

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

---

<b>RoseMary Love, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>Case Number</b>
	:	<b>1:00CV02502</b>
<b>vs.</b>	:	
	:	<b>Judge: Walton, J.</b>
<b>Tom Vilsack, Secretary</b>	:	
<b>The United States Department of</b>	:	
<b>Agriculture,</b>	:	
	:	
<b>Defendant.</b>	:	

---

**MOTION FOR LEAVE TO FILE FOURTH AMENDED  
AND SUPPLEMENTAL COMPLAINT**

Plaintiffs, by and through counsel, move for leave to file a Fourth Amended and Supplemental Complaint pursuant to Fed. R. Civ. P. 15(a) and (d) and LCvR 15.1. The purposes of the amendment and supplement are to update the pending Third Amended Complaint to reflect the current state of this litigation and to add new allegations and causes of action which arose after the filing of the original complaint (and amendments thereto) for violations of the Plaintiffs' Fifth Amendment rights to equal protection and due process in light of the government's claims administration program being offered to women farmers such as plaintiffs. Toward that end, the proposed Fourth Amended and Supplemented Complaint, a copy of which is attached as Exhibit A to the Memorandum of Law in support of this motion:

1. adds additional due process and equal protection claims under the Fifth Amendment of the United States Constitution arising because of the government's discriminatory administrative claims program being offered to women farmers who have been

subjected to discrimination by the United States Department of Agriculture (“USDA”) in the granting and servicing of farm loans.

2. removes the previously stated Administrative Procedure Act claims; and
3. makes clear that the class action allegations are provisional and are included only in the event that the parties agree upon a class for settlement purposes, as the government has in connection with litigation involving other minority farmers.

Plaintiffs’ proposed amendment and supplement is timely in light of the government’s announcement that the proposed administrative program is final and will be implemented shortly, subject only to the appointment of a claims administrator, which is expected imminently.

Plaintiffs’ counsel contacted Defendant’s counsel regarding this Motion in accordance with LCvR 7(m). Defendant’s counsel has not consented to the filing of the proposed Fourth Amended and Supplemental Complaint.

Dated: November 7, 2011

Respectfully submitted,

/s/ Barbara S. Wahl  
Marc L. Fleischaker #004333  
Barbara S. Wahl #297978  
Kristine J. Dunne #47148  
ARENT FOX LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339.  
Telephone: (202) 857-6000  
Facsimile: (202) 857-6395

Roderic V.O. Boggs  
Emily Brittain Read  
WASHINGTON LAWYERS  
COMMITTEE FOR CIVIL RIGHTS  
AND URBAN AFFAIRS  
11 Dupont Circle, N.W. - Suite 400  
Washington, D.C. 20036

Telephone: (202) 319-1000  
Facsimile: (202) 319-1010

Alexander John Pires, Jr. # 185009  
PIRES COOLEY  
4401 Q Street, N.W.  
Washington, D.C. 20007  
Telephone: (202) 333-1134

Philip Fraas # 211219  
STINSON MORRISON HECKER LLP  
1150 18th Street N.W., Suite 800  
Washington, DC 20036-3845  
Telephone: (202) 572.9904  
Facsimile: (202) 572.9946

***Counsel for Plaintiffs***

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

---

<b>RoseMary Love, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>Case Number</b>
	:	<b>1:00CV02502</b>
<b>vs.</b>	:	
	:	<b>Judge: Walton, J.</b>
<b>Tom Vilsack, Secretary</b>	:	
<b>The United States Department of</b>	:	
<b>Agriculture,</b>	:	
	:	
<b>Defendant.</b>	:	

---

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE  
TO FILE FOURTH AMENDED AND SUPPLEMENTAL COMPLAINT**

Rules 15(a) of the Fed. R. Civ. P. provides for liberal amendment of pleadings and expressly states that “[t]he court should freely give leave when justice so requires.” In the leading case construing this rule, *Foman v. Davis*, 371 U.S. 178, 182 (1962), the United States Supreme Court declared that:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be “freely given.”

*Id.*; see also *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (quoting *Foman*, 371 U.S. at 182). In addition, Rule 15(d) of the Fed. R. Civ. P. states that “[o]n motion and

reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Similarly, a court should liberally grant a party’s request to file a supplemental pleading if those supplemental facts connect to the facts asserted in the original pleading. *City of Moundridge, Ks v. Exxon Mobil Corp*, 471 F. Supp. 2d 20, 29 (D.DC 2007) (citing *Quaratino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995)). Leave to file a supplemental complaint should be denied only where supplementation will “cause undue delay of trial, inconvenience and will ... prejudice the rights of any other party.” *City of Moundridge, Ks.*, 471 F. Supp. 2d at 29 (quoting *Wells v. Harris*, 185 F.R.D. 128, 132 (D. Conn. 1999), and citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). For the reasons set forth below, this Court should grant Plaintiffs’ Motion for Leave to File a Fourth Amended and Supplemental Complaint. A copy of Plaintiffs’ proposed Fourth Amended and Supplemental Complaint is attached as **Exhibit A** hereto.

The purpose of the amendment and supplement is to update the pending Third Amended Complaint to reflect the current status of the litigation, including prior rulings in the case and events that have arisen after the filing of the original complaint and the amendments thereto. The primary focus of the Fourth Amended and Supplemental Complaint is to add allegations and legal claims for violations of Plaintiffs’ Fifth Amendment rights of equal protection and due process arising out of the government’s administrative claims program being offered to women farmers who have been subjected to discrimination by the United States Department of Agriculture (“USDA”) during the relevant time period. These due process and equal protection claims had not yet arisen when the Third Amended Complaint was filed. In addition, the Fourth Amended and Supplemental Complaint makes clear that the allegations related to class certification will not be actively litigated and are pertinent only in the event that the parties agree

upon a settlement class as part of an overall resolution of Plaintiffs' claims, as the government has done in connection with the settlement of other minority farmers' claims. Further, because Plaintiffs' Administrative Procedure Act claims were dismissed, and the dismissal was affirmed by the D.C. Circuit, the Fourth Amended and Supplemental Complaint removes that cause of action from the Plaintiffs' claims. The proposed Fourth Amended and Supplemental Complaint does not add any new plaintiffs or defendants. It is designed to clarify the scope of Plaintiffs' current claims and simplify the case with regard to trial and the ultimate relief to be awarded to Plaintiffs.

Amendment and supplementation of the complaint will not prejudice Defendant. This case has been and continues to be stayed, and despite the passage of several years, it remains in its preliminary stages. No merits discovery has been conducted, and no trial date has been set.

Plaintiffs' amendment and supplementation of the complaint is timely. The case remains stayed, and the Defendant never answered or otherwise responded to Plaintiff's Third Amended Complaint, which the Court accepted for filing on July 28, 2003. The government has announced that the administrative claims program for women farmers who have been subjected to discrimination by USDA is final. At the status hearing on October 21, 2011, counsel for the government represented to the Court that the government does not anticipate further changes to the program and that the Plaintiffs already know the contours of the program. Transcript of Oct. 21, 2011 hearing ("Transcript"), annexed here as **Exhibit B**, at 7, 9. In fact, the government has been actively promoting the administrative claims process in the community. *Id.* at 9 ("outreach ... includes contacts by the agency with legal aid organizations, with various nonprofits, public service announcements, posting in field offices, a whole variety of activities, meetings with stake holders, et cetera ... The outreach continues."). For more than eight months, the government has

been soliciting individuals to register to receive claims packages. *See* <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2011/02/0085.xml>) (“Beginning February 25, 2011, individuals can register to receive a claims package ...”). The government anticipates awarding the contract for the claims administrator by the end of November 2011, and if there is no further challenge to the award, the program could commence within several weeks thereafter. Transcript, Exhibit B, at 11.

Although the administrative claims program has not yet commenced, Plaintiffs’ proposed amendment and supplementation is timely. The program is final. Other than some wording clarifications, there have been no material changes in the program for many months. Defendant steadfastly refuses to change the serious fundamental defects with the program, which include the following:

- Women claimants bear a more onerous burden than African-American and Native American farmers under the government’s claims programs applicable to those minority groups. At the October 21, 2011 hearing, the government conceded that there are differences in the programs for farmers of different minority groups. *Id.* at 6.
- The administrative claims program for women claimants does not provide free legal assistance to women claimants as part of the program, which is afforded to African-American and Native American farmers under the government’s claims programs applicable to those minority groups. Given the complexity of the claims form and the sophistication of the legal concepts involved, many claimants will simply be unable to navigate the claims process without legal help, which many cannot afford.
- Monetary awards for successful women claimants are designed to be less than that available to successful African-American and Native American farmers under the government’s claims programs applicable to those minority groups.
- Women claimants must release *all* claims against the government at the time of submission of a claim, including claims that are outside of the time frame and beyond the causes of action addressed by the administrative claims process.

- The government may oppose a woman claimant's application and submit documentation in opposition to her claim without any notice to the claimant or an opportunity for her to respond to the government's submission. At the hearing on October 21, 2011, the government conceded that the agency retains the right to do so in connection with each and every application submitted but does not anticipate filing such document in every case. *Id.* at 8.
- Women constructive claimants (those to whom the government refused to provide or process loan applications) must present either sworn statements by eye witnesses or copies of complaints filed within one year of the discriminatory event in order to state a claim, whereas constructive claimants under the African-American and Native American farmers' administrative claims programs do not need to provide the same evidence. At the hearing on October 21, 2011, the government admitted that the evidentiary burden for women constructive claimants is different than that for African-American and Native American constructive claimants. *Id.* at 6.

Justice and fairness dictate that Plaintiffs be permitted to update their complaint to reflect the current status of the government's actions and to add claims against the same Defendant resulting from its conduct in connection with this very case. Allowing the filing of the Fourth Amended and Supplemental Complaint would promote the efficient disposition of this matter. Defendant cannot claim surprise as to the additional allegations, as the government is aware that Plaintiffs have complained that women farmers should be offered a voluntary claims administration program with terms identical to those offered for other minority groups with identical claims. *Id.* at 24. Moreover, the possibility of amending and supplementing the complaint to add these allegations was also discussed at the October 21, 2011 status conference, at which time the Court suggested that a motion be filed expeditiously.

Accordingly, Plaintiffs request that this Court grant their Motion for Leave to File a Fourth Amended and Supplemental Complaint.



Dated: November 7, 2011

Respectfully submitted,

/s/ Barbara S. Wahl

Marc L. Fleischaker #004333

Barbara S. Wahl #297978

Kristine J. Dunne #47148

ARENT FOX LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5339.

Telephone: (202) 857-6000

Facsimile: (202) 857-6395

Roderic V.O. Boggs

Emily Brittain Read

WASHINGTON LAWYERS

COMMITTEE FOR CIVIL RIGHTS

AND URBAN AFFAIRS

11 Dupont Circle, N.W. - Suite 400

Washington, D.C. 20036

(202) 319-1000

Fax (202) 319-1010

Alexander John Pires, Jr. # 185009

PIRES COOLEY

4401 Q Street, N.W.

Washington, D.C. 20007

Telephone: (202) 333-1134

Facsimile: (202) 338-3635

Philip Fraas # 211219

STINSON MORRISON HECKER LLP

1150 18th Street N.W., Suite 800

Washington, DC 20036-3845

Telephone: (202) 572.9904

Facsimile: (202) 572.9946

*Counsel for Plaintiff*