IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID CANTU
502 West 9th Street
San Juan, TX 78589

and

GUADALUPE GARCIA
9303 North Dona Ana Rd
Las Cruces, NM 88007

and

NOE OBREGÓN
1501 Haynes Avenue
Pearsall, TX 78061

and

RUPERTO & MODESTO RODRIGUEZ
DBA Rodriguez Brothers, Inc.
11618 Pompano Lane
Houston, TX 77072

and

MODESTA SALAZAR
717 E. San Antonio Street
Pearsall, TX 78061

For Themselves and On Behalf of All Other Similarly Situated Persons

Plaintiffs,

v.

THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF JUSTICE, THE UNITED STATES DEPARTMENT OF AGRICULTURE, ERIC HOLDER in his official and individual capacities, and TOM VILSACK, his official and individual capacities

Defendants.

NO. ______________

CLASS ACTION COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

1. Plaintiffs David Cantu, Guadalupe Garcia, Noe Obregón, Modesto Rodriguez, Ruperto Rodriguez, and Modesta Salazar, on behalf of themselves and other similarly situated persons (hereinafter "Plaintiffs"), through counsel, file the instant Complaint against Defendants to secure redress from Defendants' unconstitutional treatment in the proposed settlement of discrimination claims by these Hispanic Plaintiffs, on the one hand, as compared to the manner in which Defendants have settled identical discrimination claims by similarly situated African-American and Native American claimants, on the other hand, all of whom were undeniably discriminated against in like manner by the United States Department of Agriculture ("USDA") in the administration of its farm credit and non-credit farm benefit programs (collectively "farm benefit programs"), in violation of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691 *et seq*., and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq*., respectively. In furtherance hereof, Plaintiffs complain and allege the following:

I. <u>OVERVIEW</u>

2. African-American, Native American, Hispanic and female farmers filed four virtually identical class action lawsuits alleging that the USDA routinely discriminated in its farm benefit programs on the basis of race, ethnicity or gender, and failed to investigate the claims of farmers who filed discrimination complaints with the agency at its behest. *See* Defendant's Response To Plaintiffs' Petition for Permission to Take An Interlocutory Appeal Under Fed. R. Civ. P. 23(f), D.C. Cir. Dkt. No. 04-8008 at 2-4 (October 2004) (Exhibit 1). Those lawsuits were filed after the USDA, in 1997, acknowledged and admitted that it discriminates against minority farmers and/or ranchers

(hereinafter collectively "farmers") in the administration of its farm benefit programs, and that "minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by [the USDA]." A true and correct copy of excerpts of the Report containing this acknowledgment are attached hereto as Exhibit 2 (the quote is on page 30 of the Report).

3. Despite the publicly acknowledged like pattern and practice of discrimination, Defendants have not been fair and even handed in settling the claims of minority farmers, all of whom USDA similarly victimized, but have intentionally proceeded unfairly, unequally, and disproportionately, favoring African-American and Native American farmers in the settlement of their claims while disfavoring similarly situated Hispanic and female farmers in the terms and amounts offered to settle their identical claims.

4. More particularly, even though plaintiffs in all four identical class actions alleged the same substantive discrimination, even though the USDA admittedly committed the same unlawful discriminatory practices against the plaintiffs in all four cases, and even though Congress and the Obama Administration have both called for expeditiously and fairly settling all of these cases, Defendants have refused to offer the Hispanic and female farmers settlement terms that provide them with a meaningful chance at comprehensive settlement of their discrimination claims while agreeing to settle comprehensively the very same discrimination claims of African-American and Native American farmers without imposing on them the same onerous conditions.

5. To date, the government has paid African-American farmers approximately $1 billion in settlement benefits, and, in furtherance of a commitment by

President Obama in May 2009 to settle all remaining African-American farmer claims, Congress passed and on December 8, 2010, President Obama signed legislation to provide an additional $1.25 billion to cover the claims of African-American farmers who missed the filing deadline for participation in the original settlement with African-American farmers. On October 19, 2010, the government reached a settlement with Native American farmers in the amount of $680 million in compensation plus $80 million in debt forgiveness benefits, resolving their claims on terms similar to the settlement terms granted to African-American farmers.

6. A key substantive component of all of the settlements involving African-American and Native American farmers is the right of those farmers to pursue their damage claims in a low-cost, streamlined two-track dispute resolution process. Another key favorable component of the settlements offered to African-American and Native American farmers is that notice to the victims of their right to participate in the settlements – a critical component of any fair settlement – is subject to independent judicial review and oversight..

7. In contrast, the government initially announced a "program" to settle discrimination claims of Hispanic and female farmers on a class-wide basis that inexplicably provided for monetary payments far less than those offered to similarly situated African-American and Native American farmers, and intentionally imposed far more burdensome procedural requirements designed to limit severely, and in many instances effectively to deprive, Hispanic and female claimants' recovery opportunities. Moreover, there was and is no independent monitoring of the announced settlement process for Hispanic and female farmers, but, instead, it was and is to be administered

and monitored by contractors hired by USDA, the very perpetrator of the discrimination that Hispanic farmers seek to remedy.

8. More particularly, while Hispanic and female farmers outnumber African-American farmers by at least 12 to 1 and as much as 27 to 1, according to the 2007 Census of Agriculture, the most recent census and the government had paid or committed to pay to African-American farmers $2.25 billion, it proposed to provide only $1.33 billion to settle the combined claims of Hispanic and female farmers. Additionally, while the government provides an inexpensive two-track dispute resolution system for African-American and Native American farmers, it proposed a much less favorable two-tier dispute resolution system for Hispanic and female farmers.

9. Specifically, the government provided an inexpensive two-track dispute resolution system for African-American farmers who timely filed their claims that permitted them to recover under Track A, subject to a substantial evidence burden of proof, $50,000, and under Track B, subject to a preponderance of the evidence burden of proof, such damages as the farmers were able to prove, without limitation. With respect to the African-American farmers who allegedly missed the filing deadline to participate in the initial settlement, the government also provided them an inexpensive two-track dispute resolution process that permits them to recover under Track A, subject to a substantial evidence burden of proof, up to $50,000, and under Track B, subject to a preponderance of the evidence burden of proof, up to $250,000. The government limited the Track A and Track B awards for the African-American farmers who missed the deadline to participate in the original uncapped damage awards, because Congress, in reviving their rights to recover damages, set a limit of $1.25 billion to cover their

damages and any costs associated with processing their claims. Similarly, in its settlement with Native American farmers, the government provided a low-cost, two-track dispute resolution process that is essentially identical to the process provided to the late-filer African-American farmers, providing Native American farmers up to $50,000 and $250,000 under Track A and Track B respectively. For Hispanic and female farmers, however, the government initially proposed a single-track dispute resolution process in which claimants could recover up to $50,000. Subsequently, after approximately eight months during which it refused to negotiate with Hispanic farmers, the government revised its program to provide a two-tier dispute resolution process in which Hispanic and female claimants would be subject to a substantial evidence burden and a preponderance of the evidence of proof but, unlike the settlements offered to African-American and Native American farmers, both tiers would be capped at $50,000. The government later revised the program to provide that both tiers would be subject to a substantial evidence burden of proof but again both tiers would be capped at $50,000.

10. There is no reasoned basis for USDA to offer substantially fewer benefits through a more burdensome settlement structure to Hispanic and female farmers than the settlement relief provided to similarly situated African-American and Native Americans, when USDA undeniably subjected all of them to the same substantive systemic discrimination.

11. Plaintiffs are Hispanic farmers who were subjected to, and continue to be subjected to, USDA discrimination in its farm benefit programs operated by its former agency, the Farm Home Administration ("FmHA"), and the FmHA's successor, the Farm Service Administration ("FSA"), in violation of the ECOA, and the APA, and who were

further injured due to USDA's failure to process and investigate their discrimination complaints which had been filed by the Hispanic farmers with USDA at the agency's behest.

12. The USDA continues its pattern and practice of discriminating against Hispanic farmers by refusing, because of their Hispanic origins, to settle comprehensively the Hispanic farmers' discrimination claims on terms and in amounts materially similar to its agreed settlements of substantively identical claims brought by similarly situated African-American and Native American farmers.

13. When the federal government provides substantial benefits to members of one racial group to redress discrimination, while it knowingly refuses similar benefits to similarly situated members of another racial group who undeniably suffered the same discrimination by the government, the government's racial favoritism of certain minority farmers over other minority famers being intentionally disfavored in the administration of justice denies those deprived equal protection of the laws in violation of the Fifth Amendment of the United States Constitution.

14. The Constitution further forbids the government from intentionally affording a process for the recovery of settlement benefits that favors members of one racial group, while it denies a similar process to members of another racial group (and, indeed, imposes a noticeably different and far more burdensome process on the latter), where the government has undeniably discriminated against all members of the differently treated groups in the same manner and to the same extent and inflicted similar injury on the minority farmers in each group. Governmental officials have taken an oath to take care that the laws be faithfully executed and administered even handedly. When

they engage in settlement negotiations calculated to saddle members of one racial group of similarly situated claimants with a recovery process that unduly burdens that group's members, while knowingly providing a far more favorable process to members of a different racial group in settlement of the same discrimination claims, the government uses race to deprive certain minority members the due process that it has elected to afford members of different minority groups in violation of the Fifth Amendment of the United States Constitution.

II. JURISDICTION

15. As this case is brought under the Fifth Amendment of the United States Constitution, jurisdiction is founded upon 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, and 28 U.S.C. § 2202.

III. VENUE

16. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e).

IV. PARTIES

17. Plaintiffs are Hispanic farmers who are United States citizens. They are all victims of USDA's discriminatory practices and have sustained serious damages as a result.

18. Plaintiff and proposed Class representative David Cantu, for example, is a graduate from the University of Texas Pan American with a degree in biology who has 25 years of experience farming and ranching. In approximately 1983 and 1985 he attempted to submit a disaster relief assistance loan. The FmHA agents refused to accept or process the loan application because they claimed that the USDA would not be able to

disburse any funds for at least two years. In approximately 1992 the USDA advertised a young farmer's loan package to encourage younger farmers to continue farming. Mr. Cantu attempted to submit an application, but the FmHA informed him that he would not be permitted to apply because they were certain that he would be unable to make the loan repayments. Whenever he attempted to apply for a loan, the FmHA/FSA officers always discouraged him if not entirely prevented him from applying for the loan. Mr. Cantu eyewitnessed the discriminatory treatment of fellow Hispanic farmers when he visited the Hidalgo FmHA/FSA office and complained verbally about this treatment.

19. Plaintiff and proposed Class representative Guadalupe Garcia has been farming since he was eight years old and has a Bachelors Degree of Science and Masters Degrees in Agronomy and Plant Physiology. He has been denied loan servicing and restructuring by the FmHA on several occasions, and the FmHA still refused to grant him services even after the denial was overturned on appeal. Because of the FmHA's delays and denials, Mr. Garcia lost his farm to foreclosure and sustained severe economic losses. In the 1980s, 1990s and in the year 2000, he filed several complaints to USDA protesting discriminatory treatment. He never received any response from USDA.

20. Plaintiff and proposed class representative Noe Obregón has devoted approximately 22 years of his life to farming. On seven different occasions from 1982-91, he applied for operating loans from FmHA in Pearsall, Texas. The FmHA denied the majority of the applications that he submitted offering him a series of what appeared to be unfounded excuses. On the rare occasion that his loan application was approved, it typically arrived over six months late and was for significantly less than the amount he requested. Mr. Obregón complained to the Pearsall office both orally and in writing on

numerous occasions about the discriminatory treatment that he received. He feels that the USDA office did not want to help him succeed in his farming operation solely because he is Hispanic.

21. Plaintiffs and proposed class representatives Modesta Salazar and her brothers Modesto and Ruperto Rodriguez are each shareholders of Rodriguez Brothers, Inc. ("RBI"), a family-owned farm of 523 acres located outside of Pearsall, Texas. The Rodriguez family has owned the farm since 1952. From 1982 to 1997, Modesto Rodriguez was the principal operator of the farm. RBI borrowed funds from the FmHA office in Frio County, Texas. Many, if not most, of the loans made to RBI were required to be placed in supervised bank accounts despite the Rodriguez family's many years of farming experience. In 1989, RBI submitted a written complaint alleging that FmHA and its Frio County supervisor discriminated against RBI by, among other things, requiring RBI to place its funds in supervised bank accounts and refusing to release the funds to permit RBI to feed its livestock during a drought. USDA also improperly denied RBI loan servicing and despite a ruling in RBI's favor when it appealed the loan servicing denial, USDA has refused to this day to provide the required loan servicing.

22. The discriminatory treatment experienced by the above-named Plaintiffs is representative of, and substantively no different from, the discriminatory handling of applications to participate in farm benefit programs filed by countless other Hispanic farmers, all of whom are members of the purported class of unnamed Plaintiffs here. All Plaintiffs are currently seeking redress for their injuries in a lawsuit currently pending in the United States District Court for the District of Columbia, described in more detail

later in this Complaint, or are members of the putative class whose claims are sought to be redressed by that lawsuit.

23. Defendant the United States of America acts by and through its departments, agencies, and officials.

24. Defendant United States Department of Justice ("DOJ") is a cabinet department in the United States government charged with enforcing the law and ensuring fair and impartial administration of justice for all Americans. The United States Attorney General administers the DOJ.

25. Defendant USDA is a United States cabinet department responsible for developing and executing federal policy on farming, agriculture, and food. It aims to meet the needs of farmers and ranchers, promote agricultural trade and production, work to assure food safety, protect natural resources, foster rural communities, and end hunger in the United States and abroad.

26. Defendant Eric Holder is the United States Attorney General. He was confirmed as Attorney General on February 2, 2009. Upon entering office, he took an oath to support the Constitution of the United States against all enemies, foreign and domestic, and to bear true faith and allegiance to the same. He purported to take the oath freely, without any mental reservation or purpose of evasion; and promised to faithfully discharge the duties his office. Upon information and belief, he is a resident of the District of Columbia, and his principal place of business is the District of Columbia. The Attorney General has plenary authority to settle lawsuits filed against the United States. *See* 28 U.S.C. § 2414. Mr. Holder was personally involved in and responsible for the settlement of two of the four similar class action litigations brought by the African-

American and Native American farmers, captioned *Pigford v. Glickman,* Nos. 97-1978 & 98-1693 (D.D.C.), and *Keepseagle v. Glickman* No. 99-3119 (D.D.C.) respectively, which two class actions claimed the same racially discriminatory treatment in the USDA's administration of its farm benefits programs as claimed in the class action litigation brought by the Hispanic farmers, captioned *Garcia v. Glickman*, No. 00-02445 (D.D.C.) and the class action litigation brought by the female farmers, captioned *Love v. Glickman,* No. 00-2502 (D.D.C.). He is being sued in his official and individual capacities.

27. Defendant Tom Vilsack is the USDA Secretary. He was confirmed as USDA Secretary on January 20, 2009. Upon entering office, he took an oath to support the Constitution of the United States against all enemies, foreign and domestic, and to bear true faith and allegiance to the same. He purported to take the oath freely, without any mental reservation or purpose of evasion; and promised to faithfully discharge the duties his office. Upon information and belief, he is a resident of Iowa and the District of Columbia, and his principal place of business is the District of Columbia. As USDA Secretary, Mr. Vilsack, upon information and belief, plays a substantial role in connection with the negotiation and approval of settlements involving claims made against the USDA and the United States. He also has the authority to settle specified claims made against the USDA. He is being sued in his official and individual capacities.

V. RAMPANT DISCRIMINATION AT THE USDA

28. Farming is an arduous living. Small farmers operate at the whim and mercy of conditions completely beyond their control; weather conditions and fluctuating crop market prices to a large extent determine whether farmers will make a profit, barely

break even or lose money. As a result, many farmers depend heavily on the USDA's farm benefit programs to survive from one year to the next.

29. For instance, if an early freeze kills three-quarters of a farmer's crop one year, he may not have sufficient resources to buy seeds to plant the following season. Or if a farmer needs to modernize his operations and buy a new harvester in order to make his operations profitable, he often cannot afford to buy equipment without credit. Because of the seasonal nature of farming, USDA must quickly process farm benefit applications or the farmer may lose all or most of his anticipated income for an entire year. It does a farmer no good to receive a loan to buy seeds after the planting season has passed.

30. The USDA's credit and benefit programs are federally funded programs, but the decisions to approve or deny applications for credit or benefits are made locally at the county level pursuant to highly subjective, national regulations. In virtually all farming communities, local farmers and ranchers elect three-to-five member county committees. Historically, the county committee was responsible for determining a farmer's eligibility for farm credit and non-credit farm benefits, as well as for appointing a county executive who is supposed to provide farmers with help in completing their credit and benefit applications.

31. In the late 1990s, the USDA purported to reform the role of the county committees in the credit process by supposedly ending the committees' role in determining eligibility for farm credit, although the committee continues to perform its other responsibilities. According to the notice announcing the reform, the USDA stated that the county committee, while no longer determining the farmer's eligibility for credit,

would still play a vital role in the process by providing unspecified "important information about the applicant." A true copy of the Announcement is attached as Exhibit 3. Thus, the supposed reform left the committees completely untethered to any ostensible criteria or standards.

32. The county committees do not represent the racial diversity of the communities they serve. Minority and female farmers, who have long been victims of discrimination in the administration of farm benefit programs, are grossly under represented on the white-male-dominated committees. The government and top officials at USDA have long been on notice of the discrimination against minority and female farmers in USDA's farm benefit programs.

33. Any farmer who believes that his application to participate in those programs has been denied on the basis of race or for other discriminatory reasons theoretically has had the option of filing a civil rights complaint depending on the time period between 1981 and the present with various offices of USDA, including the Office of the Secretary of Agriculture, or the Office of Civil Rights Enforcement and Adjudication ("OCREA"), or the USDA Office of Civil Rights ("OCR"). USDA regulations set forth a detailed process by which these complaints were and are to be investigated and conciliated, and ultimately a farmer who is unhappy with the outcome is entitled to sue in federal court under the ECOA for discrimination in the credit programs, or the APA for discrimination in the non-credit farm benefit programs.

34. USDA also has codified regulations, 7 C.F.R. Part 15 - "Nondiscrimination," which state USDA's policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of

1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs; however, USDA admitted that the regulations have long been outdated and never accurately reflected the programs and laws of the Department's agencies.

35. Sometime in 1983, USDA secretly dismantled its civil rights enforcement capability and consequently complaints of discrimination that were filed were never processed, investigated or forwarded to the appropriate agencies for conciliation. This development was not publicized, so minority farmers (including Plaintiffs) continued in good faith to file discrimination complaints not knowing that the investigative staffs had been disbanded and that their complaints were ignored.

36. USDA willfully failed to investigate complaints of discrimination in its farm benefit programs filed by Hispanic farmers and continues to fail to investigate such complaints of discrimination (including those of Plaintiffs) to this day. As a result, farmers who filed complaints of discrimination never received a response, or if they did receive a response, it was a cursory denial of relief. In some cases, OCREA staff simply threw discrimination complaints in the trash without ever responding to or investigating them. In other cases, even if there was a finding of discrimination, the farmer never received any relief.

37. Without redress, the discrimination against Hispanic farmers has continued unabated. Loans that are routinely given to white farmers are just as routinely either denied or unduly delayed to Hispanic farmers. Those who manage to stay in farming often are subject to humiliation and degradation at the hands of the county

committees; and many are forced to stand by powerless as white farmers received preferential treatment.

38. USDA's blatant disregard of the requirements of ECOA and the APA—particularly the effective dismantling of its civil rights enforcement capability—prompted Congress to enact special legislation in 1998 (Section 741 of the Omnibus Consolidated Appropriation's Act for Fiscal Year 1999) which waived, *inter alia,* the statutes of limitations applicable to claims regarding farm credit and non-credit benefits arising between January 1, 1981 and December 31, 1996.

39. By the mid-1990s, when the USDA finally acknowledged its system for handling discrimination complaints was in shambles, untold numbers of complaints from minority farmers were backlogged, discarded and unresolved. The USDA had and still has thousands of discrimination complaints that have never been investigated.

VI. THE USDA ACKNOWLEDGES ITS DISCRIMINATORY PRACTICES

40. In December 1996, then-Secretary Dan Glickman appointed a Civil Rights Action Team ("CRAT") to "take a hard look at the issues and make strong recommendations for change." In February 1997, CRAT concluded that "minority farmers have lost significant amounts of land and potential farm income as a result of discrimination by FSA [Farm Services Agency] programs and the programs of its predecessor agencies, ASCS [Agricultural Stabilization and Conservation Service] and FmHA [Farmers Home Administration]. . . . The process for resolving complaints has failed. Minority and limited-resource customers believe USDA has not acted in good faith on the complaints. Appeals are too often delayed and for too long. Favorable decisions are too often reversed." *See* Exhibit 2 at 30-31.

41. Also in February 1997, the USDA's Office of the Inspector General ("OIG") issued a report to then-Secretary Glickman stating that the USDA had a backlog of complaints of discrimination that had never been processed, investigated or resolved. The report found that immediate action was needed to clear the backlog of complaints, that the "program discrimination complaint process at [the Farm Services Agency] lacks integrity, direction, and accountability," and that staffing problems, obsolete procedures, and "little guidance from management" have resulted in a "climate of disorder" within the civil rights staff at FSA." Report of the Office of Inspector General to Secretary Glickman at 5 (Feb. 27, 1997). (A true and correct copy of this report is attached hereto at Exhibit 4.)

42. The February 1997 OIG Report addressed complaints of discrimination within FSA as well as 10 other USDA agencies. OIG found, *inter alia*, that the FSA's discrimination complaint process lacked integrity and accountability, had no effective tracking system, had no process for reconciliation, was in disorder, failed to resolve discrimination complaints, and had a massive backlog. *See id.* at 6. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people. *See id.* Hundreds of unresolved complaints were over a decade old. OIG found no management oversight within FSA for handling civil rights complaints. *See id.* at 9.

43. At the same time that OIG released its report, the USDA CRAT Report was released, condemning USDA's lack of civil rights enforcement and accountability as a cause of the drastic decline in the number of minority farmers. In the CRAT Report,

the USDA described the pattern and practice of disparate treatment experienced by minority and limited resource farmers applying to USDA 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.

See Exhibit 2 at 15.

44. USDA admitted in the CRAT Report that it often ignored discrimination complaints, and that

(a) a lack of diversity in FSA county offices combined with a lack of outreach to small and limited-resource farmers to directly and adversely affects that participation of Hispanics and other minorities in USDA programs, as well as program delivery to minorities and female;

(b) farmers reported that even when there was a finding of discrimination, USDA refused to pay damages;

(c) its record keeping on discrimination complaints was "nonexistent," that a backlog existed, and that the largest number of complaints against a single USDA sub-agency was against FSA.

See id. at 18-20, 22-23, 24-25.

45. In sum, USDA admitted that it 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.

See id. at 56.

46. In testimony before Congress in 1997, then-Secretary Glickman candidly admitted that the USDA has "a long history of . . . discrimination," and that "[g]ood people . . . lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin." A true and correct copy of the relevant portion of Secretary Glickman's testimony is attached hereto at Exhibit 5 (the quote is on page 94).

47. Even when the OCR ostensibly began to process complaints in the late 1990s, it became clear that the process remained fatally flawed and the results mirrored those when USDA entirely ignored such complaints. Former OCR Director Lloyd Wright described his efforts in the late 1990s to address the backlog of complaints as follows:

> [o]f . . . 350 processes complaints, there were initially only two potential findings of discrimination. Originally, I started to sign some of the decisions because superficially the reports appeared to support the "no finding of discrimination" decisions. However, after thoroughly examin[ing] the reports, I began to notice a pattern.
>
> The team reviewers based their "no finding on discrimination" decisions largely on the accused agency's initial preliminary inquiry. *The problem was that 99 percent of the time, the agency accused of discrimination investigated itself and invariably found no discrimination had occurred. These preliminary reports were self-serving. Based on my instructions, the team reviewers should have found that the files were incomplete since the only review of the complaint came from the accused agency.* The file should have also contained an independent investigation by OCR. Because the files did not contain independent investigation reports prepared by OCR, I refused to sign the no finding decisions.

A true copy of Mr. Wright's declaration is attached as Exhibit 6 (the quote is at 1, ¶¶ 7-8 with italics added). The files contained no such independent reports because USDA had dismantled its civil rights investigatory capability.

48. In 2002, Rosalind Gray, a former director of USDA's Office of Civil Rights, testified that

> [b]ased upon my first-hand knowledge, I can attest that many complaints were destroyed or not accepted at all. After FSA complaint processing was transferred to the OCR, the FSA was initially responsible for preparing a preliminary investigatory report. . . . In preparing the preliminary report, FSA would send its non-civil rights investigators to interview and often intimidate the complainant.
>
> . . .
>
> After all the investigations and findings of discrimination, after all the findings that FSA was not in compliance with civil rights regulations, after the millions paid by FSA in settlement of administrative complaints and *after the many more millions in debt that FSA has forgiven, there still has not been any change in the way programs are administered. There were many recommendations for change. Yet, systematic exclusion of minority farmers remains the standard operating procedure for FSA.*

A true and correct copy of the relevant portion of Ms. Gray's testimony is attached hereto at Exhibit 7 (the quotes are at 5, ¶ 20, 7 ¶ 28) (emphasis added).

49. Reflecting on her tenure as OCR Director, Ms. Gray further testified:

> Civil rights procedures were developed and published, but were not and are not followed. OCR dismissed hundreds of cases because they were not filed within 180 days of the "occurrence of the alleged discrimination." Yet many complainants did not receive a letter of acknowledgment after filing their complaint for more than a year and it frequently required another year for the complaint to be investigated and still another year before a proposed finding in the case was rendered. Consequently, there have been countless farmers who have lost their land or died waiting for USDA to process their complaints.

See id. at 8 ¶ 31.

50. Ms. Gray and Mr. Wright were not alone in their assessment of USDA's shameful handling of discrimination complaints even after the dismantling of its civil rights investigatory capability had come to light and lawsuits were filed. In two internal reports, USDA openly acknowledged its continued failure to account for and to investigate discrimination complaints. Indeed, the CRAT Report concluded that "[t]he process for resolving program complaints has failed." *See* Exhibit 2 at 31.

51. Notwithstanding the reported wrongdoing of USDA officials and notwithstanding the fact that, in connection with the first settlement of the African American farmers' lawsuit, more than 15,000 findings of discrimination were made resulting in the payment of $1 billion in settlement benefits, no official was ever fired or even reprimanded for improper racial discrimination in executing his or her duties. To the contrary, many officials who wrongfully denied USDA loans or services on the basis of race are still employed by the USDA today. Indeed, on information and belief, the only USDA official or employee in the entire history of the department ever to be fired for alleged discrimination was Shirley Sherrod, who, in July 2010, was wrongfully forced to resign by Defendant Vilsack, prior to the airing of the Glen Beck television show, following false allegations that Ms. Sherrod, an African-American, had discriminated against a white farmer.

52. USDA continues to refuse to investigate Hispanic farmers' complaints in disregard for the regulations prescribing the procedures for processing and investigating discrimination complaints. According to the undisputed declaration of a former OCR Equal Employment Opportunity Specialist, he and his colleagues were repeatedly told not

to investigate Hispanic farmers' discrimination complaints. A true and correct copy of this declaration is attached hereto at Exhibit 8.

VII. CLASS ACTIONS ARE FILED

53. The first of four virtually identical class actions seeking redress for the USDA's discrimination, styled *Pigford v. Glickman*, was filed in the United States District Court for the District of Columbia on August 28, 1997, by three African-American farmers.

54. The *Pigford* plaintiffs claimed that USDA had discriminated against African-American farmers for decades, denying their applications, delaying the processing of their applications, or approving them for insufficient amounts or with restrictive conditions. The *Pigford* plaintiffs alleged that USDA had secretly dismantled its capacity to investigate discrimination complaints and consequently never processed or investigated complaints filed with it by African-American farmers. The *Pigford* plaintiffs alleged that, as a result, African-American farmers who filed complaints of discrimination never received a response, or if they did receive a response, it was a cursory denial of relief. The *Pigford* plaintiffs alleged that in some cases, USDA simply threw discrimination complaints in the trash without ever responding to or investigating them. On October 9, 1998, the trial court initially certified the case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, based upon USDA's well-documented and admitted refusal to investigate discrimination complaints filed with it by African American farmers. Thereafter, on April 14, 1999, the trial court again certified the case as a class action, this time pursuant to Rule 23(b)(3).

55. On November 24, 1999, Native American farmers brought a virtually identical suit against the USDA in the United States District Court for the District of Columbia, styled *Keepseagle v. Glickman,* echoing the allegations set forth in the *Pigford* complaint described in paragraph 52 *supra*. On September 28, 2001, the trial court certified the case as a class action, based upon USDA's well-documented and admitted refusal to investigate discrimination complaints filed with it by Native American farmers.

56. On October 13, 2000, Hispanic farmers filed a third virtually identical class action suit in the United States District Court for the District of Columbia, styled *Garcia v. Glickman,* alleging that the USDA, just as it did with African-American and Native American farmers, discriminated against Hispanic farmers by also denying them access to USDA's farm credit and non-credit farm benefit programs in violation of the ECOA and the APA, and that USDA refused, and still refuses, to investigate their complaints of discrimination in those programs. Unlike the two judges in the African-American and Native American farmers' cases, the judge in the Hispanic farmers' case, who also presided over the female farmers' case, refused to certify the case as a class action on the basis of USDA's well-documented and admitted refusal to investigate complaints of discrimination filed with it by Hispanic farmers.

57. Finally, on October 19, 2000, female farmers filed a fourth virtually identical class action suit in the United States District Court for the District of Columbia, styled *Love v. Glickman,* alleging the same substantive claims as did the African-American, Native American, and Hispanic farmers. The same judge, who presided over the Hispanic farmers' lawsuit, refused to certify the case as class action on the basis of

USDA's well-documented and admitted refusal to investigate discrimination complaints filed with it by female farmers.

58. According to the 2007 Census of Agriculture, the most recent, there are 30,599 farms which have blacks as their principal operators nationwide and 34,706 farms which have Native Americans as their principal operators nationwide. The same census places the number of farms nationwide with Hispanic principal operators at 55,570, and 306,209 farms nationwide with female principal operators. The same census lists under the category of "all operators" 39,697 African-Americans, 55,889 Native Americans, 82,462 Hispanics and 985,182 female. Thus, according to the Census of Agriculture, Hispanics and female farmers outnumber African-American farmers from 12 to 1 to 27 to 1. (USDA census data are set forth in Exhibit 9.)

VIII. THE PIGFORD SETTLEMENT

59. In contrast to its treatment of the suits brought by the Hispanic and female farmers, which have now been pending for ten years, the government agreed to settle the African-American farmers' case within approximately two years after the filing of the case. *See generally Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (approving consent decree).

60. The consent decree ("*Pigford I*") established a two-track dispute resolution system. Under Track A, African-American farmers who satisfied a specified burden of proof would be paid what the Court characterized as a "virtually automatic" $50,000, plus granted certain loan forgiveness and the government would pay the taxes due on the damage award. To satisfy the burden of proof, they had to show that they had applied to the USDA for farm credit or benefits, had made a complaint of discrimination

before 1997, and that the USDA had treated them less favorably than the USDA had treated similarly situated white farmers. Alternatively, African-American farmers could follow a "Track B" process for damage claims greater than $50,000 and, by satisfying a higher burden of proof, recover unlimited damages. In addition, farmers who were the victims of discrimination in USDA's non-credit farm benefit programs could recover liquidated damages of $3,000 for such discrimination. As of June 2010, approximately $1 billion had been disbursed to approximately 15,000 African-American farmers.

61. Under the *Pigford I* consent decree, the government forgave all outstanding loans that were determined to be affected by discrimination proven by successful claimants. Because there was no limit on the total damages, any such debt relief did not reduce the amount payable to claimants for damages. The government paid damages and debt relief out of the federal Judgment Fund, a pool of money administered by DOJ to cover damage claims against the federal government.

IX. THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008

62. On May 22 and June 18, 2008, Congress enacted two statutes, together known as the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 923; Pub. L. 110-246, 122 Stat. 1651 ("2008 Farm Bill"). Section 14011 of the 2008 Farm Bill urged the USDA to settle pending discrimination lawsuits "in a just and expeditious manner." Specifically, Section 14011 reads:

> **SENSE OF CONGRESS RELATING TO CLAIMS BROUGHT BY SOCIALLY DISADVANTAGED FARMERS OR RANCHERS**
>
> It is the sense of Congress that all *pending claims and class actions brought against the Department of Agriculture* by socially disadvantaged farmers or ranchers . . . including Native American, *Hispanic*, and female farmers or ranchers based on racial, ethnic, or gender discrimination in farm program participation *should be resolved in an expeditious and just manner*.

Id. (emphasis added).

63. Consistent with Section 14011, Secretary Vilsack, during his confirmation and on multiple subsequent occasions, stated that the administration recognized that all of these cases should be settled. A true and correct copy of the relevant portions of Secretary Vilsack's confirmation testimony is attached at Exhibit 10.

64. Specifically, Secretary Vilsack noted that "the time has come for this department to be the department of and for and by all the people by working hard to resolve the outstanding civil rights claims in program and employment practices." *See id.* at 2. He further stated "If I'm confirmed, the message will be clear: discrimination in any form will not be tolerated[.]" *See id.*

65. In addition, Section 14012 of the 2008 Farm Bill provided relief to the African-American farmers who unsuccessfully sought entry to the initial *Pigford* settlement under paragraph 5(g) of the *Pigford* Consent Decree, which permitted late filings only in the event of extraordinary circumstances beyond the farmer's control. Specifically, Section 14012(b) provided that "[a]ny *Pigford* claimant who has not previously obtained a determination on the merits of a *Pigford* claim may, in a civil action brought in the United States District Court for the District of Columbia, obtain that determination." Section 14012(a)(4) defined "*Pigford* claimant" to mean "an individual who previously submitted a late-filing request under [paragraph] 5(g) of the [*Pigford* Consent Decree]." Pursuant to Section 14012 of the 2008 Farm Bill, as of January 1, 2010, over 28,000 plaintiffs had filed individual claims in 17 complaints in the United States District Court for the District of Columbia. These cases collectively became known as *Pigford I*. To date, no class has been certified in any of the 17 cases.

X. THE GOVERNMENT INCREASES SETTLEMENT BENEFITS FOR AFRICAN AMERICAN FARMERS

66. After President Obama took office, the federal government, while still declining to enter into any settlement with Hispanic, Native American or female farmers, chose to re-examine the benefits provided by Section 14012 of the 2008 Farm Bill to the African-American farmers who missed the filing deadline to participate in the original *Pigford* settlement. On May 6, 2009, the Obama Administration and Defendant Vilsack announced that the government would provide an additional $1.25 billion dollars to cover the claims to the late-filed African-American farmers for past discriminatory treatment. This funding was to be a mandatory spending provision to be included in the 2010 Budget to compensate African-American farmers who missed the filing deadlines of the original *Pigford I* settlement.

67. In a statement, President Obama said the proposed settlement funds would "close this chapter" in the agency's history and allow it to move on. The President further stated that his "hope is that the farmers and their families who were denied access to USDA loans and programs will be made whole and will have the chance to rebuild their lives and their businesses." A true and correct copy of President Obama's remarks is attached at Exhibit 11.

68. Defendant Vilsack, in turn, issued a statement that he was "very pleased that President Obama is taking swift action on this matter as it is something that will help us chart a new course at USDA, one on which all USDA customers and employees are treated equally and fairly." *See id.*

69. As a result of the proposed appropriations of $1.25 billion, approximately $2.25 billion have either been paid to or allocated to settle the claims of African-

American farmers and "close the chapter" of discrimination against African-American farmers.

70. Because the congressional appropriation to fund the *Pigford II* settlement is capped at $1.25 billion, the settlement limits amounts paid under Track A and Track B to up to $50,000 and $250,000, respectively. Moreover, amounts paid to USDA for debt relief reduce the amount available to pay damages to victims in compensation for the discrimination they suffered. Furthermore, if the amount of money allocated to pay debt relief is insufficient to relieve individual farmers of the total outstanding balance on his or her affected loan, any unpaid balance remains a debt of the farmer and continues to accrue interest.

XI. THE KEEPSEAGLE SETTLEMENT

71. On October 19, 2010, the government reached a settlement with the Native American farmers. The announced settlement includes approximately $680 million in damages and $80 million in debt forgiveness to Native American farmers who sustained the same systematic discrimination as did the Hispanic farmers. The combined amount of $760 million equaled the amount of damages claimed by the Native American farmers in the report submitted by their damages expert. In addition, the government, as it had for African-American farmers, provided Native American farmers with a low-cost, two-track dispute resolution process to recover claims greater than $50,000.

72. The same day, President Obama said in a statement that he "applaud[s] Secretary Vilsack and Attorney General Holder for their hard work to reach this settlement – a settlement that helps strengthen the nation to nation relationship and underscores the federal government's commitment to treat all citizens fairly." The

President further stated that his Administration continues to work towards a resolution of the claims made by female and Hispanic farmers against the USDA." A copy of the President's October 19, 2010 statement is attached at Exhibit 12.

XII. THE HISPANIC FARMERS' CONTINUED ATTEMPTS AT SETTLEMENT

73. Defendants Holder and Vilsack and other government officials continue to discriminate against Hispanic farmers in the administration of justice, refusing to provide for Hispanic farmers settlement procedures and substantive provisions enabling them to secure the same process as Defendants have provided to African-American and Native American farmers, despite the fact that Hispanic, female, African-American and Native American farmers all suffered identical discrimination by USDA and all filed virtually identical complaints. In fact, Defendants Holder and Vilsack and other government officials have persistently refused to provide equal benefit opportunities to rectify past discrimination for the Hispanic farmers, or even engage in good faith settlement negotiations with the Hispanic farmers.

XIII. THE GOVERNMENT DISCRIMINATORILY DENIES HISPANIC FARMERS COMPARABLE SETTLEMENT BENEFITS

74. Instead, on May 25, 2010, Defendants announced that they would establish a "program" ostensibly aimed at settling the claims of Hispanic and female farmers. Despite efforts by counsel for the Hispanic farmers to secure a settlement on terms similar to and as favorable as those offered by the government to the African-American and Native American farmers, the announced "program" did not remotely reflect the negotiations of counsel for the Hispanic farmers, but, instead, intentionally offered terms far less beneficial, and, indeed, far more onerous, than those provided to the

African-American and Native American farmers, notwithstanding that the farmers in all these groups sustained the same degree and kind of discrimination, and were regularly and consistently denied farm benefits in the same measure and to the same extent because of their race or gender, and as a result suffered like injury, as farm credits and assistance systematically went instead to Caucasian male farmers.

75. The originally announced "program" offered Hispanic farmers some undefined part of $1.33 billion (59% of the $2.25 billion paid to or allocated to African-American farmers) to be shared with female farmers despite the fact that Hispanic and female farmers outnumber African-American farmers by from 12 to 1 to 27 to 1. Hispanic farmers, alone, outnumber African-American farmers by nearly 2 to 1, and Hispanic farmers have substantially outnumbered African-American farmers consistently since 1992.

76. Moreover, by the terms of the originally announced "program," there would be a single track for Hispanic and female farmers with a cap of $50,000 per successful claimant. For Hispanic and female farmers with provable damages greater than $50,000, the program required them to either file a federal lawsuit to pursue their claims or forgo them for some undetermined amount up to $50,000. Thus, while Defendants provide a low-cost Track B dispute resolution option to African-American and Native American farmers to pursue damage claims greater than $50,000, they provided and still provide no such option to Hispanic farmers.

77. After nearly eight months during which Defendants refused to negotiate with Hispanic farmers, Defendants, on February 22, 2011, announced a new program which they described as an improvement upon the original program. Defendants' new

program establishes a two-tier dispute resolution process and dropped the demand that Hispanic farmers not already parties to the *Garcia* lawsuit file complaints and then immediately move to dismiss those complaints. Under Tier 1, Hispanic and female farmers, subject to a substantial evidence burden of proof and depending upon the number of successful claimants, could recover up to $50,000 from a damage fund of $1.23-1.33 billion, depending upon the number of successful claimants in Tier 2. Under Tier 2, Hispanic and female farmers, subject to the higher preponderance of evidence burden of proof, could recover $50,000. Under the proposal, there would be no cap on the number of claimants who could recover $50,000 under the higher preponderance of the evidence burden of proof. Thus, in stark contrast to the settlements offered to African-American and Native American farmers, the government's settlement offer to Hispanic and female farmers was still capped at $50,000 with no low-cost dispute resolution alternative for claims greater than $50,000. Moreover, in order to be assured of receiving a $50,000 award, Hispanic and female farmers would have to satisfy the same burden of proof that entitled African-American farmers in *Pigford I* to recover, unlimited damages and entitled African-American farmers in *Pigford II* and Native American farmers in *Keepseagle* to recover up to $250,000. On information and belief, the highest Track B award in *Pigford I* was $13 million. Under the new program, Defendant would still require Hispanic and female farmers with provable damages greater than $50,000 to either file a federal lawsuit to pursue their claims or forego them for $50,000 despite the fact that they could satisfy the burden of proof that permitted African-American farmers in *Pigford I* to recover as much as $13 million through the low-cost Track B dispute resolution process.

78. Under the announced "program," Hispanic or female farmers would not have the benefit of a claim notice independently verified and monitored, as the government has provided to the African-American and Native American claimants, but would be subject to a process and procedures administered by the very agency that continues to discriminate against Hispanic and female farmers, operating, on information and belief, through contractors selected and paid by USDA.

79. Given the government's imposition of a $1.33 billion cap under its announced "program" that is to be shared by female and Hispanic farmers, and the greater burden of proof imposed upon Hispanic and female farmers to avoid participation in the capped fund, there is, depending upon the number of successful claimants, a very real likelihood that individual farmers will not only receive substantially less than the $50,000 maximum under this "program," but also nowhere near total debt relief. Under the "program," any debt that is not completely relieved remains a debt of the farmer and continues to accrue interest until completely paid.

80. Because USDA could apply any such outstanding debt as an offset to any damage recovery received under the announced "program," a large number of successful claimants could be left with no cash at all and still be in debt to USDA.

81. In addition although the government provided compensation for damages resulting from discrimination in the non-credit farm benefit programs in *Pigford I* and *Pigford II*, it has refused to afford Hispanic farmers such compensation despite the fact that Hispanic farmers have asserted such viable claims.

82. On March 7, 2011, Defendants unilaterally announced a revised framework that essentially replaced the preponderance of evidence standard applicable to

Tier 2 claims with the substantial evidence burden of proof. In making the changes to the settlement proposal, Defendants have steadfastly refused to negotiate with counsel for Hispanic farmers and in every instance categorically refuse to provide Hispanic farmers with the same type of settlement process as they have provided African-American and Native American farmers.

XIV. THE GOVERNMENT'S ANNOUNCED "PROGRAM" IS DISCRIMINATORY AND UNCONSTITUTIONAL

83. The government's unilateral attempt to impose the "program" as a settlement of Hispanic farmers' claims in a manner substantially different from and substantially less favorable than the settlement provided to African-American and Native American farmers is wholly inconsistent with the rule of law and the equal protection guaranteed by the Constitution of the United States. For reasons that have no rational basis in law or fact, Defendants, because of the farmers' racial differences, continue to deny Hispanic farmers the same substantial benefits, and, indeed, impose on them significantly harsher burdens, than are found in the settlement terms Defendants have offered to African-American and Native American farmers, notwithstanding that the Hispanic, African-American and Native American farmers admittedly have long suffered the substantively identical discrimination pervading the USDA's farm benefit programs and are equally entitled to full redress for their like injuries.

84. Defendants' refusal to settle fully and comprehensively the Hispanic farmers' claims on materially the same terms that Defendants have agreed to settle the very same claims of African-American and Native American farmers is intentional and continues USDA's persistent discrimination against Hispanic farmers because of their

Hispanic origin in violation of Plaintiffs' right to due process and equal treatment under law in the administration of justice.

85. Moreover, on information and belief, the individual Defendants alone had ultimate authority to approve the settlement of the Hispanic farmers' claims, and thus necessarily had a hand in the development of the government's announced "program" offered to the Hispanic farmers in lieu of the settlement fashioned for the African-American and Native American farmers. The individual Defendants were thus, on information and belief, personally involved in the decisions to deny the settlement benefits to Hispanic farmers that were approved for and received by the African-American and Native American farmers. Similarly, on information and belief, Defendants were personally involved in the decisions to impose on the Hispanic farmers onerous settlement conditions not imposed on the African-American and Native American farmers .

86. The government cannot as a matter of law and consistent with the equal protection guarantees of the Constitution simultaneously provide similarly situated African-American and Native American farmers a low-cost two-track settlement process designed to facilitate resolution of their claims, while insisting that Hispanic farmers, who like their Native American counterparts suffered identical discrimination, must undergo a substantially less favorable and more burdensome settlement process calculated to impede and discourage meaningful resolution of their claims. Such disparate and uneven treatment of equally meritorious discrimination claims based only on the racial differences of the respective claimants is contrary to the rule of law and violates the Constitution's equal protection guarantee.

87. The denial of class certification in the Hispanic farmers' lawsuit does not provide a rational basis for such desperate and unequal treatment of Hispanic farmers on the one hand and African-American and Native American farmers on the other hand in the settlement process because the three groups are similarly situated victims of government discrimination as the government has expressly conceded.

88. In *Pigford II,* the defendants have agreed to pay African-American farmers who missed the filing deadline to participate in the *Pigford I* settlement $1.25 billion for a total of over $2.25 billion. In *Pigford II, although none of the 17 consolidated cases has been certified as a class action*, the Defendants have from the outset of those cases indicated their desire to deal with these cases as if a class had been certified and has executed what purports to be a class settlement that includes terms far more favorable than the terms offered to similarly situated Hispanic farmers.

89. Similarly, the Defendants have settled with the Native Americans as a class despite the fact that the Native American case *(Keepseagle) was certified as a class action on exactly the basis that the court in the Hispanic and female farmers' cases held could not be the basis for certifying a class – a holding that has been affirmed by the D.C. Circuit.* Significantly, in urging the D.C. Circuit to review the ruling upon which the question of class certification ultimately turned in the Native American, Hispanic and female farmers cases, the government, referring to the *Garcia* case, argued:

> This is one of three related cases now pending in district court alleging virtually identical claims against the USDA on behalf of different minority groups attempting to proceed as class actions. Now that there is an actual conflict in the certification of class actions in virtually identical suits by Hispanic, female, and Native American farmers, review by this Court may well be appropriate to ensure that similarly-situated minority groups are treated consistently. However, one of the primary reasons for the varying

> class certification decisions in these cases is disagreement on the underlying legal issue: whether plaintiffs' claim concerning the USDA's alleged "failure to investigate discrimination complaints" is actionable under either the APA or the ECOA. Because the viability of such a common "complaint processing" claim among class members informs any assessment of the propriety of class certification in these cases, the Court's resolution of that threshold legal question is essential.

Exhibit 1 at 19-20. The Defendants' disparate treatment of Native American, Hispanic and women farmers in the administration of justice cannot be reconciled with the rule of law. Having refused to move to decertify the Native American farmers' case as a class action after winning the right to do so in the D.C. Circuit when it affirmed the district court's ruling on the complaint processing claims, the government must settle with all three groups on a class basis pursuant to Rule 23 or be found to have discriminated against Hispanic and female farmers in the settlement of their cases.

90. In addition, the manner in which the Defendants have chosen to settle the African-American and Native American farmers' cases renders the issue of class certification completely irrelevant and a pretext for racial and ethnic discrimination. At the core of all of the settlements proposed by the Defendants is a low-cost, two-track dispute resolution process. No claimant under any settlement can recover anything without first individually satisfying the requisite burden of proof for the applicable dispute resolution track. Under the Defendant's discriminatory processes, African-American and Native American farmers can use the low-cost process to pursue claims greater than $50,000 while Hispanic farmers are prohibited from doing so. Instead, Hispanic farmers must either forgo such claims or file and prosecute expensive federal lawsuits in district court.

XV. CLASS ACTION ALLEGATIONS

91. Plaintiffs bring this class action on behalf of Hispanics who farmed or ranched, or attempted to farm or ranch, during the period January 1, 1981 to the present and who complained to the USDA about its acts of discrimination against them on the basis of race and national origin when they sought to participate on equal terms in farm loan and disaster benefit programs, and are further being discriminated against because of race in the administration of justice by being intentionally denied the settlement opportunities the government has afforded to similarly situated African-American farmers and Native American farmers to redress the identical discrimination they suffered in USDA's lending programs that was suffered by these Hispanic farmers.

92. Although the USDA discriminated against Hispanic farmers in administering its farm loan and non-credit benefit programs, all class members here have suffered identical discrimination by reason of the government's refusal, solely because these plaintiffs are Hispanic and not African-American or Native American, to provide them the same settlement terms, of offer to them comparable compensation for their injuries, as the government has provided to similarly situated African-American farmers and similarly situated Native American farmers.

93. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(2). This action satisfies the numerosity, commonality, typicality, adequacy and predominance and superiority requirements of those provisions.

94. The class is so numerous that individual joinder of all the members is impractical and that compelling each plaintiff to institute and pursue a separate action to secure the remedial relief essential to the eradication of systemic, pervasive

discrimination practiced against each, and/or to recover monetary damages as compensation for the economic harm caused by discrimination, is both impractical and a needless burden on the courts. The most recent Agricultural Census lists the number of Hispanic farmers at a minimum of 55,570, for all of whom securing remedial relief is essential. (Exhibit 9.)

95. Common questions of law and fact exist as to all members of the class, viewed as a Rule 23(b)(2) class, and such questions predominate over any questions affecting only individual members of the class. The common questions of law and fact presented in this action spring from a central undisputed and overriding reality that (1) for decades the USDA knowingly tolerated the existence of pervasive discrimination against minorities in the administration of its farm loan and disaster benefit programs, which was created by a highly decentralized, localized system of county committees who were free to act on a wholly subjective basis with no meaningful supervision from senior management of USDA, and (2) that the government has provided African-American and Native American farmers with settlement opportunities that offer more favorable monetary and procedural benefits than those proposed to Hispanic farmers, notwithstanding that all three minority groups admittedly sustained the same substantive and pervasive discrimination by USDA in like manner over the same period of time. This core factual reality does not vary from class member to class member and may be established without reference to individual circumstances of any particular class member.

96. Additional common questions include:

(a) Whether the USDA committed acts of discrimination against the Hispanic farmers substantively identical to those it committed against the African-American and Native American farmers in administering its farm loan and non-credit benefit programs?

(b) Whether aforesaid unequal treatment of Hispanic farmers in the settlement of their identical discrimination claims is a denial of due process and equal protection under law in the administration of justice in violation of the Fifth Amendment of the United States Constitution?

97. Plaintiffs' claims are typical of the claims of the members of the class, all of whom, by virtue of the unfair, intentional, and racially discriminatory actions of the Defendants, have been denied benefits provided to similarly situated African-American and Native American farmers who sustained the same underlying discrimination as Hispanic farmers.

98. 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. The named plaintiffs' claims are consistent with the claims of other class members. Plaintiffs' counsel are experienced class action lawyers who will adequately represent the class.

99. 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 Defendants' failure to provide equal benefits in the administration of justice as described in this Complaint is impracticable. Even if any class members could afford to litigate, it would be unduly burdensome to the courts to litigate each individual case. 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, each class member's farm number, address, application date and payment results is readily available to defendants.

COUNT ONE

VIOLATION OF THE FIFTH AMENDMENT -- EQUAL PROTECTION (GOVERNMENTAL DEFENDANTS)

100. The foregoing allegations are re-alleged and incorporated herein by reference.

101. Equal protection of the laws demands that similarly situated citizens be treated equally in the administration of justice. The underlying discrimination experienced by the Hispanic farmers was substantively identical and their injuries were substantively identical to those sustained by the African-American and Native American farmers. Yet, based solely on differences of race, Defendants have provided the African-American and Native American farmers with higher compensation allocations in settlement benefits, and with far more favorable procedural measures to realize those benefits, than they have offered to the Hispanic farmers.

102. There is no legitimate justification for treating similarly situated members of different racial groups differently. The disparity in treatment in the administration of justice cannot reasonably be explained except on account of differences of race. The government Defendants' actions regarding the differences in settlement treatment for resolution of identical claims knowingly deprive the Plaintiffs of the equal protection of the laws as guaranteed by the Fifth Amendment of the United States Constitution.

COUNT TWO

VIOLATION OF THE FIFTH AMENDMENT -- DUE PROCESS (GOVERNMENTAL DEFENDANTS)

103. The foregoing allegations are re-alleged and incorporated herein by reference.

104. Due process guarantees Plaintiffs a fair, impartial, and even handed process to ensure that their claims of manifest discrimination are and will be resolved in meaningful fashion, and that they will receive full and adequate redress for their injuries.. The government's announced "program" provides no independent, fair and impartial oversight in the administration of settled claims. To the contrary, the government's announced "program" entrusts, yet again, to the USDA—the very agency that both perpetrated the widespread shameful discrimination that caused countless minority farmers to lose their livelihoods in the first instance, and then secretly dismantled its own investigatory process that it disingenuously claimed would search out and correct the racial injustice rampant in its farm lending programs—to administer the woefully inadequate settlement benefits now being offered to Hispanic claimants, and imposes unfair procedural burdens to impede and discourage participation by those claimants. In contrast, no such constraints and burdens have been imposed on the African-American and Native American farmers as a condition of settling their claims .

105. Due process also demands a meaningful post-deprivation remedy for damages sustained. Because the government's announced "program" provides two tiers both capped at $50,000, Defendants unlawfully deny to Hispanic farmers the low-cost dispute resolution process with respect to claims greater than $50,000 that they readily provided to African-American and Native American farmers. In addition, there is every

likelihood that individual Hispanic farmers will receive substantially less than the $50,000 maximum. While the Defendants propose to allocate $160 million in debt relief to be shared by Hispanic and female farmers, under the second *Pigford* and *Keepseagle* models, any debt that is not completely relieved remains a debt of the farmer and continues to accrue interest until completely paid. Moreover, USDA could, under its announced "program," apply any such outstanding debt as an offset to any damage recovery received in the so-called settlement. The likelihood of such a shortfall in debt relief is quite substantial because the $160 million is two times the $80 million debt relief amount provided in the Native American farmers' case despite the fact that, according to the 2007 Census, Hispanic and female farmers outnumber Native American farmers by at least 9 to 1 ((55,570 + 306,209) to 34,706) and as much as 19 to 1 ((82,462 + 985,182) to 55,889). (Exhibit 9.) Thus, far from a meaningful post-deprivation remedy, for many there is the real prospect under the government's announced "program" that, while regarded by the USDA as a successful claimant, the deck has been stacked so that they in fact end up with nothing in cash and still be in debt to USDA.

106. There is no legitimate justification for treating similarly situated members of different racial groups differently. The disparity in treatment cannot reasonably be explained without reference to racial status. The Defendants' actions regarding the difference in treatment knowingly deprive the Plaintiffs of due process as guaranteed by the Fifth Amendment of the United States Constitution.

COUNT THREE

VIOLATION OF THE FIFTH AMENDMENT –EQUAL PROTECTION (INDIVIDUAL DEFENDANTS)

107. The foregoing allegations are re-alleged and incorporated herein by reference.

108. Equal protection of the laws demands that similarly situated citizens be treated equally in the administration of justice. By continually refusing to discuss or settle the Hispanic farmers' claims, and by offering settlement benefits on far less favorable terms than given to African-American and Native American farmers, the individual Defendants intentionally engaged in conduct designed to disfavor members of one racial group, all of Hispanic origin, while favoring members of other racial groups, including either African-American or Native American farmers, all while acting under the color of federal law in violation of the Hispanic farmers' clearly established constitutional right. The discrimination experienced by the Hispanic farmers was substantively identical and their injuries were substantively identical to those sustained by the African-American and Native American farmers. Yet, Defendants have intentionally elected to compensate the African-American and Native American farmers with higher allocations in settlement benefits, and with more favorable procedural measures to claim those benefits, than they have been willing to offer or provide to the Hispanic farmers.

109. There is no legitimate justification for treating similarly situated members of different racial groups differently. The disparity in treatment cannot reasonably be explained without reference to racial status. The individual Defendant's actions regarding the differences in settlement treatment for resolution of identical claims

knowingly deprive the Plaintiffs of the equal protection of the laws as guaranteed by the Fifth Amendment of the United States Constitution.

COUNT FOUR

VIOLATION OF THE FIFTH AMENDMENT – DUE PROCESS (INDIVIDUAL DEFENDANTS)

110. The foregoing allegations are re-alleged and incorporated herein by reference.

111. Due process guarantees Plaintiffs a fair, impartial and even-handed process to ensure that their claims of manifest discrimination are and will be resolved in a meaningful fashion, and that they will receive full and adequate redress for their injuries.. The government's announced "program" does not provide for any independent, fair and impartial oversight in the administration of claims. To the contrary, the government's announced "program" entrusts, yet again, to the USDA—the very agency that perpetrated and continues to countenance the widespread shameful discrimination that caused countless minority farmers to lose their livelihoods in the first instance, and then secretly dismantled its own investigatory process that it disingenuously claimed would search out and correct the racial injustice rampant in its farm lending programs—to administer the woefully inadequate settlement benefits now being offered to Hispanic claimants, and imposes unfair procedural burdens to impede and discourage participation by those claimants. By intentionally failing to fairly and impartially settle claims of the Hispanic farmers for the admitted wrongdoing they suffered in the same manner and to similar extent as they have settled the claims of similarly situated African-American and Native American farmers, the individual Defendants engaged in conduct while acting under the

color of federal law that violates the Hispanic farmers' clearly established constitutional right.

112. Due process also demands a meaningful post-deprivation remedy for damages sustained. Because the Defendants' announced "program" is capped at $50,000 per claimant, Defendants deny Hispanic farmers the low-cost dispute resolution process for resolving claims greater than $50,000 that Defendants readily provided to African-American and Native American farmers. In addition, depending upon the number of successful claimants and because the fund allocated for debt relief is capped at $160 million, there is every likelihood that individual farmers will not only receive substantially less than the $50,000 maximum, and far less than total debt relief. Under the second *Pigford* and *Keepseagle* models, any debt that is not completely relieved remains a debt of the farmer and continues to accrue interest until completely paid. Moreover, under the announced "program," USDA could apply any such outstanding debt as an offset to any damage recovery received in the so-called settlement. Far from a meaningful post-deprivation remedy, for many there is a real prospect under the government's announced "program that, while regarded by the USDA as a successful claimant, the deck has been stacked so that they in fact end up with nothing in cash and still be in debt to USDA.

113. There is no legitimate justification for treating similarly situated members of different racial groups differently. The disparity in treatment cannot reasonably be explained without reference to racial status. The Defendants' actions regarding the difference in settlement treatment for resolution of identical claims knowingly deprive the Plaintiffs of due process as guaranteed by the Fifth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

A. A declaration pursuant to 28 U.S.C. § 2201, that the practices, policies, patterns, and procedures described in this Complaint violate the constitutional rights of Plaintiffs;

B. A permanent injunction prohibiting Defendants, their officers, agents, employees and successors from engaging in racially discriminatory treatment of Hispanic farmers, and in particular from treating Hispanic farmers in the settlement of their claims against the USDA unequally from the manner in which they have treated African-American and Native American farmers in the settlement of their identical claims;

C. An award of reasonable attorneys' fees and costs, including expert fees, and interest;

D. Any such other and further relief, including but not limited to such specific remedies, as the Court deems just and proper.

Respectfully submitted,

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Date: March 15, 2011