

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES COPELAND
3 Effingham Court
Columbus, Ga 31909

**EARL MOORER, on Behalf of the Estate
of JOHN MOORER**
292 Benton Rd.
Lowndesboro, Al 36752

MARSHALLENE McNEIL
472 Hwy 41 North
Camden, AL 36726

Plaintiffs,¹

v.

TOM VILSACK, Secretary
**THE UNITED STATES DEPARTMENT
OF AGRICULTURE**
1400 Independence Avenue, S.W.
Washington, DC 20250,

Defendant.

Civ. No. 08-cv-1188-PLF

**AMENDED CLASS ACTION COMPLAINT TO DETERMINE
MERITS AND DAMAGES PURSUANT TO § 14012 OF THE
FOOD, CONSERVATION AND ENERGY ACT OF 2008, AS AMENDED**

Pursuant to Section 14012 of the Food, Conservation and Energy Act of 2008 (“Farm Bill”),² as amended by Section 201 of the Claims Resolution Act of 2010 (“Claims Resolution Act”),³ Plaintiffs James Copeland, Earl Moorer (on behalf of the Estate of John Moorer), and Marshallene McNeil (hereinafter “Plaintiffs”) bring this action against the Secretary of

¹ This amended complaint removes the Black Farmers and Agriculturalists Association, Inc. (“BFAA”) as a plaintiff in this action. Previously named Plaintiffs Tommy Davis, Virginia Flinn Factor, and Ludora Valentine remain plaintiffs eligible for relief as putative members of the proposed Class.

² Pub. L. 110-246, 112 Stat. 1651 (June 18, 2008).

³ Pub. L. 111-291, 124 Stat. 3064 (Dec. 8, 2010).

Agriculture (“Secretary”), on behalf of themselves and a class of similarly situated *Pigford* claimants, seeking a determination on the merits of their “*Pigford* claims” and damages for unlawful race-based discrimination in the processing of their applications or in their attempts to apply for participation in federal farm credit or benefit programs between January 1, 1981 and December 31, 1996.

FACTS LEADING TO CAUSE OF ACTION

I. USDA’s History of Discrimination Against African American Farmers

1. From January 1, 1981 through December 31, 1996, USDA engaged in systemic and systematic discrimination, from the county level through the federal level, against African American farmers who applied for loans or other credit services and benefit programs through the Farm Service Agency (“FSA”) and its predecessor organizations, the Agricultural Stabilization and Conservation Service (“ASCS”) and the Farmers Home Administration (“FmHA”). *See* Seventh Amended Class Action Complaint, *Pigford v. Glickman*, Civ. A. No. 97-cv-1978 (hereinafter “*Pigford* Compl.”) at ¶¶ 17-20.

2. The FSA, like the FmHA and the ASCS before it, operates through a three-tiered review system consisting of county-level offices and committees, which are reviewed and monitored by state-level offices and committees, which are in turn subject to federal level review in Washington, D.C. by the national office and the National Appeals Division. *Id.* at ¶ 20. Although the credit and benefit programs are federally-funded programs, the decisions to approve or deny applications for credit or benefits are made locally at the county level by locally elected county committees and local loan officers appointed by those committees. *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999).

3. The county committees, elected by local ranchers and farmers, did not reflect the racial diversity of the communities they served – indeed, nationwide, the African American

representation among county commissioners by 1999 (even after the proposed Class Period) was less than 0.5%. *Id.* at 87.

4. Despite the existence, at least nominally, of state and federal-level review, the local committees were rife with discrimination. As this Court has noted: “African American farmers complain[ed] that county commissioners ha[d] discriminated against them for decades, denying their applications, delaying the processing of their applications or approving them for insufficient amounts” *Pigford*, 185 F.R.D. at 87. The Court further found that the delays were so extreme in some locations that “it took three times as long on average to process the application of an African American farmer as it did to process the application of a white farmer.” *Id.* (citing REPORT - CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE: A REPORT BY THE CIVIL RIGHTS ACTION TEAM (Feb. 1997) (“CRAT Report”).)

5. The discrimination problems were exacerbated by lack of institutional oversight. In 1983, USDA “disbanded its Office of Civil Rights and stopped responding to claims of discrimination.” *Id.* While there was supposed to be a detailed process for investigating discrimination claims, “[a]ll the evidence developed by the USDA and presented to the Court indicates . . . that this system was functionally nonexistent for well over a decade.” *Id.* at 88.

6. When African American farmers complained to USDA, their complaints were mismanaged, ignored, or “lost.” In fact, “[i]n some cases, [Office of Civil Rights Enforcement and Adjudication] staff simply threw discrimination complaints in the trash without ever responding to or investigating them.” *Id.*

7. In December 1996, in response to frequent complaints that its farm credit programs were operating in a discriminatory manner, USDA convened a Civil Rights Action Team to conduct a comprehensive study of its farm loan programs. After an exhaustive study, USDA issued the “CRAT Report,” which concluded that “[m]inority farmers have lost

significant amounts of land and potential farm income as a result of discrimination” by USDA entities such as the FSA. *Id.* (quoting the CRAT Report). The CRAT Report also found that the “process for resolving complaints ha[d] failed” and that “immediate action was needed to clear the backlog of complaints.” *Id.*

II. *Pigford v. Glickman*

8. In 1997, Timothy Pigford, an African American farmer, filed a class action lawsuit in the United States District Court for the District of Columbia alleging that USDA had discriminated against African American farmers by denying or delaying applications for farm benefit programs and by mishandling discrimination complaints filed with USDA. *Pigford v. Glickman*, Civ. A. No. 97-cv-1978. His complaint alleged violations of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, *et. seq.*, the Administrative Procedure Act, 5 U.S.C. § 706, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. *Pigford*, 185 F.R.D. at 112, *aff’d*, 206 F.3d 1212 (D.C. Cir. 2000).

9. A second class action suit was filed by Cecil Brewington, alleging similar discrimination by USDA against African American farmers. *Brewington v. Glickman*, Civ. A. No. 98-cv-1693. On January 6, 1999, this Court consolidated the *Pigford* and *Brewington* actions. *See* Order of Jan. 6, 1999, Civ. A. No. 98-cv-1693, Dkt. 9. The consolidated action is referred to as the *Pigford* litigation.

10. On January 5, 1999, the Court certified the following class:

All African American farmers who (1) farmed, or attempted to farm between January 1, 1981 and December 31, 1996; (2) applied to the United States Department of Agriculture (USDA) during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA’s response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA’s treatment of such farm credit or benefit application.

Pigford, 185 F.R.D. at 92.

11. After more than a year of litigation, the parties negotiated a settlement and entered into a Consent Decree to resolve the *Pigford* litigation. The Consent Decree, which was approved by this Court on April 14, 1999, established a process enabling farmers who had been discriminated against as applicants for, or in their attempts to apply for, farm loans or other credit and benefit programs to obtain an adjudication of their discrimination claims through a two-track dispute resolution mechanism. Under Track A, class members with minimal, or even no, documentary evidence were eligible to receive a cash payment of \$50,000, forgiveness of certain debt owed to the USDA, and a tax payment to offset the tax consequences of the liquidated and debt awards. *Id.* at 95. The Track B option required a higher burden of proof – preponderance of the evidence – but allowed for uncapped damages. *Id.*

12. As this Court concluded, the *Pigford* Consent Decree was “a significant first step” in redressing the wrongs that had been heaped upon African American farmers between 1981 and 1996. *Id.* at 113.

III. Late Filing in *Pigford v. Glickman*

13. More than 22,000 farmers presented their claims for adjudication on the merits under the *Pigford* Consent Decree, and more than 15,000 farmers received monetary compensation. *See* Office of the Monitor, <http://www.pigfordmonitor.org/stats>.

14. However, *tens of thousands* of additional class members were unable to obtain relief under the Consent Decree because they did not submit completed claims packages by the October 12, 1999 deadline established by the Consent Decree. *See* Arbitrator’s Ninth Report on the Late-Claim Petition Process (“Arb. Rpt.”), Civ. A. No. 1:97-cv-1978, Dkt. 1214 (Nov. 30, 2005) at 3-4. The Consent Decree did afford farmers who filed late-filing requests *after* the October 12, 1999 deadline a potential right to proceed with their claims, but only if they filed on or before September 15, 2000 and could meet the “extraordinary circumstances” test established

by Section 5(g) of the Consent Decree. *See* Stipulation and Order of July 14, 2000, Dkt. 303, at 3; Arb. Rpt. at 2-3.

15. Approximately 61,000 claimants submitted late-filing requests under Section 5(g) of the Consent Decree by the September 15, 2000 deadline. Just over 2,700 of them – *i.e.*, only four percent – were permitted to obtain an adjudication on the merits of their claim. More than 7,900 additional claimants submitted late-filing requests under Section 5(g) of the Consent Decree after September 15, 2000. None of these claimants obtained a determination on the merits of their discrimination claims. *See* Bithell Decl. (June 4, 2009) at 2 *available at* Exhibit 2 to Certain Plaintiffs’ Motion to Stay the Class Certification Proceedings (June 9, 2009) (Dkt. 66 of Civ. No. 08-mc-0511 (D.D.C.)).

16. On June 18, 2008, the current version of the Food, Conservation, and Energy Act of 2008 (“Farm Bill”) became law.⁴ Section 14012 of the Farm Bill expressly affords to *Pigford* claimants who previously had submitted late-filing requests under Section 5(g) of the Consent Decree – but who did not obtain a determination on the merits – the right to bring a civil action in the United States District Court for the District of Columbia to obtain a merits-based determination of their *Pigford* claims. Farm Bill § 14012(b). Claimants who prevail are entitled to actual damages, *id.* at § 14012(g), or, alternatively, certain specified liquidated damages, payments in recognition of outstanding loans owed to USDA (if applicable), and certain specified tax relief. *Id.* at § 14012(f). \$100 million was appropriated under the Farm Bill to pay successful Section 14012 claims. § 14012(i)(1).

17. Congress’s intent in enacting Section 14012 of the Farm Bill is clear – to “giv[e] a full determination on the merits for each *Pigford* claim previously denied that determination.”

⁴ The Farm Bill was originally passed on May 22, 2008, *see* Pub. L. No. 110-234, 122 Stat. 923, but was repealed and re-enacted in full on June 18, 2008. *See* Pub. L. No. 110-246, 122 Stat. 1651.

Farm Bill, § 14012(d). Indeed, the Farm Bill specifically instructs the Court to “liberally construe [§ 14012] so as to effectuate [this] remedial purpose.” *Id.* During floor debates, then-Senator Barack Obama, a leading sponsor of the legislation, reiterated that the bill was intended “to provide tens of thousands of eligible late *Pigford* claimants a right to go to court and have their cases heard.” 154 Cong. Rec. S4212-05. Senator Tom Harkin, another key supporter of the legislation, explained that the legislation was intended to ensure that “these claimants who have not had their cases determined on the merits may, in [a] civil action, obtain that determination.” 154 Cong. Rec. S4152-01.

18. On December 8, 2010, President Obama signed the Claims Resolution Act of 2010,⁵ Section 201 of which established certain additional requirements to protect the integrity of the process for resolving Section 14012 claims in the context of a February 18, 2010 Settlement between a putative class of African American farmers and the Secretary of USDA. The Claims Resolution Act also provided an additional \$1.15 billion to pay successful claims, subject to certain conditions. § 201(a), (b).

19. Through this action, Plaintiffs, in reliance on the language and manifest intent of Section 14012 of the Farm Bill and Section 201 of the Claims Resolution Act, seek to obtain redress for the unlawful race-based discrimination they suffered in the processing of their applications or in their attempts to apply for participation in federal farm credit or benefit programs between January 1, 1981 and December 31, 1996.

JURISDICTION

20. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, 1346; 42 U.S.C. § 2000d; and Pub. L. No. 110-234, § 14012(b).

⁵ Pub. L. 111-291, 124 Stat. 3064 (Dec. 8, 2010).

VENUE

21. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e) and Pub. L. No. 110-234, § 14012(b).

THE PARTIES

22. Plaintiff James Copeland is an African American from Harris County, Georgia who, between January 1, 1981 and December 31, 1996, farmed or attempted to farm land that he and his family owned. Between 1990 and 1992, Mr. Copeland attempted to apply to USDA for an operating loan, but was told repeatedly that the USDA office had lost his applications. Mr. Copeland was subject to racial discrimination in the USDA's response to his attempt to apply for a loan, and he suffered substantial economic injury as a result of this discrimination. Mr. Copeland complained to the United States Government about the USDA discrimination after January 1, 1981 and on or before July 1, 1997.

23. On information and belief, Mr. Copeland is a member of the *Pigford* class and a "Pigford claimant" as defined by Section 14012(a)(4) of the Farm Bill. Pursuant to Section 5(g) of the Consent Decree, Mr. Copeland petitioned to participate in the *Pigford* claims resolution process as a "late-filer," on or between October 13, 1999 and September 15, 2000. Mr. Copeland was assigned Tracking No. 66581-00 by the *Pigford* Facilitator. Mr. Copeland's request was denied by the *Pigford* Arbitrator, and he has never obtained a determination on the merits of his *Pigford* claim.

24. Plaintiff Earl Moorner brings a claim on behalf the Estate of his father, John Moorner. John Moorner is a now-deceased African American from White Hall, Alabama who farmed or attempted to farm between January 1, 1981 and December 31, 1996 on land that he owned and/or leased. John Moorner applied for a loan from USDA each year from 1981 to 1984. Each year, his application for a farm loan was denied, or he was provided a loan for less than he

had requested. This treatment was due to racial discrimination, and he complained to a USDA official about this treatment, citing white farmers in the area who received better treatment than he did. As a result of this discrimination, John Moorer suffered economic damage.

25. On information and belief, the Estate of John Moorer is a member of the *Pigford* class and a “*Pigford* claimant” as defined by Section 14012(a)(4) of the Act. Pursuant to Section 5(g) of the Consent Decree, John Moorer’s Estate, through Earl Moorer, petitioned to participate in the claims resolution process as a “late-filer” on or between October 13, 1999 and September 15, 2000, and was given a Tracking Number of 2788-00. The request was denied by the Arbitrator, and Mr. Moorer’s Estate has never obtained a determination on the merits of her claims.

26. Plaintiff Marshallene McNeil is an African American who, between January 1, 1981 and December 31, 1996, farmed or attempted to farm land her family owned in Camden, Alabama. In 1982, Ms. McNeil went to the FmHA office in Camden, Alabama to request an operating loan, but was told by the administrator of the office that there was no money available for her, and her loan application was denied. This denial was the result of racial discrimination. As a result of her inability to get a loan, Ms. McNeil suffered economic injury. Ms. McNeil complained to the same FmHA official between January 1, 1981 and July 1, 1997, about their treatment of her application.

27. On information and belief, Ms. McNeil is a member of the *Pigford* class and a “*Pigford* claimant” as defined by Section 14012(a)(4) of the Farm Bill. Pursuant to Section 5(g) of the Consent Decree, Ms. McNeil petitioned to participate in the *Pigford* claims resolution process as a “late-filer,” on or between September 16, 2000 and June 18, 2008. Ms. McNeil’s request was denied by the *Pigford* Arbitrator, and she has never obtained a determination on the merits of his *Pigford* claim.

28. Defendant Thomas Vilsack is Secretary of the USDA, and is the federal official currently responsible for the administration of the statutes, regulations, and loan programs which are at issue in this litigation.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this Class action pursuant to Fed. R. Civ. P. 23(b)(1)(B) on behalf of themselves and a Class defined as follows:

All individuals: (1) who submitted late-filing requests under section 5(g) of the *Pigford v. Glickman* Consent Decree on or after October 13, 1999, and on or before June 18, 2008; but (2) who have not obtained a determination on the merits of their discrimination complaints, as defined by Section 1(h) of the Consent Decree.

30. *Numerosity*: The Class is composed of approximately 66,000 individuals. The large number of Class members makes “joinder of all members . . . impracticable,” and is sufficient to establish numerosity under Fed. R. Civ. P. 23(a)(1).

31. *Commonality*: The following are each “questions of law or fact common to the class,” sufficient to establish commonality under Fed. R. Civ. P. 23(a)(2):

- a. Class Members share a common interest in ensuring that all successful claimants have an equal opportunity to receive compensation for the discrimination they have suffered.
- b. Class Members share a common interest in ensuring that the funds available to pay successful claimants are not limited to the \$100 million appropriated by the 2008 Farm Bill.
- c. Class Members share a common interest in minimizing the evidentiary burdens and costs, as well as the delays, that a judicial claims process will entail.

32. *Typicality*: Plaintiffs' claims are typical of the claims of the Plaintiff Class as all such claims arise out of Section 14012 of the Farm Bill and Defendant's uniform course of wrongful conduct as described above. This is sufficient to establish typicality under Fed. R. Civ. P. 23(a)(3).

33. *Adequacy of Representation*: Plaintiffs will fairly and adequately protect the interests of the Members of the Class and have no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of complex class actions who will adequately represent the interests of the Class in this litigation. Thus, the requirement of adequacy of representation in Fed. R. Civ. P. 23(a)(4) is met.

34. *Limited Fund*: This Class action is appropriate for certification as a limited fund class action under Fed. R. Civ. P. 23(b)(1)(B) because (1) the totals of the aggregated liquidated claims and the fund available for satisfying them, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all the claims; (2) the whole of the inadequate fund is devoted to the overwhelming claims; and (3) the claimants identified by a common theory of recovery are treated equitably among themselves.

CLAIMS FOR RELIEF

COUNT I

ACTION FOR DETERMINATION ON THE MERITS OF PIGFORD CLAIMS PURSUANT TO § 14012 OF 2008 FARM BILL

35. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-34 of this Complaint as if fully set forth herein.

36. Pursuant to Section 14012(b) of the Farm Bill, each Plaintiff and each member of the proposed Class is entitled to a determination on the merits of a *Pigford* claim in this Court. The Court should find, pursuant to Section 14012(b) of the Farm Bill, that each Plaintiff and each member of the proposed Class was the subject of unlawful discrimination by the USDA.

COUNT II

**ACTION FOR DAMAGES PURSUANT
TO § 14012 OF THE 2008 FARM BILL**

37. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-34 of this Complaint as if fully set forth herein.

38. Pursuant to Sections 14012(g) and 14012(f) of the 2008 Farm Bill, each Plaintiff and each member of the proposed Class alleging discrimination relating to USDA loan programs is entitled either to actual damages or, alternatively, liquidated damages in the amounts set forth in the Farm Bill, discharge of any debt that was incurred under, or affected by, the programs that were the subject of the discrimination claims, and a tax payment in the amount equal to 25 percent of both the liquidated damages and the loan principal discharged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

- (A) Provide each Plaintiff and Class member a determination on the merits of his or her claim;
- (B) Award each Plaintiff and Class member either (a) the actual damages he/she sustained as a result of discrimination by the USDA; or (b) liquidated damages in the amount of \$50,000 for each Plaintiff; or (c) liquidated damages in the amount of \$3,000 for non-credit benefit claims;
- (C) With respect to Plaintiffs and Class members pursuing claims under Section 14012(f)(1), order Defendant to discharge any debts incurred under, or that were affected by, the one or more programs that were the subject of each Plaintiff's discrimination claims;
- (D) With respect to Plaintiffs and Class members pursuing claims under Section 14012(f)(1), order Defendant to make a tax payment for each Plaintiff in the

amount equal to 25 percent of any liquidated damages and any loan principal discharged;

- (E) Order Defendant to pay the costs of adjudicating Plaintiffs' and Class members' claims, including attorneys' fees as may be awardable; and
- (F) Grant such other and further relief that the Court deems to be just and equitable.

Respectfully submitted this 1st day of April, 2011.

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CERTIFICATE OF SERVICE

I certify that on April 1, 2011, I filed a copy of this Amended Complaint via the ECF system, and sent copies by electronic-mail to the counsel of record in the above-referenced case.

/s/

J. Andrew Meyer, Esq.