IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SID MILLER, on behalf of himself and others similarly situated, *Plaintiff*, *v.* TOM VILSACK, in his official capacity as SECRETARY OF AGRICULATURE, *Defendant*.	Civil Action No. 4:21-cv-595-O

DEFENDANT'S RESPONSE TO
COREY LEA'S MOTION FOR PERMISSIVE JOINDER

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INTRODUCTION

Corey Lea, a third party seeking to join this action as a plaintiff, has not carried his burden to show that he is entitled to intervene as of right under Rule 24(a) or that the Court should permit him to intervene under Rule 24(b). Indeed, in his motion, styled as one for permissive joinder, Mr. Lea does not invoke Rule 24—the proper procedural vehicle for a third party seeking to join a lawsuit—much less establish that intervention is warranted. Moreover, Mr. Lea's litigation history shows that he has filed numerous frivolous actions in federal court based on substantially similar allegations to those he makes here. Indeed, nearly all of those lawsuits have already been dismissed, and in some cases courts have imposed sanctions on Mr. Lea for filing frivolous lawsuits and have prohibited him from filing any more cases. This Court should deny Mr. Lea's motion to join this action because he has not shown that he meets the requirements for intervention and his participation in these proceedings would prejudice the parties by diverting them to addressing his repetitive and unrelated claims.

BACKGROUND

On March 11, 2021, the President signed into law the American Rescue Plan Act of 2021 ("ARPA"), providing $1.9 trillion in economic stimulus. *See* H.R. 1319, 117th Cong (2021). Among that $1.9 trillion, Congress appropriated funds to pay up to 120 percent of certain direct or guaranteed USDA farm loans held by "socially disadvantaged farmers or ranchers" ("SDFRs") outstanding as of January 1, 2021. *See id.* § 1005. Congress also appropriated $1.1 billion to provide training and technical assistance to SDFRs, among other socially disadvantaged groups ("SDGs"); to provide grants and loans to improve land access for SDFRs, among other SDGs; to fund one or more equity commissions to address racial equity issues within the USDA; to provide additional financial assistance to SDFRs, among other SDGs, who the Secretary of Agriculture determines have suffered prior discrimination by the USDA; and to provide funding for research, education, scholarships, and internships at

minority-serving colleges and universities. *See id.* § 1006.[1]

For purposes of Sections 1005 and 1006, Congress gave the term "socially disadvantaged farmer or rancher" the same meaning as in Section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, codified at 7 U.S.C. § 2279(a). *See id.* §§ 1005(b)(3), 1006(c)(2)-(3). That provision defines an SDFR as "a farmer or rancher who is a member of a socially disadvantaged group," 7 U.S.C. § 2279(a)(5); *see also id.* § 1006(c)(2), which is further defined as "a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities," *id.* § 2279(a)(6).

On April 26, 2021, Plaintiff, Sid Miller, on behalf of himself and others similarly situated, filed this putative class action, challenging the USDA's interpretation of "socially disadvantaged groups" for purposes of Sections 1005 and 1006 of ARPA, as well as other statutory provisions that use that term. Compl., ECF No. 1. Plaintiff alleges that he is a farmer and rancher who identifies as "overwhelmingly white" and "primarily Scotch-Irish," with "approximately 2% African-American ancestry." *Id.* ¶ 13. He claims that the USDA's interpretation of SDGs excludes him from USDA benefits and programs for SDFRs "on account of his race," *id.* ¶ 14, and that this exclusion violates the U.S. Constitution and Title VI of the Civil Rights Act of 1964, *see id.* ¶¶ 18-20 (Claim 1). He also claims, in the alternative, that if not unconstitutional, then the USDA's interpretation "violates the clear and unambiguous text of 7 U.S.C. § 2279(a)(6), by excluding white ethnic groups that have been subjected to racial and ethnic prejudice." *Id.* ¶ 23 (Claim 2). Lastly, he claims that the term "socially disadvantaged group" must be construed "to include individuals who have any discernable trace of minority ancestry." *Id.* ¶ 24 (Claim 3). Plaintiff asks this Court to, *inter alia*, enjoin the Secretary of Agriculture

[1] Those include Historically Black Colleges and Universities ("HBCUs"), Native American tribally-controlled colleges and universities ("1994 Institutions"), certain Alaska Native and Native Hawaiian serving institutions, certain Hispanic serving institutions, and insular area institutions located in the U.S. territories. *See id.* § 1006(b)(4)(A)-(E).

"from implementing any racial exclusions or discriminatory racial preferences in [USDA] programs." *Id.* ¶ 37(c).

On May 4, 2021, Corey Lea filed a motion for permissive joinder under Rule 20(a), seeking to be joined as a plaintiff in this action. *See* Mot. to Joinder Corey Lea as a Pl. and the Dept. of Agriculture as a Def. Pursuant to FRCP 20(a)(1)(b) Claim Against Pl. Sid Miller (hereinafter "Lea Mot."), ECF No. 7. Mr. Lea alleges that he is a socially disadvantaged farmer, and he claims that allowing the loan forgiveness provisions in Section 1005 of ARPA apply to certain white farmers, as Plaintiff requests, would reduce the amount of money that could go to SDFRs like him. *See* Lea Mot. ¶¶ 1-2. He also purports to raise a "cross-claim" against Plaintiff Miller for failure to exhaust administrative remedies. *See id.* ¶¶ 7-9. And he brings claims under the Equal Protection Clause, the Administrative Procedure Act ("APA"), and the Equal Credit Opportunity Act ("ECOA"), largely based on allegations that the USDA treats SDFRs worse than white farmers by not providing formal hearings before Administrative Law Judges ("ALJs") and not issuing final decisions within 180 days of SDFRs' complaints with the USDA. *See id.* at 4-11.

ARGUMENT

Mr. Lea's motion to join this action as a plaintiff should be denied. Although Mr. Lea styles his motion as one for joiner under Rule 20, courts treat such motions by third parties as motions for intervention under Rule 24. However, Mr. Lea's motion does not even invoke Rule 24, nor does it satisfy the procedural requirements under Rule 24(c). For those reasons alone, Mr. Lea's motion should be denied. And in any event, the allegations in Mr. Lea's motion do not satisfy the requirements for intervention as of right under Rule 24(a) or for permissive intervention under Rule 24(b).

With respect to intervention as of right, Mr. Lea has not identified a protectable interest that will be affected by the disposition of this action. He has not alleged that he has qualifying loans for purposes of Section 1005 of ARPA, and the agency's denial of an ALJ hearing is not related to this

action. He also has not alleged that Defendant will inadequately represent any interest he may have related to ARPA's loan forgiveness program, much less overcome the presumption that the USDA will adequately represent any such interest.

With respect to permissive intervention, Mr. Lea has not met the requirements of Rule 24(b) and should not be permitted to intervene in any event. His ARPA-related allegations do not constitute a "claim" or a "defense," and his claim that he has a right to an ALJ hearing does not share common factual or legal questions with Plaintiff's claim challenging the USDA's interpretation of "socially disadvantaged groups." Moreover, Mr. Lea should not be permitted to intervene in any event because his litigation history shows that his claims—some of which have been dismissed as frivolous in previous lawsuits and resulted in sanctions against him—would prejudice the parties by continuing to divert their resources from addressing the main action and delaying these proceedings.

I. Standard Of Review

When an outside party seeks to join a lawsuit, a motion to intervene is necessary and Federal Rule 24 is the appropriate vehicle. *See Oreck Corp. v. Nat'l Super Serv. Co.*, 1996 WL 371929, at *1 (E.D. La. July 2, 1996) (explaining as much in contrast to Rule 20, which permits joinder by existing parties); *In re Smith*, 521 B.R. 767, 774 (Bankr. S.D. Tex. 2014) (denying motion under Rule 20 because non-party could not enter the case using that rule). Rule "24(a) permits a party to seek intervention as of right while Rule 24(b) allows a party to seek permissive intervention." *DeOtte v. Azar*, 332 F.R.D. 173, 178 (N.D. Tex. 2019) (citing Fed. R. Civ. P. 24).[2] Both forms of intervention require that a motion to intervene be timely filed, *see* Fed. R. Civ. P. 24(a), (b)(1); *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977), and that the motion "state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought," Fed. R. Civ. P. 24 (c)(1).

[2] Hereinafter, all alterations, citations, omissions, quotations, and subsequent history are omitted unless otherwise indicated.

The movant bears the burden of establishing that intervention is appropriate. *See Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016).

For intervention as of right, in addition to establishing timeliness, and absent "an unconditional right to intervene by a federal statute," Fed. R. Civ. P. 24(a)(1), the movant must satisfy the following elements: (1) he "must have an interest relating to the property or transaction which is the subject of the action;" (2) he "must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and" (3) his "interest must be inadequately represented by the existing parties to the suit." *DeOtte*, 332 F.R.D. at 178. "Failure to satisfy [any] one requirement precludes intervention of right." *Id.*

For permissive intervention, after evaluating the timeliness of the motion to intervene, and absent "a conditional right to intervene by federal statute," Fed. R. Civ. P. 24(b)(1)(A), courts engage in a two-step process to determine whether a movant should be permitted to intervene." *DOH Oil Co. v. QEP Res., Inc.*, 2019 WL 3816290, at *5 (W.D. Tex. May 20, 2019). "First, the court must decide whether the movant's claim or defense and the main action share a common question of law or fact." *Id.* "Second, the court … determines whether intervention 'will unduly delay or prejudice the adjudication of the original parties.'" *Id.* (citing Fed. R. Civ. P. 24(b)). It is also appropriate for the court to consider "whether the intervenor's interests are adequately represented by other parties and whether the[] [intervenor] will significantly contribute to full development of the underlying factual issues in the suit." *Brackeen v. Zinke*, 2018 WL 10561984, at *5 (N.D. Tex. June 1, 2018). Permissive intervention "is wholly discretionary with the district court even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *DeOtte*, 332 F.R.D. at 185. And "[o]rders denying permissive intervention are reviewed for clear abuse of discretion and will be reversed only if extraordinary circumstances are shown." *Trans Chemical Ltd. v. China Nat'l Machinery Import & Export Corp.*, 332 F.3d 815, 822 (5th Cir. 2003).

II. Mr. Lea Has Not Carried His Burden To Intervene Under Rule 24.

As a third party seeking to be added as a plaintiff, Mr. Lea does not invoke Rule 24, much less carry his burden to show that he satisfies its requirements. Nor did he accompany his motion with a pleading setting out the claim or defense for which he seeks to intervene, as he "must" under Rule 24(c)(1). The Court should deny Mr. Lea's motion based on his failure to meet these threshold requirements. *See, e.g., Westridge v. Poydras Properties, Inc.*, 1995 WL 120081, at *1 (E.D. La. Mar. 20, 1995) (denying motions to intervene for, *inter alia*, failure to comply with Rule 24(c)); *DOH Oil Co.*, 2019 WL 3816290, at *5 (same). And even if Mr. Lea could overcome these threshold deficiencies, the allegations in his motion do not satisfy the other requirements of Rule 24(a) for intervention as of right or Rule 24(b) for permissive intervention.

A. Mr. Lea Has Not Shown that He Is Entitled to Intervene as a Matter of Right.

Mr. Lea does not allege that he has an unconditional right to intervene by federal statute, so we turn to the other requirements of Rule 24(a), none of which he meets. *See United States v. Texas E. Transmission Corp.*, 923 F.2d 410, 413 (5th Cir. 1991).[3]

1. Mr. Lea has not shown that he has a protectable interest related to the subject of this action or that any such interest may be affected by disposition of this action.

As an initial matter, Mr. Lea has not shown that he has a protectable interest relating to the subject of the action or that any such interest may be affected by the disposition of this action. Mr. Lea's motion appears to allege two interests: (1) an interest in a formal hearing before an ALJ and a final agency decision within 180 days ("ALJ interest"), *see* Lea Mot. 4-10; and (2) an interest in preventing white farmers from being included among the SDFRs who can receive loan forgiveness under Section 1005 in order to preserve the amount of money for minority SDFRs ("ARPA interest"), *see id.*

[3] The Government does not dispute timeliness with respect to either form of intervention.

¶¶ 1-6. Setting aside the merit of Mr. Lea's allegations, the interests he identifies do not entitle him to intervene under Rule 24(a).

The ALJ interest that Mr. Lea identifies is not related to the property or transaction that is the subject of this action, and the disposition of this action will have no bearing on that interest. *See* Fed. R. Civ. P. 24(a)(2). This case is about whether the USDA's interpretation of "socially disadvantaged groups," for purposes of ARPA and other USDA programs, is permissible under the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and the relevant statutory language. *See generally* Compl. Plaintiff seeks to prevent the USDA from using racial categories in its interpretation of "socially disadvantaged groups" or to require the USDA to include other ethnic groups in its interpretation. *See id.* ¶ 21, 37(a). Mr. Lea's alleged ALJ-based interest is not related to whether the USDA properly interprets the statutory term "socially disadvantaged groups" for the purposes of USDA benefits and programs and thus cannot provide a basis for intervention under Rule 24(a). *See, e.g., Yorkshire P'ship, Ltd. v. Pac. Cap. Partners*, 154 F.R.D. 141, 142 (M.D. La. 1993) (denying intervention under Rule 24(a) where the would-be intervenor did not show that its claim for breach of contract damages related to the main partnership dispute). In addition, the disposition of whether the USDA's regulatory interpretation of "socially disadvantaged groups" is permissible will have no bearing on whether Mr. Lea or other SDRFs obtain a formal hearing with an ALJ and a decision within a certain timeframe. For that reason too, Mr. Lea's alleged ALJ interest cannot provide a basis for intervention under Rule 24(a). *See United States v. Encycle/Texas, Inc.*, 1999 WL 33446875, at *3 (S.D. Tex. Aug. 2, 1999) (denying intervention under Rule 24(a) where would-be intervenors did not show that disposition of the action might impair or impede their ability to protect their interests).

Mr. Lea's alleged ARPA interest is also insufficient under Rule 24(a). To intervene as of right, a would-be intervenor must have an interest in the proceedings that is "concrete, personalized, … legally protectable," and "direct." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015). Thus, his

"stake in the matter" must "go[] beyond a generalized preference that the case come out a certain way." *Texas*, 805 F.3d at 657. He may have a legally protectable interest if he "is subject to the regulations at issue in an action or … [a] beneficiary of the regulations at issue." *DeOtte*, 332 F.R.D. at 182. But "a purely economic interest is insufficient." *Id.* at 183. "In addition, the [would-be] intervenor should be the real party in interest regarding his claim." *Saldano v. Roach*, 363 F.3d 545, 551 (5th Cir. 2004). And he has "no standing to assert a right if it is not his own." *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.,* 732 F.2d 452, 464 (5th Cir.1984).

Based on these precedents, Mr. Lea's alleged ARPA interest is insufficient under Rule 24(a) in several respects. First, Mr. Lea alleges a generalized preference that the Court rule for Defendant on the merits of this case, but he has not alleged an interest that is personalized—or "specific to [him]," *Texas*, 805 F.3d at 658—and is not the real party in interest with respect to his claim. Mr. Lea alleges that if Plaintiff obtains his requested relief, SDFRs "will receive … less emergency [debt] relief." Lea Mot. ¶ 6; *see also id.* ¶ 1. But although he alleges that he is an SDFR who is affected by the debt relief in Section 1005, *see id.* ¶ 1, he does not allege that he has a qualified loan such that he would otherwise be entitled to that debt relief. He therefore has not shown that he is a beneficiary of the program at issue (and is not regulated by it) or that he possesses an interest that the "law recognizes as belonging to … [him]." *New Orleans Public Service*, 732 F.2d at 464.

Second, even if Mr. Lea could establish a personalized interest, any such interest he may have is, at most, economic, which is "insufficient" under Rule 24(a). *DeOtte*, 332 F.R.D. at 183. And third, Mr. Lea's alleged ARPA interest is not direct. As noted, Mr. Lea theorizes that if Plaintiff obtains his requested relief, there will be less debt relief available to minority SDFRs under Section 1005. *See* Lea Mot. ¶¶ 2-6. "This is an attenuated interest," at best. *DeOtte*, 332 F.R.D. at 183. Mr. Lea's theory is based on the incorrect premise that Congress appropriated a fixed amount of money for the loan forgiveness program under Section 1005. It did not. *See* ARPA § 1005(a)(1) (appropriating "such

sums as may be necessary, to remain available until expended, for the cost of loan modifications and payments under this section"). Thus, Mr. Lea has not established, as he must, that minority farmers and ranchers would not receive the loan forgiveness provided for in Section 1005 even if Plaintiff were to obtain the relief he requests.[4] As such, Mr. Lea's alleged ARPA interest is not direct and is thus insufficient to entitle him to intervention under Rule 24(a). *See DeOtte*, 332 F.R.D. at 183.

Fourth, not having shown that he possesses a personal interest in the debt relief under Section 1005, or that Plaintiff's requested relief may affect that interest, Mr. Lea cannot show that disposition of this action may impair his ability to protect that interest. For that reason too, Mr. Lea cannot satisfy Rule 24(a)'s requirements. *See* Fed. R. Civ. P. 24(a)(2) (requiring a would-be intervenor to show that he "is so situated that disposing of the action may as a practical matter impair or impede [his] ability to protect [his] interest"); *Encycle/Texas, Inc.*, 1999 WL 33446875, at *3.

Lastly, Mr. Lea's purported "cross-claim" against Plaintiff for failure to exhaust administrative remedies, *see* Lea Mot. ¶¶ 7-9, does not suffice for intervention under Rule 24(a) because Mr. Lea is not the real party in interest regarding that "claim," nor does he have standing to assert it. Failure to exhaust administrative remedies is an affirmative defense that must be asserted by the defendant, namely a defendant agency like the USDA. *See Davis v. Fort Bend Cty.*, 893 F.3d 300, 307 (5th Cir. 2018) (citing, *inter alia*, *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2007) (noting that in Prison Litigation Reform Act cases, "[a]ny failure to exhaust must be asserted by the defendant")). Similarly, in support of his "cross-claim," Mr. Lea argues that Plaintiff has failed to obtain a final agency action, *id.* at 3, but that is not a cognizable claim. A final agency action is a prerequisite to filing suit against a

[4] Defendant takes no position at this time on the appropriate remedy in the event that this Court were to side with Plaintiff. Defendant merely argues here that Mr. Lea's alleged ARPA interest is not direct. In that regard, of note, Plaintiff claims in the alternative that the Court should construe SDFRs to *include* certain white ethnic groups and individuals who have any discernable trace of minority ancestry. *See* Compl., claims 2 and 3.

federal agency under the APA. *See Soundboard Assn v. Fed. Trade Comm'n*, 888 F.3d 1261, 1267 (D.C. Cir. 2018). Without it, a litigant no doubt "lack[s] a cause of action under the APA." *Id.* But for that reason, lack of a final agency action is a defense—and one that belongs to federal agencies—not an independent basis for a claim by a private litigant.[5] Mr. Lea may wish the Government to raise the lack of final agency action or failure to exhaust as defenses against Plaintiff, but Mr. Lea does not have the authority to raise defenses on the Government's behalf, and intervention would not give him that authority. Mr. Lea thus is not the real party in interest with respect to those defenses, nor does he have standing to assert them. *See New Orleans Public Service,* 732 F.2d at 464.

2. Mr. Lea has not shown that his alleged ARPA interest would be inadequately represented by Defendant.

In addition, assuming *arguendo*, that Mr. Lea's alleged ARPA interest is a sufficient interest for purposes of Rule 24(a), he has not shown that any such interest would be inadequately represented by Defendant. Although the burden to show inadequate representation has been characterized as "minimal," "it cannot be treated as so minimal as to write the requirement completely out of the rule." *DeOtte*, 332 F.R.D. at 185. Indeed, the Fifth Circuit "has created two presumptions of adequate representation that [would-be] intervenors must overcome in appropriate cases." *Id.* First, if "the would-be intervenor has the same ultimate objective as a party to the lawsuit," then "the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption." *Id.* Second, "when the putative representative is a governmental body," the would-be intervenor must show "that its interest is in fact different from that of the governmental entity and that the interest will not be represented by it." *Id.*

[5] Mr. Lea does not allege that he will be required to do, or be restrained from doing, anything as a result of the relief Plaintiff seeks against the Government and thus does not possess a "defense" in this case. *See* Caleb Nelson, *Intervention*, 106 Va. L. Rev. 271, 274 (2020) (explaining that "a 'defense' is a particular type of legal argument that the targets of a claim assert to explain why the court should not grant relief against them").

Here, with respect to his alleged ARPA interest, Mr. Lea's ultimate objective is the same as Defendant's. He argues that Plaintiff has not exhausted administrative remedies, Lea Mot. ¶¶ 7-9, and seeks to prevent Plaintiff from obtaining his requested relief, *see id.* ¶ 6. Both Mr. Lea and Defendant then have the same end goal: to oppose and seek to deny Plaintiff's requested relief. Mr. Lea has not made any claim of, much less shown, adversity of interest, collusion, or nonfeasance on the part of Defendant, or "demonstrated any reason to think the federal government will not zealously defend its own laws." *Brackeen*, 2018 WL 10561984, at *4. Indeed, "without at least a preview of the substantive arguments, defenses, and claims by all parties in this case," Mr. Lea cannot "me[e]t [his] burden to show that [he is] inadequately represented. *Texas v. United States*, 2018 WL 10562846, at *2 (N.D. Tex. May 16, 2018). Nor do his allegations show that his alleged ARPA interest is in fact different from Defendant's. As such, Mr. Lea has not overcome the presumption that Defendant will adequately represent that interest and is therefore not entitled to intervene under Rule 24(a) on the basis of that interest. *See, e.g., Haspel & Davis Milling & Planting Co. v. Bd. Of Levee Commissioners of The Orleans Levee Dist. & State Of Louisiana*, 493 F.3d 570, 579 (5th Cir. 2007) (upholding denial of intervention on basis of presumption where would-be intervenor did not carry his burden).

B. Mr. Lea Has Not Shown that Permissive Intervention Is Appropriate.

Mr. Lea likewise has not carried his burden to show that he should be permitted to intervene under Rule 24(b) on the basis of either his ARPA or ALJ allegations.

With respect to Mr. Lea's ARPA allegations, he falters at the first step in the process—to show that he has a claim or defense that shares a common question of law or fact with the main action—for the fundamental reason that he has no cognizable claim or defense. The words "claim or defense" in the context of Rule 24(b)(2) "'manifestly refer to the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit.'" *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997) (quoting *Diamond v. Charles,* 476 U.S. 54, 76–77 (1986) (O'Connor, J., concurring in

part and concurring in judgment)). Or, in other words, an "actual, present interest that would permit [the movant] to sue or be sued by [the parties] in an action sharing common questions of law or fact with those at issue in th[e] litigation." *Diamond*, 476 U.S. at 77 (O'Connor, J., concurring). Mr. Lea has no claim or defense in this sense based on his ARPA allegations. He "has no 'claim' because [he] is not suing any of the litigants." *DeOtte*, 332 F.R.D. at 186. He has not alleged that the USDA is doing anything unlawful with respect to ARPA and indeed, seeks to prevent Plaintiff from obtaining his requested relief. *See* Lea Mot. ¶¶ 2, 6. And his exhaustion argument, styled as a "cross-claim" against Plaintiff, *see id.* at 3, is, as noted, an affirmative defense that can be raised only by Defendant, *see supra* 11. Mr. Lea likewise "has no 'defense' because [he] will not be required to do anything—nor will [he] be restrained from doing anything—by the relief that [Plaintiff is] seeking against the federal government." *DeOtte*, 332 F.R.D. at 186. Because Mr. Lea does not have a valid claim or defense against any of the current litigants, his ARPA allegations provide "no grounds for permissive intervention." *Id.* Moreover, as set forth above, Mr. Lea has not carried his burden to show that any alleged ARPA interest he may have would be inadequately represented by Defendant. *See supra* 12-13. That reason too militates against permissive intervention. *See Brackeen*, 2018 WL 10561984, at *5 (denying permissive intervention, in part, because the proposed intervenor had not demonstrated inadequate representation).

With respect to Mr. Lea's ALJ allegations, they simply do not raise a question of law or fact in common with the main action. *See* Fed. R. Civ. P. 24(b)(1)(B). As discussed above, Mr. Lea alleges that, unlike white farmers, he and other minority farmers are not afforded a formal hearing before an ALJ and a decision thereafter within 180 days. *See* Lea Mot. 4-11. He alleges that this violates the Equal Protection Clause, the APA, and ECOA. *See id.* It is evident that those factual and legal issues are different from, and independent of, those raised by Plaintiff, who challenges the USDA's interpretation of the statutory term "socially disadvantaged groups." The only commonality is that both

Mr. Lea and Plaintiff make equal protection allegations, but the questions of law are wholly different: one being whether the USDA unlawfully discriminates against minority farmers in its complaint processes, and the other being whether the USDA discriminates against white farmers in its interpretation of the term "socially disadvantaged group." And resolution of those questions would involve consideration of entirely different sets of facts. As such, Mr. Lea's ALJ allegations do not support permissive intervention under Rule 24(b). *See Airbus Helicopter Inc. v. Helicopter Consultants of Maui Inc.*, 2015 WL 12712704, at *2 (N.D. Tex. Jan. 22, 2015) (denying permissive intervention where "each parties' claims involve separate contracts which would be evaluated using different legal theories").

Mr. Lea also should be denied permissive intervention because he will not contribute significantly to the full development of the underlying factual issues in the suit and is likely to unduly delay and prejudice the adjudication of the rights of the existing parties. *See Romero v. Bd. of Cty. Commissioners for the Cty. of Curry*, 313 F.R.D. 133, 142 (D.N.M. 2016) (citing 6 Moore, *supra,* § 24.10[1], at 24–63) ("[C]onsiderations of trial convenience dominate the question of whether to allow permissive intervention."). The claims at issue in the underlying dispute turn primarily on legal questions involving the USDA's regulatory interpretation of statutory language. To the extent factual development is involved at all, Mr. Lea has provided no reason to believe that any facts relevant to the dispute reside with him and thus, that consideration weighs against permissive intervention. *See Brackeen*, 2018 WL 10561984, at *5 (denying permissive intervention, in part, because the would-be intervenor had not shown "how it would contribute to the cause of action in a meaningful way").[6]

[6] Indeed, rather than contributing to the factual development in the case, Mr. Lea appears to be disseminating information for his benefit that could confuse the public. *See* https://thecowtownfoundation.org/ (encouraging SDFRs with outstanding direct or guaranteed USDA loans to "become a member of [his] foundation so [his] experienced law group can help [them] get full debt write off as provided in the Emergency Debt Relief for People of Color Act of 2021") (last visited May 25, 2021). As the USDA has explained, borrowers who qualify for loan forgiveness under Section 1005 of ARPA do not need to take any action right now and instead will receive a written notification from FSA explaining the payment process. *See* https://www.farmers.gov/americanrescueplan/arp-faq. USDA

Moreover, Mr. Lea's litigation history suggests that his involvement in this litigation is likely to unduly delay proceedings and prejudice the parties. Mr. Lea has filed numerous actions against the USDA, many of them based on allegations like those here, including that the USDA has unlawfully denied him a hearing before an ALJ. *See Lea v. U.S. Dep't of Agriculture*, No. 16-cv-00735, Report and Recommendation), ECF No. 33 (M.D. Tenn. Dec. 11, 2017), attached as Exhibit A. Most of them have been dismissed. *Pigford v. Vilsack*, 2016 WL 4921378, at *7 (D.D.C. Sept. 15, 2016) (dismissing as "lack[ing] merit," among other things, Lea motion alleging that he and others had not received a hearing on their discrimination claims and requesting that the court "freeze" implementation of the consent decree); *Lea v. United States*, 120 Fed. Cl. 440 (2015) (*Lea III*) (granting defendant's motion to dismiss); *Lea v. United States*, No. 14–CV–00040–TBR (W.D. Ky. May 29, 2014) (dismissing plaintiff's complaint for violation of the sanctions against him); *Lea v. United States*, No. 10–CV–00052–JHM (W.D. Ky. Jul. 11, 2013) (granting defendants' motion to dismiss), *aff'd*, No. 14–5445 (6th Cir. Dec. 18, 2014), *cert. denied,* Case No. 14–8315 (April 6, 2015); *Lea v. United States*, No. 10–CV–00029–JHM (W.D. Ky. Jan. 19, 2011) (granting defendants' motion to dismiss), *aff'd*, No. 11–5969 (6th Cir. Aug. 7, 2013); *Lea v. Kentucky*, 1:09–CV–0056–TBR (W.D. Ky. April 20, 2010) (granting defendants' motion to dismiss); *see also* Ex. A at 3 (listing cases). Several on the basis that his claims were "frivolous." *Lea v. Farmers Nat'l Bank,* No. 3:15–CV–00595 (M.D. Tenn. May 27, 2015) (finding plaintiff's case "to be legally frivolous by reason of improper venue"); *see also* Ex. A at 3-11. And in at least one instance, the court sanctioned Mr. Lea for filing "frivolous and duplicative lawsuits" and enjoined him and his corporate affiliate from filing any civil lawsuit in that district alleging similar factual or legal claims. *Lea v. United States,* No. 13–CV–00110–JHM (W.D. Ky. Feb. 6, 2014), ECF No. 64, *aff'd*, No. 14–5493

has also made clear that borrowers need not work with a third party to access this assistance and under no circumstances should pay a fee to a third party in connection with any assistance. *See id.*

(6th Cir. Dec. 18, 2014), *cert. denied,* Case No. 14–8315 (April 6, 2015) (explaining that Mr. Lea's "submission of frivolous and duplicative lawsuits serves no legitimate purpose, places a tremendous burden on this Court's limited resources, and deprives other litigants with meritorious claims of the speedy resolution of their cases"). In dismissing a separate action by Mr. Lea against the USDA, the U.S. Court of Federal Claims similarly explained:

> This is *pro se* plaintiff's third attempt, in a two-year period, to pursue the same claims in the United States Court of Federal Claims, and it should be his last filed in this, or any other, trial court. During the previous seven years, *pro se* plaintiff Corey Lea has relentlessly and frivolously taxed the limited resources of the federal judiciary by filing numerous, duplicative complaints in this and other federal courts based on the same fundamental set of facts. Although plaintiff may consider this decision another unhappy ending, this decision should send a clear message to Mr. Lea.

Lea v. United States, 126 Fed. Cl. 203, 218 (2016).

Mr. Lea should not be permitted to further tax the limited resources of this Court and the current litigants.[7] This is not an instance where "no one would be hurt and the greater justice could be attained," *DeOtte*, 332 F.R.D. at 178; instead, the current parties will likely continue to be prejudiced by Mr. Lea's participation in these proceedings. Defendant therefore respectfully requests that the Court exercise its discretion and deny Mr. Lea permissive intervention. *See DeOtte*, 332 F.R.D. 173 at 186–87 (denying permissive intervention where "some delay would ensue due to the further briefing that would be required for the parties to respond to [the would-be intervenor's] opposition brief").

III. Mr. Lea Cannot Join This Action Under Rule 20.

As noted, Mr. Lea seeks to join this lawsuit as a plaintiff under Rule 20(a), *see* Lea Mot. at 1 (citing Fed. R. Civ. P. 20(a)); however, Rule 24—not Rule 20—is the appropriate vehicle for a third party seeking to participate in a pending action, *see Oreck Corp.*, 1996 WL 371929, at *1. Regardless,

[7] Mr. Lea filed a similar motion for joinder in another case challenging Section 1005, among other things. *See* Mot. to Joinder by Corey Lea, *Faust v. Vilsack*, No. 21-548 (E.D. Wis.), ECF No. 6.

even if Mr. Lea could use Rule 20 to join this action, he has not shown that joinder under Rule 20 is warranted, for many of the same reasons as those set forth above. *See id.* (explaining that the "[o]nly difference between intervention of right and joinder is which party initiates the addition of a new party to the case").

A person may be joined as a plaintiff under Rule 20(a) if: (1) the person's "claims arise out of the 'same transaction, occurrence, or series of transactions or occurrences'"; and (2) "there is at least one common question of law or fact linking all claims." *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521 (5th Cir. 2010) (per curium) (quoting Fed. R. Civ. P. 20(a)). To permit joinder under Rule 20, both requirements must be satisfied. *See Bancroft Life & Cas. ICC, Ltd. v. FFD Res. II, LLC*, 884 F. Supp. 2d 535, 538 (S.D. Tex. 2012). And even where both requirements are satisfied, "district courts have the discretion to refuse joinder in the interest of avoiding prejudice and delay, … or safe-guarding principles of fundamental fairness." *Acevedo*, 600 F.3d at 521.

As set forth above, Mr. Lea's ARPA-related allegations do not constitute a claim, much less a plausible one, where he does not make any allegations *against* Defendant and instead seeks to deny Plaintiff's requested relief, and his purported "cross-claim" against Plaintiff is an affirmative defense that can be raised only by Defendant. *See supra* 11. For that reason alone, Mr. Lea's ARPA-related allegations cannot supply a basis for permissive joinder. *See* 7 Charles Alan Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1656 (3d ed. 2001) (explaining that Rule 20(a) "does not excuse any of the joined parties from the obligation to state a claim against defendant or defendants upon which relief may be granted") (citing cases); *Granchelli v. P & A Ints., Ltd.*, 2013 WL 435942, at *2 (S.D. Tex. Feb. 4, 2013) (explaining that under Rule 20(a)(1), a plaintiff may join when he has "claims" arising out of the same transaction or occurrence); *Berthelot v. Am. Postal Workers Union, Loc.*

185, 2010 WL 4639050, at *7 (S.D. Tex. Nov. 8, 2010) (same).[8] And Mr. Lea's ALJ-related allegations do not arise out of the same transaction or occurrence, nor do they raise a common question of fact or law, where Plaintiff's challenge—to the USDA's interpretation of SDGs for purposes of ARPA and elsewhere—is wholly unrelated to whether Mr. Lea and other minority farmers are entitled to a hearing before an ALJ and a decision within 180 days. *See supra* 9. Moreover, even if Mr. Lea could satisfy the requirements for permissive joinder, as explained above, his joinder would result in undue delay and prejudice to the parties and should not be permitted for that reason alone.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court deny Mr. Lea's motion for permissive joinder and his request to join this lawsuit as a plaintiff.

Dated: May 25, 2021

Respectfully submitted,

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[8] This is not to suggest that Defendant believes that Mr. Lea's ALJ-related allegations *do* state a plausible claim. As noted, similar claims have been dismissed repeatedly. But Defendant does not address that issue here because there are numerous other reasons why joinder should not be permitted on the basis of Mr. Lea's ALJ-related allegations or otherwise.

Certificate of Service

On May 25, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Emily Sue Newton
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
United States Department of Justice

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA, Petitioner, v. UNITED STATES DEPARTURE OF AGRICULTURE, et al., Respondents.	Case No. 3:16-cv-00735 Judge Terrence Berg Magistrate Judge Newbern

To: The Honorable Terrence G. Berg, District Judge

REPORT AND RECOMMENDATION

The District Court referred this *pro se* Petition for Judicial Review under the Administrative Procedure Act to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) to dispose or recommended disposition of any pretrial motions and to conduct further proceedings, if necessary, under Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Court. (Doc. No. 3.)

Pending before the Court is the Motion to Dismiss of Respondent United States Department of Agriculture (USDA) (Doc. No. 22). Petitioner Corey Lea has responded in opposition. (Doc. No. 24.) For the following reasons, the undersigned RECOMMENDS that the motion to dismiss be GRANTED and that the Petition be DISMISSED.

I. Background

Petitioner Corey Lea brings a petition under the Administrative Procedure Act (APA), 5 U.S.C. § 701, *et seq.*, related to (1) the USDA's "fail[ure] [to] act on [t]he 2008 Farm Bill and the

[foreclosure] moratorium relief it provided in 7 CFR 766.358" for borrowers, and (2) "an accepted discrimination complaint still unresolved [at] the USDA's Office of Civil Rights." (Doc. No. 1, PageID# 2, ¶¶ 1–2.) It appears Lea's claims arise out of a foreclosure on Lea's property, which Lea believes the USDA should have stopped, and Lea's status as a "socially disadvantaged farmer and . . . a member of a protected class, African American." (*Id.* at PageID# 3–4, ¶ 7; PageID# 4, ¶ 8; PageID# 5, ¶ 11–12; PageID# 8, ¶ 20.) He seeks "an expedited formal hearing on the merits before the Department of Agriculture's Administrative Law Judg[e and,] if necessary, a judicial review of the ALJ's decision." (*Id.* at PageID# 9.)

Factual context is almost entirely absent from Lea's complaint in this action. However, Lea has brought substantially similar, and sometimes identical, claims in other courts which illuminate the present action. The United States Court of Federal Claims described Lea's related litigation history as follows in a 2016 order:

> This is *pro se* plaintiff Corey Lea's third action initiated in the United States Court of Federal Claims arising from the same underlying facts filed within a two-year time period. Plaintiff alleges that, in November 2007, the now-dissolved company Corey Lea, Inc. obtained a loan from Farmers National Bank to purchase farm property. This loan was guaranteed by the United States Department of Agriculture (USDA) Farm Service Agency (FSA) through a loan guarantee agreement. As a result, Farmers National Bank held a first mortgage on 90 percent of the property, and the USDA FSA held a second mortgage on 10 percent of the property. Mr. Lea attached the loan guarantee agreement to the complaint filed in the current action, which identifies "COREY LEA, INC." as the "Borrower," and "FARMERS NATIONAL BANK" as the "Lender." (capitalization in original). Although plaintiff did not provide a copy of the second mortgage held by the USDA FSA with his complaint, defendant provided a copy of this second mortgage as an attachment to its motion to dismiss. This second mortgage document identifies the mortgagor as "COREY LEA, INCORPORATED." (capitalization in original).
>
> Subsequently, in December 2007, plaintiff alleges that he secured a loan from Independence Bank to fund the construction of a new house on the property and to refinance the existing loan from Farmers National Bank. According to plaintiff, he requested a loan subordination from the USDA, however, the USDA denied the request after conducting an appraisal of the property and appraising the value of the property at $18,035.00 less than the amount of debt that plaintiff would incur with

the new loan, if completed. Following this denial, plaintiff filed a complaint with the USDA Office of Civil Rights, which was received by the USDA on May 1, 2008, alleging that the denial of the loan resulted from racial discrimination. It is not clear from the record in [this] case how these allegations were resolved.

In February 2009, Farmers National Bank initiated a foreclosure action on the farm property due to a failure to make payments for five months. Plaintiff alleges that, by July 28, 2009, the office of the USDA FSA responsible for adjudicating plaintiff's discrimination complaint had requested suspension of the foreclosure action. In October 2009, however, Farmers National Bank was granted a Judgment and Order of Sale as to the farm property. Thereafter, plaintiff filed multiple suits in the United States District Court for the Western District of Kentucky, and the United States Court of Federal Claims, "seeking an injunction against the farm's foreclosure as well as damages for the USDA's alleged earlier discrimination."

In addition to [the present] case, which the court refers to as *Lea IV*, plaintiff, Corey Lea, has filed at least eleven separate actions within the federal judiciary system based on the same set of facts, including: *Lea v. United States*, No. 3:16–CV–00735 (M.D. Tenn. April 13, 2016) (ongoing); *Lea v. Farmers Nat'l Bank*, No. 3:15–CV–00595 (M.D. Tenn. May 27, 2015) (finding plaintiff's case "to be legally frivolous by reason of improper venue"); *Lea v. United States*, No. 14–44C, 2014 WL 2101367 (Fed. Cl. May 19, 2014) (*Lea I*), *aff'd in part, vacated in part*, 592 Fed. Appx. 930 (Fed. Cir. 2014) (*Lea II*) (voluntarily dismissed); *Lea v. United States*, 120 Fed. Cl. 440 (*Lea III*) (granting defendant's motion to dismiss); *Lea v. United States*, No. 14–CV–00040–TBR (W.D. Ky. May 29, 2014) (dismissing plaintiff's complaint for violation of the sanctions against him); *Lea v. United States*, No. 13–CV–00110–JHM (W.D. Ky. Feb. 6, 2014) (finding plaintiff's claims frivolous and issuing sanctions enjoining plaintiff from filing related civil claims), *aff'd*, No. 14–5493 (6th Cir. Dec. 18, 2014), *cert. denied*, Case No. 14–8315 (April 6, 2015); *Lea v. United States*, No. 10–CV–00052–JHM (W.D. Ky. Jul. 11, 2013) (granting defendants' motion to dismiss), *aff'd*, No. 14–5445 (6th Cir. Dec. 18, 2014), *cert. denied*, Case No. 14–8315 (April 6, 2015); *Lea v. United States*, 1:11–CV–00094–JHM (W.D. Ky. Aug. 26, 2011) (transferred to Sixth Circuit at plaintiff's request); *Lea v. United States*, No. 10–CV–00029–JHM (W.D. Ky. Jan. 19, 2011) (granting defendants' motion to dismiss), *aff'd*, No. 11–5969 (6th Cir. Aug. 7, 2013); *Lea v. Kentucky*, 1:09–CV–0056–TBR (W.D. Ky. April 20, 2010) (granting defendants' motion to dismiss); *Lea v. Farmers Nat'l Bank*, 1:09–CV–00075–JHM–ERG (W.D. Ky. July 21, 2009) (granting defendants' motion to dismiss and finding that *pro se* plaintiff Corey Lea cannot pursue claim on behalf of corporation, Corey Lea, Inc.).

A number of *pro se*, plaintiff Corey Lea's prior complaints have been dismissed and found frivolous. For example, the United States District Court for the Western District of Kentucky specifically issued sanctions against plaintiff for his "submission of frivolous and duplicative lawsuits" and enjoined "Plaintiff Corey Lea" and his corporate affiliate, "Corey Lea, Inc.," from "filing any civil lawsuit in

> the United States District Court, Western District of Kentucky alleging or asserting factual or legal claims based upon or arising out of any of the legal or factual claims alleged" in plaintiff's previous actions. *Lea v. United States*, No. 13–CV–00110–JHM, ECF No. 64 (emphasis in original). The District Court explained:
>
> > Plaintiffs repeated filing of civil actions re-hashing the same arguments is improper and harassing and clearly unwarranted. His submission of frivolous and duplicative lawsuits serves no legitimate purpose, places a tremendous burden on this Court's limited resources, and deprives other litigants with meritorious claims of the speedy resolution of their cases. The similarity of Plaintiff's actions and the timing evince his bad faith and improper purpose in filing the present action. As such, it is appropriate for this Court to impose sanctions upon Plaintiff.
>
> *Id.*

Lea v. United States, 126 Fed. Cl. 203, 206–08 (Fed. Cl. 2016).

In May 2015, Lea initiated a separate action in this Court against the USDA, among other defendants, alleging discrimination and a violation of 7 C.F.R § 766.358. Complaint at 4–5, 11, *Lea v. Farmers Nat'l Bank*, No. 3-15-cv-00595 (M.D. Tenn. May 27, 2015), ECF 1. On February 23, 2016, the Court dismissed Lea's complaint on the grounds of frivolity based on improper venue. *Lea v. Farmers Nat'l Bank*, No. 3:15-cv-00595, 2016 WL 727775, at *1 (M.D. Tenn. Feb. 23, 2016). The Sixth Circuit affirmed that dismissal. *Lea v. Warren County*, No. 16-5329, 2017 WL 4216584, at *1 (6th Cir. May 4, 2017).

Lea filed the instant petition on April 13, 2016. (Doc. No. 1.) In it, Lea states that "the Secretary of the United States Department of Agriculture terminated the financial [assistance] provided to [Lea] in the form of a direct loan and loan guarantee to a local bank." (Doc. No. 1, PageID# 3, ¶ 5.) Construing his minimal allegations in the light most favorable to him, Lea claims that the USDA failed to protect him from foreclosure by not enforcing the foreclosure moratorium period imposed by the 2008 farm bill legislation, 7 C.F.R. § 766.358, against the private bank that

held his loan.[1] (*See* Doc. No. 1, PageID# 3–4, ¶ 7.) He cites the USDA's "long history of racial discrimination" and states that the "Secretary could have prevented the employees of the USDA from conspiring with the private bank to perfect an illegal provision." (*Id.* at PageID# 5, ¶ 12.) Lea states that he has "an accepted discrimination complaint still unresolved [at] the USDA's Office of Civil Rights." (*Id.* at PageID# 2, ¶ 2.) In response to Lea's request for a hearing on the merits of his complaint, "[t]he ALJ stated she was without jurisdiction to hold . . . the formal hearing on the merits[.]" (*Id.* at PageID# 3, ¶ 6.) Lea asserts that "the USDA has written rules against the constitution by not allowing black farmers to have a formal hearing before the Administrative Law Judge" while "a similar[ly] situated white male farmer" can. (*See id.* ¶ 4.) He asks for "an expedited formal hearing on the merits before the Department of Agriculture's Administrative Law Judg[e and,] if necessary, a judicial review of the ALJ's decision." (*Id.* at PageID# 9.)

The USDA filed its motion to dismiss on August 31, 2016. (Doc. No. 22.) In it, the United States assumes that Lea "seeks review of the two (2) most recent related decisions in the [United States Court of Federal Claims] out of the many adverse decisions against [Lea] in that court." (Doc. No. 23, PageID# 104.) The United States cites decisions from the Court of Federal Claims issued on April 25, 2016 and May 10, 2016. (*Id.*) In those decisions, the Court of Federal Claims found that Lea's claims "based on alleged takings, tort, and implied-in-fact contract" were collaterally estopped by prior decisions of that court against him and that Lea's remaining breach

[1] The Food and Energy Conservation Act (or 2008 "Farm Bill") instituted a moratorium with respect to certain farmer program loans "on all acceleration and foreclosure proceedings instituted by the Department of Agriculture against any farmer or rancher" with a claim of program discrimination against the USDA. 7 U.S.C. § 1981a(b)(1). The Western District of Kentucky found, however, that the bill did not preclude foreclosure due to Lea's discrimination claim because 7 U.S.C. § 1981a "limited the moratorium solely to those foreclosures 'instituted by the Department of Agriculture,'" and a private bank, not the USDA, instituted the foreclosure proceedings in Lea's case. *Lea v. U.S. Dep't of Agric.*, No. 1:10-cv-00029, 2011 WL 182698, at *3–4 (W.D. Ky. Jan. 19, 2011).

of contract claims were properly brought by Lea's corporate entity, Corey Lea, Inc., and not Lea personally. (*Id.* at PageID# 105–06.) The United States argues that Lea "does not plead any sufficient facts upon which relief can be granted in his Petition to challenge the decisions made by the Claims Court." (*Id.* at PageID# 106.)

II. Legal Standard

Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Such a statement ensures that defendants receive "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). In deciding whether the plaintiff has set forth a "plausible" claim, the court must accept as true the factual allegations (but not legal conclusions) in the complaint. *Iqbal*, 556 U.S. at 678.

Pro se complaints, no matter how "inartfully pleaded," are held to "less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Where a plaintiff proceeds *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim on which relief may be granted . . . " 28 U.S.C. § 1915(e)(2)(B)(ii). The court shall also dismiss any action it finds to be frivolous or maliciously filed. *Id.* § 1915(e)(2)(B)(i).

III. Analysis

As a threshold matter, the undersigned notes that the United States' motion to dismiss is based upon a faulty assumption that Lea's current petition challenges the April 25, 2016 and May

10, 2016 decisions of the Court of Federal Claims. (*See* Doc. No. 23, PageID# 104.) Lea's petition in this Court was filed on April 13, 2016, and thus could not be in response to those later-filed decisions. (*See* Doc. No. 1.) Because the United States offers no other basis for its motion, it does not provide grounds for the dismissal of Lea's complaint. However, because Lea proceeds *in forma pauperis* in this action, the Court has an independent obligation to determine "at any time" whether the complaint is frivolous, maliciously filed, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2(B)(i)–1915(e)(2)(B)(ii). The undersigned will therefore evaluate Lea's complaint under that statute.

A. Venue

This Court has previously found, and the Sixth Circuit has affirmed, that the Middle District of Tennessee is not the proper venue for an action stemming from the foreclosure of Lea's property. *Lea v. Farmers Nat'l Bank (Lea I)*, No. 3:15-CV-00595, 2016 WL 727775, at *1 (M.D. Tenn. Feb. 23, 2016); *Lea v. Warren County (Lea II)*, No. 16-5329, 2017 WL 4216584, at *2 (6th Cir. May 4, 2017). Although the United States does not challenge venue in this case, the Court must consider sua sponte whether a lack of venue renders this matter legally frivolous under the *in forma pauperis* statute, as the Sixth Circuit found Lea's prior action to be. *Lea II*, 2017 WL 4216584, at *2. The undersigned finds that it does.

In an action brought against an agency or officer of the United States, venue is proper in the district in which a defendant resides, a "substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated," or "the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). It appears that Lea's claims here again center on the property located in the Western District of Kentucky and the USDA's actions surrounding its foreclosure. (Doc. No. 1, PageID#

4, ¶ 7; Doc. No. 24-1, PageID# 168.) Although Lea frames this action as a challenge to the administrative law judge's failure to hold a hearing on the merits of his civil rights complaint, and not as a direct challenge to the foreclosure of his property, the foreclosure and the events surrounding it still constitute the heart of Lea's claims. As the Sixth Circuit found, "the subject property was located in Kentucky, it was sold in Kentucky, litigation regarding the property had already been brought in Kentucky courts, and Lea himself resided in Kentucky during the time of the foreclosure and the sale of the subject property." *Lea II*, 2017 WL 4216584, at *2. Thus, a "substantial part of the events or omissions giving rise" to Lea's claims occurred in the Western District of Kentucky, where the real property that is the subject of this action is situated. 28 U.S.C. § 1391(e)(1). Venue is proper in that district and not the Middle District of Tennessee.

Upon finding a case to be improperly filed in its district, a court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Lea's case would find proper venue in the Western District of Kentucky. However, it appears that Lea has been "permanently enjoined from filing any civil lawsuit in the United States District Court, Western District of Kentucky alleging or asserting factual or legal claims based upon or arising out of [the foreclosure]." *Lea v. U.S. Dep't of Agric.*, No. 114CV-40-R, 2014 WL 2435903, at *1 (W.D. Ky. May 29, 2014).[2] Because Lea must "seek leave and written permission to file [an action in the Western District of Kentucky] and certify under oath or affirmation that the action involves new matters in accordance with the sanctions entered against him" before filing any new action in that district, the undersigned finds that

[2] Lea filed his first action in this Court shortly after he was enjoined from proceeding in the Western District of Kentucky. *See* Complaint, *Lea v. Farmers Nat'l Bank*, No. 3:15-cv-00595 (M.D. Tenn. May 27, 2015), ECF 1.

transferring this matter would not serve the interest of justice and that dismissal is the appropriate result. *Id.*

B. Failure to State a Claim Under the Administrative Procedures Act

Even if venue were proper in this district, Lea's petition does not state a claim upon which relief may be granted because the petition's few facts do not allege that Lea has suffered a legal wrong within the meaning of the Administrative Procedures Act (APA). To state a claim under the APA, a petitioner must plead that "the challenged agency action caused them to suffer a 'legal wrong' or 'adversely affected or aggrieved' them 'within the meaning of a relevant statute.'" *Herr v. U.S. Forest Serv.*, 803 F.3d 809, 818 (6th Cir. 2015) (quoting 5 U.S.C. § 702). Second, the petitioner must plead that a statute has subjected the challenged agency action to review, or that the challenged action is a "final" one "for which there is no other adequate remedy in a court." *Berry v. U.S. Dep't of Labor*, 832 F.3d 627, 632 (6th Cir. 2016) (quoting 5 U.S.C. § 704). An action is "final" when it marks "the consummation of the agency's decisionmaking process" and determines "rights or obligations." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (internal quotations omitted).

Lea first pleads that "[t]he agency and the secretary failed to enforce its own rules and regulations and an Act of Congress that provided moratorium relief against foreclosure until a hearing on the merits by the Administrative Law Judge." (Doc. No. 1, PageID# 6, ¶ 15.) This claim fails because the Western District of Kentucky has held, and the Sixth Circuit has affirmed, that the plain language of the statute Lea references provided a moratorium only on foreclosures "instituted by the Department of Agriculture," 7 U.S.C. § 1981a(b)(1), and Lea concedes that a "private bank" initiated his foreclosure. *Lea v. U.S. Dep't of Agric.*, No. 1:10-CV-00029, 2011 WL 182698, at *4 (W.D. Ky. Jan. 19, 2011), *aff'd*, Order at 5–6, *Lea v. U.S. Dep't of Agric.*, No. 11-

5969 (6th Cir. Aug. 7, 2013), ECF 95; (Doc. No. 1, PageID# 4, ¶ 7). Lea has not alleged a legal wrong under the APA; moreover, any claim he might have raised has already been determined.

Further, Lea does not include any facts to show what harm he has suffered because he did not have a hearing on the merits before the ALJ or what contracts USDA failed to enforce. (*See* Doc. No. 1, PageID# 7, ¶ 17.) Although Rule 8 does not demand that a plaintiff make "detailed factual allegations," *Twombly*, 550 U.S. at 555, Lea's unsupported assertion that denial of the hearing "caused harm" is exactly the sort of "unadorned, the-defendant-unlawfully-harmed-me accusation" that the Supreme Court has found does not adequately state a claim. *Iqbal*, 556 U.S. at 678; (Doc. No. 1, PageID# 7, ¶ 17). Dismissal is therefore appropriate under § 1915(e)(2)(B)(ii).

Finally, although Lea brings his claims under a different cause of action than that alleged in prior suits, he seeks relief for the same injuries that have been litigated many times over. Lea's numerous cases in the Western District of Kentucky and the Court of Federal Claims—all arising from the same facts—make dismissal of Lea's case as frivolous appropriate under 28 U.S.C. § 1915(e)(2)(B)(i). *See Holder v. City of Cleveland*, 287 F. App'x 468, 471 (6th Cir. 2008) ("Where two successive suits seek recovery for the same injury, a judgment on the merits operates as a bar to the later suit, even though a different legal theory of recovery is advanced in the second suit." (quoting *Cemer v. Marathon Oil Co.*, 583 F.2d 830, 832 (6th Cir. 1978) (per curiam)); *Taylor v. Reynolds*, 22 F. App'x 537, 538 (6th Cir. 2001) (affirming dismissal of action as frivolous because claim preclusion barred "all claims by the parties or their privies based on the same cause of action, as to every matter actually litigated as well as every theory of recovery that could have been presented"). Lea has found a new bottle, but the wine is old. The similarity of Lea's many actions and the timing of his filing in this Court show that this lawsuit does not have a proper

purpose and must be dismissed as frivolous under § 1915(e)(2)(B)(i) and for failure to state a claim under § 1915(e)(2)(B)(ii).

IV. Recommendation

In light of the foregoing, the Magistrate Judge RECOMMENDS that Defendants' Motion to Dismiss (Doc. No. 22) be GRANTED and that the Petition be DISMISSED. The Magistrate Judge further RECOMMENDS that Lea's additional pending motions be DENIED AS MOOT. (Doc. Nos. 25, 31, 32.)

Any party has fourteen (14) days after being served with this Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days after being served with a copy thereof in which to file any responses to said objections. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of the matters disposed of therein. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004).

Entered this 8th day of December, 2017.

ALISTAIR E. NEWBERN
United States Magistrate Judge