

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

SCOTT WYNN, an individual,

Plaintiff,

v.

TOM VILSACK, in his official capacity as
Secretary of Agriculture, et al.,

Defendants,

No. 3:21-cv-00514-MMH-JRK

**[PROPOSED] ANSWER TO PLAINTIFF'S COMPLAINT BY
[PROPOSED] DEFENDANT-INTERVENORS THE NATIONAL BLACK
FARMERS ASSOCIATION AND THE ASSOCIATION OF AMERICAN
INDIAN FARMERS**

Proposed Defendant-Intervenors the National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) answer the Plaintiff's Complaint as follows:

INTRODUCTION

1. Paragraph 1 of the Complaint states a legal conclusion to which no response is required.
2. NBFA and AAIF admit the allegations in Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint states a legal conclusion and factual opinion to which no response is required.

4. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required.

JURISDICTION AND VENUE

6. Paragraph 6 of the Complaint states a legal conclusion to which no response is required.

7. Paragraph 7 of the Complaint states a legal conclusion to which no response is required.

8. Paragraph 8 of the Complaint states a legal conclusion to which no response is required.

PARTIES

9. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

10. NBFA and AAIF admit the allegations in Paragraph 10 of the Complaint.

11. NBFA and AAIF admit the allegations in Paragraph 11 of the Complaint.

GENERAL ALLEGATIONS

12. NBFA and AAIF admit the allegations in Paragraph 12 of the Complaint.

13. NBFA and AAIF admit the allegations in Paragraph 13 of the Complaint.

14. NBFA and AAIF admit the allegations in Paragraph 14 of the Complaint.

15. NBFA and AAIF admit the allegations in Paragraph 15 of the Complaint.

16. NBFA and AAIF admit the allegations in Paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint states a legal conclusion to which no response is required.

18. NBFA and AAIF admit the allegations in Paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint cites to statutes, regulations, and other authority; NBFA and AAIF aver that these authorities speak for themselves. The remainder of Paragraph 19 states legal conclusions to which no response is required. To the extent a response is required, NBFA and AAIF deny that “socially disadvantaged” groups are limited to this list; USDA has stated that “[t]he Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation.” Available at, <https://www.farmers.gov/americanrescueplan/arp-faq>.

20. Paragraph 20 of the Complaint states a factual opinion and legal conclusion to which no response is required. To the extent that a response is required, NBFA and AAIF deny that there are no congressional findings or statements of legislative purpose related to Section 1005; for example, Section 1006 contains a statement of legislative purpose related to Section 1005.

21. NBFA and AAIF admit that Senate Bill 278 was proposed by Senator Warnock on February 8, 2021 and is also known as the “Emergency Relief for Farmers of Color Act of 2021.” The remainder of Paragraph 21 of the Complaint states factual opinion and legal conclusions to which no response is required.

22. NBFA and AAIF admit the allegations in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, NBFA and AAIF deny that Section 2 of Senate Bill 278 makes no findings specific to Asian American farmers or ranchers because Asian American farmers and ranchers are encompassed in “farmers of color.”

24. Paragraph 24 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required; NBFA and AAIF deny that Section 2 of Senate Bill 278 makes no findings specific to Hawaiian or Pacific Islander farmers or ranchers because Hawaiian or Pacific Islander farmers and ranchers are encompassed in “farmers of color.”

25. Paragraph 25 of the Complaint states a legal conclusion to which no response is required.

26. NBFA and AAIF admit the allegations in Paragraph 26 of the Complaint.

27. NBFA and AAIF admit the allegations in Paragraph 27 of the Complaint.

28. NBFA and AAIF admit the allegations in Paragraph 28 of the Complaint.

29. NBFA and AAIF admit the allegations in Paragraph 29 of the Complaint.

30. NBFA and AAIF admit the allegations in Paragraph 30 of the Complaint.

31. NBFA and AAIF admit that Mr. Ducheneaux's blog stated "Producers who have worked with USDA's Farm Service Agency previously may have their ethnicity and race on file. A borrower, including those with guaranteed loans, can contact their local USDA Service Center to verify, update or submit a new ethnicity and race designation using the AD-2047." NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint.

32. NBFA and AAIF deny the allegations in Paragraph 32 of the Complaint.

33. Paragraph 33 of the Complaint cites to the Farm Bill and information on USDA's website; NBFA and AAIF aver that these authorities speak for themselves. The remainder of Paragraph 33 states legal conclusions to which no response is required.

34. Paragraph 34 of the Complaint cites information on USDA's website; NBFA and AAIF aver that these authorities speak for themselves. The remainder of Paragraph 34 states legal conclusions to which no response is required.

35. Paragraph 35 of the Complaint discusses a class action lawsuit and consent decree; NBFA and AAIF aver that these authorities speak for themselves. The

remainder of Paragraph 35 states legal conclusions to which no response is required.

36. Paragraph 36 of the Complaint discusses a subsequent class action lawsuit; NBFA and AAIF aver that this authority speaks for itself. The remainder of Paragraph 36 states legal conclusions to which no response is required.

37. Paragraph 37 of the Complaint discusses another class action lawsuit and settlement; NBFA and AAIF aver that this authority speaks for itself. The remainder of Paragraph 37 states legal conclusions to which no response is required.

38. NBFA and AAIF admit the allegations in Paragraph 38 of the Complaint.

39. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint.

40. NBFA and AAIF admit that the 2008 farm bill permitted a maximum of \$100 million for *Pigford* claims and established a moratorium on acceleration and foreclosure proceedings by USDA. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 40 of the Complaint.

41. NBFA and AAIF admit in part and deny in part the allegations in Paragraph 41 of the Complaint. NBFA and AAIF admit that the Claims Resolution Act of 2010 was passed in part for *Pigford II* Settlement claims. NBFA and AAIF deny

the Claims Resolution Act of 2010 was passed solely for that purpose, as it also included *Cobell v. Salazar* settlement claims and additional water rights lawsuits brought by Native American tribes.

42. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint.

43. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint that “Mr. Wynn’s farm loans include Farm Operating Loans made directly by FSA.” The remainder of Paragraph 43 states a legal conclusion to which no response is required.

44. Paragraph 44 of the Complaint discusses a USDA webpage; NBFA and AAIF aver that this webpage speaks for itself. To the extent a further response is required, NBFA and AAIF deny that the language quoted in Paragraph 45 presently matches that on the website; NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint as to what the webpage contained as of the filing of the Complaint.

45. NBFA and AAIF admit the allegations in Paragraph 45 of the Complaint.

46. NBFA and AAIF lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint that

“Mr. Wynn is a white farmer.” The remainder of Paragraph 46 states a legal conclusion to which no response is required.

47. Paragraph 47 of the Complaint states a legal conclusion to which no response is required.

48. Paragraph 48 of the Complaint states a legal conclusion to which no response is required.

49. Paragraph 49 of the Complaint states a legal conclusion to which no response is required.

COUNT I: VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

50. NBFA and AAIF incorporates, as if set forth in full, all the statements, denials, and averments set forth in the preceding paragraphs.

51. Paragraph 51 of the Complaint states a legal conclusion to which no response is required.

52. Paragraph 52 of the Complaint states a legal conclusion to which no response is required.

53. Paragraph 53 of the Complaint states a legal conclusion to which no response is required.

54. Paragraph 54 of the Complaint states a legal conclusion to which no response is required.

55. Paragraph 55 of the Complaint states a legal conclusion to which no response is required.

56. Paragraph 56 of the Complaint states a legal conclusion to which no response is required.

57. Paragraph 57 of the Complaint states a legal conclusion to which no response is required.

58. Paragraph 58 of the Complaint states a legal conclusion to which no response is required.

59. Paragraph 59 of the Complaint states a legal conclusion to which no response is required.

60. Paragraph 60 of the Complaint states a legal conclusion to which no response is required.

61. Paragraph 61 of the Complaint states a legal conclusion to which no response is required.

**COUNT II: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(Not in accordance with law – Due Process Clause of the Fifth Amendment)**

62. NBFA and AAIF incorporates, as if set forth in full, all the statements, denials, and averments set forth in the preceding paragraphs.

63. Paragraph 63 of the Complaint states a legal conclusion to which no response is required.

64. Paragraph 64 of the Complaint states a legal conclusion to which no response is required.

65. Paragraph 65 of the Complaint states a legal conclusion to which no response is required.

66. Paragraph 66 of the Complaint states a legal conclusion to which no response is required.

67. Paragraph 67 of the Complaint states a legal conclusion to which no response is required.

PRAYER FOR RELIEF

1. Paragraph 1 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

2. Paragraph 2 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

3. Paragraph 3 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

4. Paragraph 4 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

5. Paragraph 5 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

6. Paragraph 6 of the Complaint's prayer for relief is a request for relief to which no response is required. To the extent a response is required, NBFA and AAIF deny that Plaintiff is entitled to the requested relief, or any relief whatsoever.

AFFIRMATIVE DEFENSES

NBFA and AAIF hereby assert the following affirmative defenses to the causes of action made by Plaintiff in the Complaint, subject to their right to amend and assert other affirmative defenses as may become available during discovery in this action.

FIRST AFFIRMATIVE DEFENSE: LACK OF STANDING

This Court lacks subject matter jurisdiction over Plaintiff's claims because Plaintiff cannot show the injury necessary to establish standing in federal court.

SECOND AFFIRMATIVE DEFENSE: LACK OF RIPENESS

This Court lacks subject matter jurisdiction over Plaintiff's claims because they are not ripe for review.

THIRD AFFIRMATIVE DEFENSE: FAILURE TO EXHAUST

Plaintiff's claims are barred because Plaintiff has failed to exhaust administrative remedies.

FOURTH AFFIRMATIVE DEFENSE: FAILURE TO STATE A CAUSE OF ACTION

Plaintiff's claims, as set forth in the Complaint, fail to state facts sufficient to constitute a cause of action against Defendant.

WHEREFORE, NBFA and AAIF respectfully request that the Court: (1) dismiss the Complaint with prejudice; (2) enter judgment in favor of NBFA and AAIF; and (3) grant such further relief as the Court deems just and proper.

Dated: June 15, 2021

Respectfully submitted,

VARNELL & WARWICK, P.A.

/s/ Janet R. Varnell

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