obtain the financing or program payments she needed to adequately farm her land, and thus her farming enterprise foundered. When she became seriously ill and her mother died in January of 1992, Gloria Moralez was forced to file Chapter 12 bankruptcy. During the five years she was in bankruptcy, FmHA/FSA continued to harass her. The agency made several attempts to foreclose on her land even though the bankruptcy court had issued a stay on foreclosure proceedings. The agency had gone so far as to order its Kansas City financial office to cut a check for \$220,000 so it could buy the land back at foreclosure, even though there was a freeze against foreclosure.

23. She filed discrimination complaints with USDA in 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1992, 1993, and 1994 regarding the denials and problems she was having with FmHA/FSA, but only on one occasion received a response to her complaint-that regarding the denial of disaster payments in 1993 described above. However, even that action to respond to her complaints was tainted. First of all, she did not get a response to her complaint until 1998. At that time, she received a letter in response to her complaint purportedly signed by an official working for defendant by the name of Wardell Townsend. The letter stated that USDA found no discrimination. The problem with the letter was that Townsend, who supposedly made this conclusion, had left USDA about one year prior to the date he supposedly signed the letter.

24. The long and persistent pattern of denial of loans and services by FmHA/FSA during the period from 1981 on—treatment different than that the agency gave to similarly situated white farmers—was a series of willful and continuous racial/ethnic discrimination; and as a result of the discrimination, Moralez’s farm operation suffered severe economic losses and she ultimately lost her 80-acre farm. The absolute refusal by defendant to respond to her repeated complaints of discrimination caused her further damage as the complaints were never investigated and the wrongs committed against her thus have remained unremedied.

* * *

25. Plaintiff and proposed Class representatives Rodolfo and Beatrice Garza are Hispanic-American residents of Zapala County, Texas, who farmed in the 1980s. Rodolfo Garza had been trained in agriculture at the local junior college, and, in 1983, he and Beatrice Garza acquired 39 acres of farm land in Zapala County from Beatrice’s parents for the purpose of starting a vegetable production operation. This land is located in the Wintergarden area of Texas, which is renowned for its production of fruits and vegetables. Their home town, Crystal City, is known as the Spinach Capital of the World. Unable to get FSA financing to operate their farm, they farmed to the extent they could using their personal funds. They successfully put in several crops of spinach, onions, and grain sorghum.

26. In 1984 and 1986, the local newspaper ran articles about the availability, at the local FSA office, of loan funds for farming. In 1984, the Garzas sought a loan to irrigate and put in crops on all 39 acres. They submitted an application to the local FSA office, and waited for a response. FSA never did respond, so Beatrice Garza contacted the office and was told that no money was available for loans. However, when she reminded the office of the article in the local newspaper, they simply told her that she and her husband did not qualify. Again in 1986, having

read another article about the availability of funds, the Garzas applied for an operating loan again. They were turned down again. The Garzas knew that a number of white farmers who were friends of theirs and similarly situated farmers were able to obtain operating loans from FSA without any trouble. These included Charles Carr, Lake Smith, and Dorothy Hodges. In fact, these farmers advised the Garzas to apply to FSA for financing.

27. Concerned about these repeated denials, Beatrice Garza timely complained by letter to the Secretary of Agriculture in 1986, but never received even a response to the letter. Having been frustrated at obtaining financing from FSA and unable to finance the farm through local cooperative or commercial banks, the Garzas had to abandon their farm operation and sell the land. As a result of the discriminatory acts, the Garzas have suffered substantial economic losses, and as a result of the Secretary of Agriculture ignoring their complaint about the loan denials, the Garzas suffered further damages.

* * *

28. Plaintiff and proposed Class representatives Larry and Robert Chavarria are third-generation Hispanic American farmers in Kings County, California. They have been farming for 17 years. They primarily grow crops on the family farm owned by their mother. It is a 640-acre tract with irrigation that is ideally suited for cotton and other row crops, as well as fruits and vegetables. Their grandfather cleared the land in 1944, and their family over the course of years has installed irrigation equipment on the land. They farm together as a general partnership, the Chavarria Farm Co. Neither Larry, Robert, nor the partnership had any dealings with FSA prior to 1997.

29. In 1995, the partnership suffered severe losses to their cotton crop, as did many other farmers in that area of California. The area was declared a disaster area and the Chavarrias

sought to obtain a disaster loan from FSA to cover losses from the 1995 crop. Larry began his inquiries in September of 1996, and filed the application in January of 1997. Although the application was complete and demonstrated that the Chavarrias and the partnership fully qualified for assistance, the Kings County FSA improperly rejected the application on grounds that were later determined by the National Appeal Division to be without merit. In doing so, the FSA office gave excess credence to the assertions of a white land owner from whom the Chavarrias were leasing farm land and with whom the Chavarrias had a dispute regarding the white landowner's efforts to revoke the lease.

30. Larry Chavarria appealed the county office decision to the National Appeals Division, and won the appeal. The hearing officer's decision substantially discounted the credibility of the white land owner and questioned the county office's giving weight to that person's assertions and the county office's abortive efforts to set Mr. Chavarria in a "sting" regarding the crops grown on the disputed lease land.

31. Even though Larry Chavarria won the appeal, the Kings and Tulane county offices continued to subject him and the partnership to unfair treatment. That office has denied them Production Flexibility Contract payments for the 1997 crops; it has been uncooperative and unwilling to work with him on servicing the emergency loan following a second disaster in the area in 1998.

32. FSA's initial loan denial and inadequate loan servicing was treatment different than that the agency gave to similarly situated white farmers, and amounted to willful and continuous racial/ethnic discrimination. As a result of the discrimination, the Chavarria farm operation suffered substantial economic losses.

33. Larry Chavarria filed a complaint with the Office of Civil Rights regarding this discrimination in 1999. Incredibly, the Office responded that FSA's denial of the loan and related unfair acts did not raise an issue of discriminatory conduct by a USDA employee, so it was refusing to investigate the complaint. Further, the response letter was dated April 28, 2000, but was not postmarked until September 12, 2000. The refusal by defendant's agency to respond to the complaint of discrimination caused Larry and Robert Chavarria; and the partnership further damage as the complaint was never investigated and the wrongs committed against them thus have remained unremedied.

* * *

34. Defendant, Dan Glickman, is Secretary of the United States Department of Agriculture, and is the federal official responsible for the administration of the statutes, regulations and programs that are the focus of this action.

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

35. USDA's Farm Service Agency provides commodity program benefits (such as deficiency payments, loan deficiency payments, production flexibility contract payments, and 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 (which previously had provided farm loans and other farm credit benefits).

36. 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 cooperative or private commercial lenders. These loans include "farm ownership", "operating", and "continuing assistance" loans, as well as loans that restructure existing loans and "emergency disaster" loans. FmHA's, and now FSA's, key responsibilities have been 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.

37. ASCS was an agency of USDA created to provide services to U.S. farmers under the commodity, price support, CRP, disaster payment, and related programs to stabilize farm income and prices, and to assist in the conservation of land. FSA continues this work today.

38. Defendant Glickman is responsible for the administration of the FSA, and previously FmHA and 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 defendant; 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).

**HOW FARMERS (1) APPLY FOR LOANS AND CREDIT WITH USDA AND
(2) APPLY FOR PARTICIPATION IN OTHER FARM PROGRAMS WITH USDA**

39. When a **farmer** applies for any federal farm loan or program, the **farmer** goes to his or her county office (formerly the **FmHA** office), and fills out a Farm and Home Plan ("FHP", a financial plan for the farm), along with his or her loan application, which requires the assistance and guidance of defendant's officials to complete. Assistance and guidance are critical because of the complexity of the programs and forms. This application process has been done pursuant to regulations found at 7 C.F.R. § 1910, et seq. If the farmer needs an ASCS-type benefit or assistance, the farmer works with his or her 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 has been 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.).

40. When the federal farm loan application with its supporting documents is completed, it is presented to the county committee. If the farmer is approved for participation, the loan is processed. The Equal Credit Opportunity Act prohibits discrimination in credit based on sex, marital status, race, color, age, national origin, or religion. 15 U.S.C. §1691(a). If an FSA loan, or loan service, is denied on discriminatory grounds, the farmer can file a complaint of discrimination with the defendant and the FSA Civil Rights Office (for FmHA, formerly the Equal Opportunity

("EO") office) or with the Office of Civil Rights (OCR) (formerly known as the Office of Civil Rights Enforcement and Adjudication ("OCREA" or "CREA")).

41. With respect to ASCS-type programs, the application is reviewed by the CED and then presented to the county committee. If approved, the ASCS benefits are awarded. The Constitution and Title VI of the Civil Rights Act of 1964 prohibit exclusion from participation in federal programs based on race, color or national origin. With respect to ASCS-type applications, if a farm program application is denied on discriminatory grounds, the farmer can file a complaint of discrimination with the defendant or OCR.

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

42. 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, then Director of OCR, Mr. Wright stated that (1) no systematic probes or investigations had been made since 1983. when the Administration disbanded the Civil Rights investigative staff, and (2) that agency regulations 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 OCR, 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")(attached hereto as Exhibit A), and the February 1997 Civil Rights Action Team Report ("CRAT Report")(attached hereto as Exhibit B), both explained below.

43. On March 10, 2000, the Office of Inspector General released its seventh audit report of the Office of Civil Rights (hereinafter "OIG Report VII" attached hereto as Exhibit C). The report states OCR's processing of civil rights complaints remains flawed: "This is our seventh 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, Viadero cover letter at 1) "...[N]o significant changes in how complaints are processed have been made." (OIG Report VII at i).

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

45. Within USDA, in past years, 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.

46. OCREA was required to forward written complaints of discrimination from USDA program participants 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.

47. FSA's Civil Rights and Small Business Utilization Staff (“CR&SBUS”) had been 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.

48. The applicable State Civil Rights Coordinator in FSA was responsible for obtaining a conciliation agreement or performing a preliminary inquiry and forwarding 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.

49. USDA has codified regulations, 7 C.F.R. Part 15 – “Nondiscrimination”, which state USDA’s policy of nondiscrimination in federally assisted and conducted programs and in USDA direct benefit programs. 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 agency’s programs and laws. See OIG Report at 5.

50. 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.

51. 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.

52. The regulation was never published.²

53. After years of abuse and neglect of Black, Native American, Hispanic and other minority farmers, OIG finally undertook an investigation and review of defendant's program discrimination complaints within FSA as well as 10 other agencies within USDA, the results of which were released on February 27, 1997. 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:

The program discrimination complaint process at FSA lacks integrity, direction and accountability 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 resulting climate of disorder has brought 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).

²The 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.

54. 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 analyses of the preliminary inquiries conducted on the complaints, although 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).

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

56. 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 disorganized. 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).

57. 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).

58. 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 tiling 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 tiling 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.

59. 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.

60. 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 remaining cases, we found no documentation in the case files at FSA that the Department has reviewed these cases. OIG Report at 8 (emphasis added).

61. OIG found 58% of the FSA civil rights complaint case files were over one 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.

<u>No. of Cases</u>	<u>Program</u>	<u>Average Age</u>
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.

62. 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).

63. 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.

64. With respect to defendant's Office of 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.

65. 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.

66. 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.

67. At the same time that OIG released its report, a USDA Civil Rights Action Team (“CRAT”) released its report, dated February 1997, condemning defendant’s lack of civil rights enforcement and accountability which 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.

68. 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.

69. CRAT reported that Hispanic and other minority growers were systematically excluded from USDA programs:

Hispanic, Asian-American, and American Indian farmers in Texas, California, and Oklahoma, and other listening sessions, told stories with a common theme: USDA has done more to hurt than to help small and minority farmers. One farmer said that the 400 Hispanic growers in California Central Coast counties formed an association in 1995 because the Department of Agriculture “systematically excluded” them from programs. CRAT Report at 6-7. (emphasis added).

70. CRAT found a common problem involving 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 might claim to have no applications available and ask the farmer to return later. Upon returning, the farmer might receive an application without any assistance 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. By the time processing is completed, even when the loan is approved, planting season has already passed 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).

71. CRAT found systematic mistreatment of minority farmers:

If the farmer’s promised FSA loan finally does arrive, it may have been arbitrarily 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).

72. 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).

73. 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 diversity 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).

74. 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.

75. 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).

76. 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.

77. 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.

78. 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.

79. 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 record keeping on these matters has been virtually nonexistent. 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 31, 1996. The largest number of pending discrimination complaints, as comments at the listening sessions suggest, are concentrated in three agencies at USDA. There were 205 cases 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 Operations (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).

80. 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.

81. 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.

82. CRAT emphasized the special needs of Hispanic and other minority farmers, and the lack of consideration of these needs by USDA:

Hispanic and Asian-American farming communities expressed concern that cultural differences in approaches to farming, in family and community traditions, in language, even in diet, are not being considered in the ways USDA delivers its programs. They express a perception that USDA has begun to recognize the shortcomings in its outreach to African-American and American Indian customers, but that it has yet to even identify that there is an unmet need in Hispanic and Asian-American communities.” CRAT Report at 28. (emphasis added).

83. 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 observed that minority farmers 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 losses. CRAT Report at 30.

84. 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.

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

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

86. CRAT found that Hispanics are the most underrepresented minority group in USDA:

According to data from the Equal Employment Opportunity Monitoring and Analysis System (EEOMAS), relative to the Civilian Labor Force, Hispanics are the most underrepresented minority group in USDA, followed by Asian-Pacific Americans. Hispanics, who are not well represented at any grade level, are the fastest growing minority group; many estimate they will be the largest minority group by 2012. CRAT Report at 36. (emphasis added).

87. 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.

88. 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 [the former Office of Civil Rights Enforcement] 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.

89. CRAT found a lack of civil rights specialists and knowledge for program-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 [then] 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.

90. 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.

91. 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.

92. 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.

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

94. The magnitude of the problem is greater than reflected in the OIG and CRAT studies. The process of resolving claims under the Pigford 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.

95. 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". (hereinafter "OIG Report II") (attached hereto as Exhibit D). This report echoes the CRAT findings with respect to the lack of diversity and minority outreach. OIG cites 7 U.S.C. § 2279 (a)(1), which states that the Secretary of Agriculture shall provide outreach and technical assistance to encourage socially disadvantaged farmers to own and operate farms and to participate in agricultural programs. Most importantly, the OIG Report II found:

Outreach efforts in the 11 states reviewed were not effectively targeted nor consistently implemented. OIG Report II at 16.

Further, we noted that in one county which has a relatively high number of non-English speaking farmers, no media ads or informational materials were prepared in Spanish, the language spoken by over half the people in the county. OIG Report II at 17.

Minority advisors rarely initiate efforts to visit and inform their minority constituents about farm loan programs. Furthermore, minority advisors for nearly all of the counties reviewed did not effectively represent the interests of the minority community. OIG Report II at 21.

96. OIG Report II found 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. OIG Report II at 11.

97. 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") (attached hereto as Exhibit E) which states:

(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. The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past. 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 continuing disorder within CR. The data base CR uses to report the status of cases is unreliable and full of error, and the files it keeps to store needed documentation are slovenly and unmanaged. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. Management controls were so poor 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).

98. This systemic pattern of inefficiency continues, some three years after OIG initially recommended corrective measures. As reported on March 10, 2000 by OIG Report VII (Exhibit C):

(a) This is our *seventh* 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, Viadero cover letter at 1.

(b) Based on the findings of our current review and on CR's poor record of responding to our past recommendations, it is difficult to recognize any significant level of progress. Unless CR implements a management plan that addresses effective leadership, changing organizational culture, customer focus, and process engineering, we question whether future complaints of discrimination in the distribution of program benefits will receive due care. OIG Report VII, Viadero cover letter at 2 (emphasis added).

(c) Many other critical issues remain unresolved. Most notably, CR did not reengineer 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.

(d) 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. OIG Report VII at 14.

99. USDA's inability to even marginally improve its operating procedures since the initial OIG and CRAT reports in February 1997 shows the defendant's reluctance to adequately address past civil rights violations and ensure that the present system will effectively protect the rights of its farmer constituents.

100. On information and belief, in recent months there has been a substantial increase in discrimination complaints filed at OCR by Hispanic farmers. However, within the last month, USDA has arbitrarily and without explanation halted the investigation of Hispanic farmers' discrimination complaints begun this summer. Up to that time, the civil rights investigatory team, through the conduct of interviews and review of records in several areas of the United States with high concentrations of Hispanic American farmers had found evidence of a pattern of discrimination against Hispanic American farmers.

101. In sum, defendant's willful disregard of, and failure to properly investigate, Hispanic American farmers' and ranchers' discrimination complaints began with the disbanding of civil rights enforcement functions back in 1983 and continues today. Even after February 1997, when USDA 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 Reports.

EQUAL CREDIT OPPORTUNITY ACT AND ADMINISTRATIVE PROCEDURE ACT

102. 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

First, ECOA states:

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).

Second, 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 under ECOA:

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 under ECOA:

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).

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

104. 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 applications for non-credit farm programs.

105. 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.

106. 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 Hispanic 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, or wheat) in a year required a review of his or her farming history, which, in turn, was directly related to the farmer's yield per acre and production base, which were dependent on the amount of operating credit made available to the farmer.

STATUTE OF LIMITATIONS IS WAIVED

107. 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) [§ 741], 112 Stat. 2681

(codified at 7 U.S.C. §2279). The following provisions of the legislation waive the applicable statutes of limitation for plaintiffs and other Class members in this case back to January 1, 198 1:

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.

* * * * *

(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, 198 1 and ending December 3 1, 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.

108. In addition, federal legal standards provide for the tolling of any of the statutes of limitation otherwise applicable to Class members in this case not covered by the

fiscal year 1999 appropriations Act whenever a person is induced or tricked into not timely filing a complaint -- such as (1) when the person incorrectly relies on USDA to process an administrative complaint when, as the OIG notes, USDA remains incapable of doing so in a timely manner; or (2) the person is prevented by extraordinary circumstances beyond his or her control from tiling a complaint in a timely manner, such as when a person has a well-founded fear of retaliation against himself or herself for voicing concerns about discriminatory practices in the local area in which he or she lives or farms; or (3) when the person is prevented by language barriers at local USDA offices, i.e. no Spanish-speaking staff, from effectively communicating his or her complaint.

CLASS ACTION ALLEGATIONS

109. 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 Hispanic participants³ in FSA's farm programs who petitioned -- or would have petitioned had they not been induced, tricked, or otherwise prevented from timely tiling a complaint -- USDA at any time between January 1, 1981, and the present 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.

³ According to the USDA Economic Research Service, the census of agriculture differentiates by race among Black, American Indian, Asian or Pacific Islander, and "other." An ethnicity designation allows for recording Hispanic operators, but some Hispanic operators are also included in the non-White count, since Hispanics may be of any race. The race category "other" is primarily limited to persons native to or of ancestry from Mexico, the Caribbean, and Central and South America. ERS Agricultural Outlook, May 1998, at 20-21.

110. During the period January 1, 1981 to the present plaintiffs and members of the Class filed discrimination complaints for not less than 20,000 farmers.

111. 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 (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

112. 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 Hispanic American farmers and ranchers, and review of defendant's reports, that during the period January 1, 1981, to the present, USDA received at least 20,000 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 20,000 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 Piaford v. Glickman) only now being forwarded to USDA's offices in Washington, D.C. While plaintiffs believe the minimal number of cases is 20,000, without access to defendant's files, 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.

113. 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 first 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.

114. 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.

115. Adequacy 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. 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 are Lead Counsel in Pigford v. Glickman, a similar class action lawsuit in which over 2,000 Black farmers are participating under a Consent Decree, Keepseagle v.

Glickman, a similar class action on behalf of Native American farmers and ranchers, and Love v. Glickman, a similar class action on behalf of women and other minority farmers. Mr. Pires and Mr. Fraas are Lead Counsel in this case. Joining them as Of Counsel, is J. L. Chestnut of Chestnut, Sanders, Sanders, Pettaway, Campbell & Albright, a nationally known civil rights lawyer, with 38 years of experience in discrimination law and class action litigation. Mr. Chestnut is also Of Counsel in Pigford v. Glickman, Keepseagle v. Glickman, and Love v. Glickman.

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.

116. 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 20,000 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.

117. 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)

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

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

120. 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, and 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)

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

122. 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).

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

124. Plaintiffs and the class pray for money damages for plaintiffs and Class members of \$20,000,000,000.⁴

COUNT III
(Violation of the Administrative Procedure Act)

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

126. 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 applicable law.

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

⁴ 20,000 Class members x \$1 ,000,000.

128. 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.

129. 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.

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, appointing plaintiffs as class representatives and Alexander J. Pires, Jr. and Phillip L. Fraas as Lead Counsel to represent the Class;

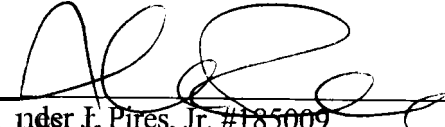
(2) An Order declaring, pursuant to 28 U.S.C. § 2201, that plaintiffs and the Class members were denied equal credit and other farm program benefits and full and timely enforcement of their civil rights discrimination complaints.

(3) An Order declaring defendant's actions to be a breach of plaintiffs' and Class members' rights under the Equal Credit Opportunity Act and the Administrative Procedure Act and declaring plaintiffs and the Class members eligible to receive monetary and other relief of not less than \$20,000,000,000.

(4) 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,

February 8, 2001

By: 

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CHESTNUT, SANDERS, SANDERS, PETTAWAY, CAMPBELL & ALBRIGHT, P.C.


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Amended Class Action Complaint was hand delivered, this 8th day of February, 2001 to Jean Lin, United States Department of Justice, Civil Division, 901 E Street, N.W., Room 866, Washington, D.C. 20530.


Alexander J. Pires, Jr.

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--ALSO ADMITTED IN NY
**NOT ADMITTED IN DC

DAVID J. FRANTZ*
BRIAN P. PHELAN+
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June 18, 2001

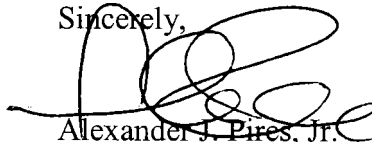
Raj Nayak
Clearinghouse Review
National Center on Poverty Law
205 W. Monroe, 2d Floor
Chicago, IL 60606

Dear Raj :

Enclosed are the most recent amended complaints in:

1. Keepseagle v. Veneman; and
2. Garcia v. Veneman.

Sincerely,



Alexander J. Pires, Jr.

Enclosures