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
P.O. Box 1173
Pearsall, TX 78061
and

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

MODESTA SALAZAR
P.O. Box 547
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 capacity, and TOM VILSACK in his official capacity.

Defendants.

NO. 1:11-CV-00541 (RBW)

FIRST AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

1. Plaintiffs David Cantu, Guadalupe Garcia, Noe Obregon, Modesto Rodriguez, Ruperto Rodriguez, and Modesta Salazar, on behalf of themselves and other similarly situated persons ("Plaintiffs"), through counsel, file the instant First Amended Complaint against Defendants to uphold their constitutional and other rights – rights that have been violated by Defendants' unequal treatment of Plaintiffs, who are Hispanic, as compared to similarly situated African-American and Native American individuals.[1]

2. Defendants have admitted to a thirty-year history of discrimination against Plaintiffs, women and other minority groups 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"). More than ten years ago, various groups of these victimized farmer and ranchers (collectively "farmers"), including African-American, Native American, female, and Hispanic farmers, filed class action complaints against USDA seeking redress for the discrimination they suffered.[2] Defendants have already settled the cases brought by African-American and Native American farmers. Yet, despite these settlements with other groups, Defendants have refused to offer the same terms to settle the discrimination claims of Hispanic farmers who suffered the same discrimination, incurred the same injuries, and filed a similar lawsuit as the African-American and Native American farmers. Instead, Defendants have finalized a settlement for Plaintiffs that, in several important aspects, is substantially worse than the settlements given to the similarly situated African-American and Native American claimants.

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[1] Leave to file an amended complaint was granted by the Court on June 20, 2012. *See* Order (Doc. No. 37) at 2.

[2] *See Garcia v. Vilsack*, No. 00-02445 (D.D.C.) (Hispanic farmers); *Pigford v. Glickman*, No. 97-1978 (D.D.C.) (*Pigford I*) and *Pigford v. Vilsack*, No. 08-0511 (D.D.C.) (*Pigford II*) (African American farmers); *Keepseagle v. Vilsack*, No. 99-03119 (D.D.C.) (Native American farmers); and *Love v. Vilsack*, No. 00-02502 (D.D.C.) (female farmers).

Defendants' failure to provide Plaintiffs with a settlement equal to that offered to the other racial groups violates, among other things, their rights to due process and equal protection guaranteed by the U.S. Constitution.

I. OVERVIEW

3. Between 1997 and 2000, African-American, Native American, Hispanic, and female farmers filed four virtually identical class action lawsuits alleging that USDA routinely engaged in the discrimination of individuals on the basis of race, ethnicity, or gender in the administration of its farm benefit programs, and failed to investigate the claims of farmers who filed complaints based on such conduct with USDA. The lawsuits were filed after USDA acknowledged and admitted such conduct and that "[m]inority farmers ha[d] lost significant amounts of land and potential farm income as a result of [such] discrimination by [the USDA]." *See* Exhibit 1 at 30.

4. Despite USDA's public acknowledgement that all minority farmers were victimized by a like pattern and practice of discrimination, Defendants have not been fair and even handed in settling the claims of different groups of similarly situated minority farmers. Instead, Defendants have 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.

5. Specifically, even though the plaintiffs in all four identical class actions alleged the same substantive discrimination; even though USDA has admitted that it has 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 the expeditious and fair settlement

of all of these cases, Defendants have refused to resolve the discrimination claims of Hispanic farmers brought by and raised by the *Garcia* case, through settlement of that case on the basis of a Fed. R. Civ. P. Rule 23 class – as they agreed to do in the African-American farmers' cases twice (*Pigford I* and *Pigford II*) and the Native American farmers' case (*Keepseagle*). Instead, Defendants have created what they consider a clever subterfuge – a "shadow" class action settlement, with the very same class alleged in the *Garcia* case, but outside of the courts and civil procedure. The intent and purpose for this subterfuge is to deny the Hispanic class the representation and scrutiny of class counsel and the supervision of the federal courts, while enabling Defendants to discriminate, in both process and compensation, between the Hispanic and the other settlement classes. The hollow excuse repeated by Defendants is that a Rule 23 class of Hispanic farmers was not certified by the Court in *Garcia*, but Defendants' true aim is to subvert the normal court process in order to treat the Hispanic class separately and unequally, depriving them of their constitutional rights to equal protection and due process and denying them representation of counsel. The "shadow class settlement," which Defendants have characterized as a "settlement program" (hereinafter the "Framework"), imposes on Hispanic and female farmers terms that are more onerous and that contain far fewer safeguards than the terms that were included in the settlement programs offered to African-American and Native American farmers.

6. Some of the crucial differences between the Framework and the settlement programs offered to the African-American and Native American farmers stem from Defendants' refusal to settle with the Hispanic farmers on a court supervised Rule 23 class basis as they did with the African-American and Native American farmers. In settling with the African-American and Native American farmers, the Defendants voluntarily agreed to treat both groups as classes

under Rule 23 for settlement purposes rather than litigate the class certification issue to judgment. In contrast, although the Framework treats the Hispanic farmers ***as if*** they are a Rule 23 class for some purposes (*i.e.*, it establishes a class definition and provides for a claims process and potential compensation on a class-wide basis), it fails to provide them with the basic rights, benefits, and safeguards Rule 23 class status confers on class members. Defendants have not, and cannot, offer any rational or legitimate purpose for using this "shadow class settlement" rather than the Rule 23 process afforded the other racial groups, and the failure to do so has significant negative impact on Plaintiffs' substantive rights. For example, the Framework lacks the following important provisions, all of which are present in the African-American and Native American settlements:

(a) **Judicial Supervision**: the Framework provides no judicial supervision over the claims process, while the African-American and Native American settlement programs provide for the continued jurisdiction and supervision of the settlement process by the Federal Courts. Consequently, African-American and Native American farmers were (and continue to be) supported throughout the process by the availability of an unbiased forum and venue for determining the adequacy of the claims adjudication process, resolving disputes, and rectifying any problems, irregularities, and unfairness that might arise during the claims process – protections Defendants have denied Plaintiffs. A lack of judicial supervision leaves the Hispanic farmers vulnerable to the following problems, among others:

(i) *Deficient Notice*: the settlements offered to African-American and Native American farmers left the administration of notice to the victims of their right to participate in the settlements – a critical component of any fair settlement – in the

hands of those groups' respective class counsel, under the independent review and oversight of the Federal Courts. In contrast, there is no judicial monitoring of the Framework at all, let alone any supervision over the notice process, which, under the Framework, is to be administered and monitored by contractors hired by USDA, the very perpetrator of the discrimination that Hispanic farmers seek to remedy. After nearly 30 years of blatant discrimination, Defendants now want the Hispanic farmers to trust them to provide appropriate notice to the entire group without affording them the same procedural safeguards that were afforded to the African-American and Native American farmers in the management of their class notice processes.

(ii) *Defective Claims Process:* as with the African-American and Native American settlements, the Framework provides for a third party, non-lawyer, contractor to manage the claims process. However, the administrator under each of the African-American and Native American settlements was hired by class counsel and approved by the Court, while the administrator under the Framework is hired by USDA. In addition, unlike those other settlements, under the Framework neither class counsel nor the Court are empowered to monitor the third-party contractor's administration of the claims process.

(b) **Assistance of Class Counsel**: the Framework does not provide for class counsel to assist the Hispanic farmers in navigating the claims process or in seeking redress from any inappropriate administration of the claims process. In contrast, both the African-American and Native American farmers' settlement programs explicitly detail the duties of class counsel (who are compensated through an award of fees by the Court), which

include formulating and issuing class notice, assisting at no charge claimants seeking relief under the least onerous evidentiary avenue (*i.e.*, "Track A"), being available to answer class member questions, and assisting the coordination and management of the claims process. Under the Framework, Hispanic and female claimants must find their own individual counsel, who they must compensate directly. The Framework offers no compensation for class counsel fees or for any attorneys' fees. Moreover, the Framework affirmatively dissuades claimants from using counsel by placing limits on the amount of fees that an attorney can charge for assistance in filing a successful claim. Specifically, fees paid out of a claimant's cash award cannot exceed $1,500 per claimant for successful claims under certain of the Framework's less burdensome adjudicatory avenues for relief, or 8% of the cash award for claims under the Framework's most burdensome avenue for relief – substantially lower than the standard fees an attorney would charge on a contingent basis in an individual case. In addition, assistance of counsel is critical for the Hispanic farmers because, among other reasons, the vast majority have little or no familiarity with or understanding of the legal phrases used in the claim form, such as the terms "substantial evidence," "preponderance of the evidence," and "independent evidence admissible under the Federal Rules of Evidence." Comprehension of these terms is critical in order for a claimant to navigate the complex and lengthy claims form and to choose the "Tier" through which he or she will pursue relief, with different evidentiary standards and documentation requirements. Further, a claimant is likely to require assistance of counsel to understand the importance and meaning of the comprehensive and irrevocable settlement agreement that each claimant must sign and submit at the outset of the claims process.

7. The safeguards in the preceding paragraph are especially important because once a claimant under the Framework selects a Tier and submits to the process, he or she forfeits any right to invoke the judicial process should he or she thereafter become dissatisfied with the Framework's claims process. At the outset of the process, each claimant must submit a required settlement agreement and must release Defendants from any and all claims that could have been brought against the Defendants in any court or administrative proceeding regardless of whether the claimants are ultimately successful in obtaining relief through the claim process. Under the Framework, there is no review – judicial or otherwise – of a denied claim. Nor is there any judicial supervision of the claims process. Thus, if claims systematically are denied on discriminatory grounds, are denied because Defendants' claims processing contractor lacks the resources to properly adjudicate all the claims, or are denied for any number of other improper reasons, there is nothing a claimant under the Framework can do about it, having waived the right to any other relief and there being no judicial supervision. African-American and Native American claimants, on the other hand, do have recourse in such situations because, among other things, the court has maintained jurisdiction over their cases and because they have class counsel looking out for their interests.

8. Other inequities in the Framework as compared to the other class settlements include:

(a) **Disproportionate Monetary Relief**: although Hispanic and female farmers outnumber African-American farmers by at least 12 to 1 and as much as 27 to 1, and outnumber Native Americans farmers by at least 9 to 1 and as much as 19 to 1, according to the 2007 Census of Agriculture, the government has paid or committed to pay $2.25 billion to African-American farmers and has paid or committed to pay $760 million to

Native American farmers, while it has proposed to provide a disproportionately low $1.33 billion to settle the combined claims of Hispanic and female farmers. Further, African-American farmers who timely filed claims were offered the opportunity to receive – without limitation – their actual damages. The Framework offers a maximum of $250,000. In addition, under the Framework there is a $160 million cap on the debt relief USDA will provide to successful claimants, which is disproportionally low compared to the total debt relief offered in the other settlements – there was no cap in the settlements for African-American farmers and a larger per capita cap in the settlement for Native American farmers.

(b) **Proof of Additional Factual Elements is Required**: unlike the settlement for African-American and Native American farmers, the Framework requires claimants to prove several additional facts, including specific evidence that the claimant was discriminated against on the basis of being Hispanic (or female). Specific evidence that the claimant was discriminated against on the basis of race will obviously be very difficult to collect. The principal discrimination at issue took place more than a decade ago. Documentary evidence of discrimination would have been in the possession of the USDA, but claimants are not entitled to any discovery and, in any event, much of that evidence may be lost. Obtaining witness testimony based on very old events will be extremely difficult. The African-American and Native American farmers did not have to amass such evidence to obtain an award; only the Hispanic and female farmers do.

(c) **Additional Documentary Evidence is Required for "Constructive Application" Claims**: "constructive application" claims are those in which the claimant attempted to apply for loans but was discouraged from doing so by USDA. Constructive application

claimants will have to provide: (a) a sworn, written eyewitness statement from a witness to the discriminatory incident many years ago; (b) a copy of a complaint filed within one year of the discriminatory incident; or (c) a letter or other document to or from a non-family member written within one year of the incident detailing what occurred. African-American and Native American constructive application claimants do not need to provide these documents in order to receive awards under their settlements.

(d) **No Compensation for Non-Credit Farm Benefits**: although the government provided compensation for damages resulting from discrimination in non-credit farm benefit programs in the *Pigford I* and *Pigford II* settlements, it has refused to afford Hispanic farmers such compensation in the Framework despite the fact that Hispanic farmers have asserted viable non-credit discrimination claims in the *Garcia* case.

9. There is no rational basis, let alone a compelling government purpose, for USDA to offer substantially fewer benefits and a less advantageous process to Hispanic and female farmers than the settlement relief provided to similarly situated African-American and Native Americans.

II. JURISDICTION

10. Jurisdiction is founded upon 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 5 U.S.C. § 702.

III. VENUE

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

IV. PARTIES

12. Plaintiffs are Hispanic United States citizen 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"), and who were further injured due to USDA's failure to process and investigate their discrimination complaints which they filed with USDA at the agency's behest. As such, Plaintiffs are potential claimants under the Framework.

13. 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 application. The FmHA agents refused to accept or process the loan application because they claimed that USDA would not be able to disburse any funds for at least two years. In approximately 1992, 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 eye witnessed the discriminatory treatment of fellow Hispanic farmers when he visited the Hidalgo, Texas FmHA/FSA office and complained verbally about this treatment.

14. 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.

15. Plaintiff and proposed class representative Noe Obregon has devoted approximately 22 years of his life to farming. On seven different occasions from 1982-1991, 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. Obregon 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 because he is Hispanic.

16. 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.

17. 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 *Garcia v. Vilsack*, No. 00-02445 (D.D.C.), a lawsuit pending in this Court (and described in more detail below), or are members of the putative class whose claims are sought to be redressed by that lawsuit.

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

19. 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.

20. 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.

21. Defendant Eric Holder is the United States Attorney General.

22. Defendant Tom Vilsack is the USDA Secretary.

V. RAMPANT DISCRIMINATION AT USDA

23. USDA's farm 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.

24. Historically, and to this day, the county committees have not and still 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 underrepresented 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.

25. 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.

26. Sometime in 1983, USDA dismantled its civil rights enforcement capability; 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 being ignored.

27. Because USDA willfully failed to investigate Hispanic farmers' complaints of discrimination in its farm benefit programs, those Hispanic 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.

28. 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.

29. 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. USDA had and still has thousands of discrimination complaints that have never been investigated.

VI. USDA ACKNOWLEDGES ITS DISCRIMINATORY PRACTICES

30. 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 reported that "[m]inority 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 . . . . 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 1 at 30-31.

31. USDA admitted in the 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 directly and adversely affects the participation of Hispanics and other minorities in USDA programs, as well as program delivery to minorities and female farmers;
>
> (b) even when there was a finding of discrimination, USDA refused to pay damages; and
>
> (c) its record keeping on discrimination complaints was "nonexistent," backlogged, 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.

32. 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 February 1997 OIG Report addressed complaints of discrimination within FSA as well as ten 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* Exhibit 2 at 6-8. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people. *See id*. at 5. 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.

33. Even when the OCR ostensibly began to process complaints in the late 1990s, it became clear that the process remained fatally flawed.

34. 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. . . . [T]he 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, . . . *systematic exclusion of minority farmers remains the standard operating procedure for FSA*.

See Exhibit 3 at 5 ¶ 20, 7 ¶ 28 (emphasis added).

35. 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.

VII. CLASS ACTIONS ARE FILED

36. 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. 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).

37. On November 24, 1999, Native American farmers brought a virtually identical suit against 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. On September 28, 2001, the trial court certified *Keepseagle* as a class action, based upon USDA's well-documented and admitted refusal to investigate discrimination complaints filed with it by Native American farmers.

38. 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 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 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 *Garcia* as a class action.

39. 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 *Love* as class action.

VIII. THE *PIGFORD* SETTLEMENT

40. In contrast to its treatment of the suits brought by the Hispanic and female farmers, which have now been pending for over 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).

41. 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 award, plus taxes owed on the award, and would be granted certain loan forgiveness. To satisfy the burden of proof, the African-American farmers had to show that they had applied to USDA for farm credit or benefits, had made a complaint of discrimination before 1997, and that USDA had treated them less favorably than it had treated similarly situated white farmers. Claimants who chose Track A could be represented by class or lead counsel for free. 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 January 31, 2011, approximately $1,058,577,198 had been disbursed to approximately 15,749 African-American farmers under the *Pigford I* consent decree.

42. Under the *Pigford I* consent decree, the government forgave all outstanding loans that were determined to be affected by discrimination proven by successful claimants (no specific documentary evidence was required). 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

43. 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 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).

44. In addition, Section 14012 of the 2008 Farm Bill provided relief to the African-American farmers who unsuccessfully sought entry to the initial *Pigford I* settlement under paragraph 5(g) of the *Pigford I* 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." Pursuant to Section 14012, 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 II*.

X. THE GOVERNMENT INCREASES SETTLEMENT BENEFITS FOR AFRICAN AMERICAN FARMERS

45. 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 I* settlement. On May 6, 2009, the Obama Administration and Secretary Vilsack announced that the government would provide an additional $1.25 billion dollars to cover the claims of 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.

46. 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." *See* Exhibit 4.

47. Because the congressional appropriation to fund what is known as the *Pigford II* settlement is limited to $1.25 billion, the settlement caps payments under Track A and Track B at $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.

48. As a result of the appropriation of $1.25 billion, approximately $2.25 billion has either been paid to or allocated to settle the claims of African-American farmers and "close the chapter" of discrimination against African-American farmers.

XI. THE *KEEPSEAGLE* SETTLEMENT

49. On October 19, 2010, the government reached a settlement with the Native American farmers (the "*Keepseagle* settlement"). The announced settlement included approximately $680 million in damages and $80 million in debt forgiveness to Native American farmers who sustained the same systematic discrimination as did the African-American, Hispanic, and female 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 through which to pursue relief for their claims of discrimination. In fact, the *Keepseagle* settlement program was nearly identical to the program established for the *Pigford II* claimants.

50. The same day, President Obama said in an October 19, 2010 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 also continues to work towards a resolution of the claims made by women and Hispanic farmers against the USDA." *See* Exhibit 5.

XII. THE HISPANIC FARMERS' SETTLEMENT

51. Defendants announced the latest, and final, iteration of their settlement program for Hispanic and female farmers – *i.e.*, the Framework – on January 13, 2012, and filed it with

the Court in the *Garcia* case and in this case (Doc. No. 30-1) on January 20, 2012. On April 2, 2012, Defendants filed with the Court in *Garcia* the "Claim Form" that claimants are required to fill out to obtain relief through the program. The Claim Form is attached hereto as Exhibit 6. USDA has already retained a claims administrator, and has represented repeatedly that the program is final and will commence imminently. The government has represented that the program for Hispanic farmers may provide a remedy for successful claimants for discrimination suffered during the period January 1, 1981, to December 31, 1996 and/or October 13, 1998, to October 13, 2000.

52. Under the Framework, Defendants established a confusing three-tier dispute resolution process:

- **Tier 1(a)** is the least onerous avenue for relief for claimants and offers the lowest award amounts. Claimants who lack certain documentation of their discrimination – including those making "constructive application" claims in which the claimant attempted to apply for loans but was discouraged by USDA – may seek *up to* $50,000, subject to proving numerous factual elements under a "substantial evidence" standard, plus tax relief on that award and debt relief from USDA on eligible farm loans. Total payments of cash awards and tax relief under Tier 1(a) are subject to a cap of $1.13 billion, plus certain remaining amounts from a $100 million set-aside for the other tiers. The cash award for each successful claimant will be the same dollar amount, but due to the total cap, the dollar amount may be reduced from $50,000 on a pro rata basis, depending on the number of successful claimants.
- **Tier 2** is the intermediate Tier through which claimants may seek a flat $50,000 award, also subject to a "substantial evidence" burden of proof, plus tax relief on that award and

debt relief from USDA on eligible farm loans. Tier 2 requires the submission of more documentation than Tier 1(a). Claimants who fail to prove their Tier 2 claims will automatically be reviewed for a Tier 1(a) award. There is no limit to the number of claimants who may qualify for Tier 2 awards, and no cap on the aggregate dollar amount of awards that may be paid to prevailing claimants under Tier 2.

- **Tier 1(b)** is the only way of obtaining an award in excess of $50,000, but it imposes the most onerous evidentiary standard. Under Tier 1(b), claimants may seek up to $250,000, if their claims are proven by a preponderance of the evidence and through independent documentary evidence admissible under the Federal Rules of Evidence, plus debt relief from USDA on eligible farm loans, but no tax relief. Total payments under Tier 1(b) are subject to a $100 million cap; therefore, the award amounts may be reduced from $250,000 on a pro rata basis depending on the number of successful claimants.

XIII. THE FRAMEWORK IS DISCRIMINATORY AND UNCONSTITUTIONAL

53. The government's settlement of Hispanic farmers' claims in a manner substantially different from and substantially less favorable than the settlements provided to African-American and Native American farmers (as detailed above in Paragraphs 6 through 8) is wholly inconsistent with the rule of law and the equal protection and due process guaranteed by the Constitution of the United States and constitutes arbitrary and capricious and unlawful agency action under the APA, 5 U.S.C. § 706(2)(A). For reasons that can only be explained on a racially discriminatory basis, not a rational basis, Defendants 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 USDA has admitted that Hispanic, African-American

and Native American farmers have long suffered the substantively identical discrimination and are equally entitled to full redress for their like injuries.

54. Hispanic, African-American, and Native American farmers are similarly situated victims of government discrimination, as the government has expressly conceded.

55. The government's only rational for treating Hispanic farmers differently from African-American and Native American farmers is that Hispanic farmers were denied class certification in the *Garcia* case, while class status was obtained in the cases brought by the other two groups.

56. However, that fact does not and cannot provide a rational basis, or a compelling government purpose, for the disparate 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.

57. First, the government never litigated the class certification issues to final judgment in the *Pigford* or *Keepseagle* cases. Instead, Defendants voluntarily settled those cases on a class basis despite having no obligation to do so.

58. In *Pigford II*, Defendants agreed to pay African-American farmers who missed the *Pigford I* filing deadline an additional $1.25 billion. Although the plaintiffs in those cases never moved for class certification, Defendants have from the outset of those cases indicated their desire to deal with the late filers as if a class had been certified and, in fact, settled the cases on a class basis.

59. Similarly, 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 was affirmed by the D.C. Circuit. In other words, *after* the D.C. Circuit affirmed the denial of class certification in *Garcia* on grounds that would be equally applicable in *Keepseagle*, Defendants agreed to settle *Keepseagle* on class basis. Defendants never moved to decertify *Keepseagle* as a class action.

60. Accordingly, Defendants voluntarily treated the African-American and Native American farmers as Rule 23 classes. Therefore, the government must settle with the Hispanic farmers on a class basis pursuant to Rule 23 or be found to have discriminated against them.

61. Second, under the law, any difference in Rule 23 class status cannot be used as a justification for denying Hispanic farmers substantive rights, including but not limited to the right to be treated equally with other similarly situated victims of USDA discrimination. Such treatment, justified solely by reference to Rule 23 status, collides with well-settled principle that "Rule 23[] . . . must be interpreted in keeping . . . with the Rules Enabling Act, which instructs that rules of procedure 'shall not abridge . . . any substantive right.'" *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997) (quoting 28 U.S.C. § 2702); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011).

XIV. CLASS ACTION ALLEGATIONS

62. Plaintiffs bring this class action on behalf of Hispanics who farmed or ranched, or attempted to farm or ranch, between January 1, 1981, and December 31, 1996, or between October 13, 1998, and October 13, 2000, and who complained to 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 who are now being discriminated against because of race in the administration of justice by being denied the equivalent settlement opportunities the government has afforded to similarly situated African-

American farmers and Native American farmers.

63. Because Plaintiffs are not African-American or Native American, all class members here have suffered identical discrimination by reason of the government's Framework, which is inferior to the settlements Defendants provided to similarly situated African-American and Native American farmers.

64. 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.

65. The class, numbering in the tens of thousands, is so numerous that individual joinder of all the members is impractical. Moreover, it would also be impractical and a needless burden on the courts to compel each plaintiff to institute and pursue a separate action to secure the remedial relief essential to the eradication of systemic, pervasive discrimination at USDA and/or to recover monetary damages as compensation for the economic harm caused by that discrimination. 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. *See* Exhibit 7.

66. 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 USDA knowingly tolerated the existence of pervasive discrimination against minorities in the administration of its farm loan and disaster benefit programs, and (2) that the government has compounded its former and still ongoing mistakes by effectively providing 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 Defendants have admitted that USDA has discriminated against all three minority groups 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.

67. Additional common questions include:

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

(b) Whether USDA's announced settlement program for Hispanic and female farmers constitutes arbitrary and capricious and/or unlawful final agency action in light of the disparity between the settlement program terms offered to African-American and Native American farmers and those offered to Hispanic and female farmers as part of the Framework.

(c) Whether Defendants have violated the doctrine of unconstitutional conditions by conditioning a valuable governmental benefit on a basis that infringes the Hispanic farmers' constitutionally protected rights to due process and equal protection.

68. 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.

69. 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.

70. 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 First Amended Complaint is impracticable. Even if any class members could afford to litigate, the class action device provides the benefits of single adjudication of what essentially is one problem for a massive group of similarly situated individuals as well as the truly critical element of comprehensive supervision by a single court over a dispute whose glacial pace (as compared with the speed of the resolution of the *Pigford* and *Keepseagle* matters) is almost entirely a direct result of the lack of court supervision over the Plaintiff class. 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

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

72. 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 and the injuries sustained by them were substantively identical to those

sustained by the African-American and Native American farmers. Yet, based 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. Once Defendants chose to execute settlements with the African-American and Native-American classes, which they have done, they obligated themselves to provide the very same rights, benefits, privileges, and safeguards, contained in and encompassed by those prior settlements, to the Hispanic class on an equal and non-discriminatory basis.

73. The government has no legitimate purpose, let alone a compelling government purpose, for treating similarly situated members of different racial groups differently. Nor can the government show that its offer of an inferior settlement program for the Hispanic farmers is rationally related to any legitimate governmental purpose, let alone the least discriminatory alternative to the programs it offered to the African-American and Native American farmers. Defendants' differential treatment of Hispanic farmers can only be driven by race-based animus. Defendants' actions regarding the differences in settlement treatment for resolution of identical claims deprive Plaintiffs of the equal protection of the laws as guaranteed by the Fifth Amendment of the Constitution.

COUNT TWO

VIOLATION OF THE FIFTH AMENDMENT – DUE PROCESS

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

75. 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 Framework

violates Plaintiffs' rights to due process because it provides no independent, fair, and impartial oversight in the administration of the claims process. To the contrary, the Framework entrusts to USDA – the very agency that both perpetrated the widespread shameful discrimination that caused countless minority farmers to lose their livelihoods in the first instance – the administration of the 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.

76. Due process also demands a meaningful post-deprivation remedy for damages sustained. Yet, there is a high likelihood that individual Hispanic farmers will receive substantially less than a $50,000 award, which was characterized as "virtually automatic" for African-American farmers. While the Defendants propose to allocate $160 million in debt relief to be shared by Hispanic and female farmers (which is less generous than the debt relief offered under the African-American and Native American settlements), any debt that is not completely relieved remains a debt of the farmer and continues to accrue interest until completely paid. The likelihood of such a shortfall in debt relief is quite substantial because the $160 million is only 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 and as much as 19 to 1. *See* Exhibit 7. Thus, far from a meaningful post-deprivation remedy, the deck has been stacked against the Hispanic farmers such that for many there is the real prospect that under the government's Framework even those who may ultimately be regarded by USDA as successful claimants, may in fact end up with nothing in cash and still be in debt to USDA.

77. The government has no legitimate purpose, let alone a compelling government purpose, for treating similarly situated members of different racial groups differently. Nor can the government show that its announced settlement program for the Hispanic and female farmers is rationally related to any legitimate governmental purpose, let alone the least discriminatory alternative to the program it offered to the African-American and Native American farmers. Defendants' actions regarding the differences in settlement treatment for resolution of identical claims knowingly deprive Plaintiffs of due process as guaranteed by the Fifth Amendment of the Constitution.

COUNT THREE

VIOLATION OF THE UNCONSTITUTIONAL CONDITIONS DOCTRINE

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

79. The doctrine of unconstitutional conditions states that the government may not condition the receipt of a government benefit on waiver of a constitutionally protected right. The fact that the government is not required to provide a benefit does not mean that it is permitted to condition the receipt of that benefit in an unconstitutional manner. That is precisely what Defendants are seeking to accomplish via their shadow class settlement Framework. Through the Framework Defendants have offered a potential benefit. But Defendants have explicitly conditioned that potential benefit on Plaintiffs' agreement to accept a lesser benefit and surrender their constitutional rights to equal protection and due process. Furthermore, regardless of the differences between the Framework and the settlement programs offered to other minority groups, the provisions of the Framework, standing alone, violate the unconstitutional conditions doctrine by conditioning compensation on (1) Plaintiffs' waiver and release of all of their claims, (2) in a manner that offers no possibility of judicial supervision of the claims process, and (3)

without realistic access to counsel due to the Framework's denial of class counsel and severe limits on the ability to employ private counsel. Such conditions, as prerequisites to receiving the compensation offered by Defendants, are unconstitutional.

COUNT FOUR

ARBITRARY AND CAPRICIOUS AND UNLAWFUL AGENCY ACTION

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

81. The APA makes it unlawful for an agency to take action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

82. The Constitution 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. Agency action that violates the U.S. Constitution is inherently arbitrary and capricious and not in accordance with the law.

COUNT FIVE

UNREASONABLE AGENCY DELAY

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

84. The APA obligates an agency "to conclude a matter presented to it . . . within a reasonable time." 5 U.S.C. § 555(b). If an agency fails to do so, the APA authorizes courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

85. As described above, once Defendants voluntarily offered a settlement of other similarly situated racial groups who were victims of USDA discrimination, they had an absolute and non-discretionary obligation under the Constitution to provide an equivalent settlement to Hispanic farmers.

86. In failing to offer such a program to Hispanic farmers, Defendants have unlawfully withheld and unreasonably delayed action that they are required to take, in violation of the APA, 5 U.S.C. § 702(1).

87. It has been ten years since the government first settled with the African-American farmers and nearly two years since it settled with the Native American farmers on substantially equivalent terms. The government has no legitimate explanation for why it continues to refuse to afford the Hispanic farmers with an equivalent settlement program.

88. Defendants' delays in providing Plaintiffs with a settlement program substantially equivalent to that which they provided to the African-American and Native American farmers, as set forth above, amount to the unlawful withholding and unreasonable delay of agency action under the APA, 5 U.S.C. § 706(1).

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 and constitute arbitrary and capricious and unlawful agency action under the APA, 5 U.S.C. § 706(2)(A);

B. A permanent injunction, pursuant to the Court's inherent equitable powers and its power under the APA, 5 U.S.C. § 706, prohibiting Defendants, their officers, agents, employees

and successors from engaging in racially discriminatory treatment of Hispanic farmers – in particular from treating Hispanic farmers in the settlement of their claims against USDA unequally from the manner in which Defendants have treated African-American and Native American farmers in the settlement of their identical claims – and compelling Defendants to provide Plaintiffs with a class settlement which includes a class for settlement purposes under Rule 23 of the Federal Rules of Civil Procedure in the *Garcia* case that is equivalent to that which Defendants provided in the settlements with the African-American and Native American farmers;

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,

Date: July 13, 2012

/s/ Adam P. Feinberg
Richard A. Hibey #74823
Adam P. Feinberg #447668
Miller & Chevalier Chartered
655 Fifteenth Street N.W., Suite 900
Washington D.C. 20005-5701
Phone: (202) 626-5888
Fax: (202) 626-5801

Robert F. Ruyak # 233304
Winston & Strawn LLP
1700 K Street N.W.
Washington, DC 20006-3817
Phone: (202) 282-5625
Fax: (202) 282-5100

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on July 13, 2012, I e-mailed the foregoing document to the Clerk of Court for filing via the court's ECF e-mail system, which will send an electronic copy to all counsel of record.

/s/ Adam P. Feinberg
Adam P. Feinberg