NO. 14-_____

In the Supreme Court of the United States

CHRISTOPHER B. and RENEE G. JULIAN,

Petitioners,

–v–

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a Racketeer Influenced Corrupt Organization (RICO) enterprise operating in and by a Federal Agency protected from civil suit for violation of the RICO act 18 U.S.C. § 1964(c) for violations of § 1961 and § 1962 (a-d) by sovereign immunity or by provisions of the Federal Tort Claims FTCA?

2. Should a court grant deference to an administrative agency's statutory interpretation in civil or criminal proceedings?

3. When a Federal Agency denies an appellant opportunity to present evidence of negligence, fraud, and discrimination, relevant to an agency decision, and judicial review is limited to review of the administrative record and the provisions of 5 U.S.C. § 706, have the administrative procedures in conjunction with the limits on judicial review not effectively violated the appellants' constitutional rights to due process and a jury trial not ?

PARTIES TO THE PROCEEDINGS

Christopher and Renee Julian, a married couple, are plaintiffs-appellants in the proceedings below.

Defendants in this action included the United States Department of Agriculture (USDA) as parent of the Farm Service Agency (FSA), National Appeals Division (NAD), and employer of seven Federal Defendants (1) James Rigney (FSA) loan officer; (2) Ronald Kraszewski FSA loan manager; (3) J. Calvin Parrish FSA State Executive Director; (4) Jerry L. King (NAD) Hearing Officer; (5) Roger Klurfeld NAD Director; (6) Christopher P. Beyerhelm USDA Deputy Administrator Farm Loan Programs;; and (7) Barbara Mclean FSA National FOIA/PA Specialist; along with one State employee, Director of Agricultural Mediation program at the University of Virginia, (1) Wanda Johnson.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Christopher B. and Renee G. Julian respectfully request this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the district courts decisions is unpublished and reproduced in the appendix (at 1a). The district court's opinion granting summary judgment in favor of defendants is unpublished and reproduced in the appendix (at 3a). The district court's opinion dismissing defendants (the Enterprise) from criminal allegations for lack of subject matter jurisdiction is unpublished and reproduced in the appendix (at 17a).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourth District issued its Opinion and final Judgment on November 24, 2014 reproduced in the Appendix at (1a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Agriculture Farm Ownership Loan Program are reproduced in the Appendix (at 79a). The following pertinent provisions:

- 7 U.S.C. § 1923
- 7 CFR § 764.151

STATEMENT

A. Introduction

Petitioners Christopher B. and Renee G. Julian, former banking associates, gave up careers in banking with the surprise birth of their daughter, Seren, late in life.

The Julians moved to the country and set out to develop a farm winery business in a rural HUD zone. After having spent six years and their life savings on development, Petitioners were relegated by enactment of Dodd Frank legislation and Small Business Administration "SBA" program rules, to pursue the only financing left available to them, a USDA Farm Ownership Loan. When FSA denied the loan, Petitioners followed all Administrative grievance proceedings from mediation through Director review with FSA and NAD in an attempt at resolution.

Petitioners alleged numerous failures of the FSA to follow its own required procedures and alleged

encountering of numerous acts of negligence, fraud, discrimination, conspiracy, and other criminal acts including perjury, violations of the Fair Credit Reporting Act (FCRA), and inappropriate Freedom of Information Act (FOIA) disclosures.

Petitioners filed suit in Federal district court of Virginia Danville district as Pro-Se litigants on the jurisdictional basis of: U.S.C 58 § 1361.1. Plaintiffs are residents of the state of Virginia in the town of Ararat and the county of Patrick. 2. The USDA and its affiliates FSA, NAD and 7 Federal employees of USDA agencies and one state employee of the University of Virginia mediation program significantly compensated by the USDA/FSA were named for their participation in the enterprise.

The suit was filed with a civil cause of action under 18 U.S.C. § 1961, 62, 64, 68 for the multiple torts of an "enterprise."

Petitioners demanded a jury trial and specifically asked the court for a jury to decide whether the agency followed its own regulations. The complaint included a request for judicial review of an Administrative Appeal. *See* Complaint relief (App.109a).

The District court denied plaintiff's jurisdiction with regards to the RICO tort allegations, with their decision on March 24, 2014 (App 17a). The district court proceeded with judicial review on a request for summary judgment by defendants and upheld the agency's use of Chevron deference for denying the loan application with its opinion on August 15, 2014 (App 3a). The District courts actions coalesced with agency appeal procedures to deny the Petitioners any opportunity to present relevant evidence that the

torts of negligence and fraud were major factors in the agency's loan denial. The Courts' granting of Chevron deference to the agency "enterprise", upholding the agency's decision has achieved the very objective of the RICO enterprise complained of eliminating damages caused by the torts and denying the opportunity for a jury to access the agency's actions.

Petitioners proceeded to appeal from the Federal Courts decisions through the Fourth Circuit Court of Appeals. The Fourth Circuit upheld the district courts rulings in their opinion on November 24, 2014 (App 1a).

This case presents important questions of administrative, civil, criminal, and constitutional law 1. Whether the enterprise of a RICO operating within a federal agency is entitled to sovereign immunity and protected by provisions of the Federal Tort Claims Act (FTCA)? 2.Whether the rights of Judicial review provide an appellant the right to file a civil suit relevant to the judicial review? 3. Whether the provisions of judicial review are an appropriate application of the private attorney general provisions. 4. Whether Federal Agencies are entitled to Chevron deference in their statutory interpretations or, of substantive regulations pursuant to statutory authority; when doing so allows the agency to avoid attaching damages for torts of the agency, its personnel, or an "enterprise"? (i.e Whether in a criminal context, a court should grant deference to an administrative agency's statutory interpretation.) 5. Whether Federal Agencies coalesce with the Judiciary performing

judicial review to violate constitutional rights when the agency denies presentation of relevant evidence and torts in their administrative procedures?

B. Statutory Support for Petitioners Case

18 U.S.C. § 1961(4) states an "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;" Chapter 18 § 1964(c) States: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final."

18 U.S.C. § 1964(c) "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the

purchase or sale of securities to establish a violation of section 1962."

28 U.S.C § 2675(a) States "An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make a final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purpose of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim." 28 U.S.C. § 2674 states: "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

5 U.S.C. § 702 "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted

or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein

(1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or

(2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief, which is sought."

5 U.S.C. § 703 "The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided

by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement."

When a Federal Agency is accused of operating a RICO "enterprise" numerous conflicts in application of these statutes come into question. 1. Can a Federal Government Agency and its employees comprise a RICO Enterprise? 2. Is a RICO enterprise operated by a Federal government Agency protected by sovereign immunity? 3. Can the torts of a RICO "enterprise" be committed while acting within the scope of the Agency's office or employment? 4. Are the Private Attorney General provisions of 18 U.S.C. § 1964(c) granting recovery of threefold damages, the cost of the suit, and reasonable attorneys fees considered punitive damages? 5. Is the United States Liable respecting the provisions of title 18 U.S.C. § 1964(c) relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances? 6. Is an applicant alleging, unlawful denial of a loan application by a Federal Agency and a conspiracy and operation of a RICO enterprise to avoid financial damages not A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute? 7. Is it appropriate to require a Plaintiff alleging the operation of a racketeer Influenced corrupt organization by a Federal Agency be required to request permission from the agency operating the "enterprise"? 8. Is any form of judicial review proceeding "Adequate" when the appellant alleges the agency is operating a RICO Enterprise? 9. If judicial review is inadequate with the allegation of a RICO enterprise, is civil or criminal suit for judicial enforcement not appropriate?

C. *Chevron* Deference

In *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). This Court addressed the issue of how courts should treat agency interpretations of statutes that mandated the agency to take some action. This court held that courts should defer to agency interpretations of such statutes unless they are unreasonable and where a statute is silent or ambiguous with regard to a particular issue, a court may not substitute its own construction of the statutory provision for a reasonable interpretation of the statute made by an administrative agency.

This Court established a two-step analysis for evaluating whether an agency's interpretation of a statute, it is entrusted to administer is lawful.

Chevron step 1 requires that the reviewing court determine "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. Congressional intent may be discerned from the plain terms of the statute and by employing the traditional rules of statutory construction. *See id.* at 843 n.9.

Chevron step 2 requires that if the statute is silent or ambiguous, however, the reviewing court must decide at Chevron step 2 "whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. A permissible construction of the statute is not necessarily the best interpretation of the statute or the interpretation

that the reviewing court would adopt if interpreting the statute in the absence of an existing agency construction. *Id.* at 843 n.11; *National Cable & Telecommunications Assn. v. Brand X Internet Services,* 545 U.S. 967, 980 (2005).

This Court clarified in *United States v. Mead*, 533 U.S. 218 (9th Cir. 2001) that not all agency interpretations of a statute qualify for *Chevron* deference. Only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority" does *Chevron* deference apply. *Id.* at 226-27. In interpreting *Mead,* the Ninth Circuit has treated "the precedential value of an agency action as the essential factor in determining whether *Chevron* deference is appropriate*." Miranda-Alvarado v. Gonzales*, 449 F.3d 915, 922 (9th Cir. 2006) (emphasis in original). Specific examples of agency interpretations meriting *Chevron* deference identified by the Supreme Court include notice-and-comment rulemaking and formal adjudications. *Mead*, 533 U.S. at 230.

Other agency constructions, such as "interpret-tations contained in policy statements, agency manuals, and enforcement guidelines," are "beyond the *Chevron* pale," but may nonetheless merit some deference under the standard set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *Id.* at 235 (quoting *Christensen,* 529 U.S. at 587). Applying *Skidmore* deference, the weight accorded to such an administrative judgment "depend[s] upon the thoroughness evident in its consideration, the

validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore,* 323 U.S. at 140.

D. Constitutional Rights

Cornell University Law Schools online Legal Information Institute states the following on Due Process "The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures."

Article III of the U.S. Constitution Section 1. States: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Section 2. States: "The trial of all crimes, except in cases of impeachment, shall be by jury."[1]

The Seventh Amendment to the constitution states: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of

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1 Emphasis added.

the United States, than according to the rules of the common law."

5 U.S.C. § 301- Departmental regulations States: "The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public."

7 CFR 11.2(a) "This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture."

28 U.S.C. § 455(a) states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. § 455(b) states: "He shall also disqualify himself in the following circumstances:

> (b)(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

> (b)(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
>
> (b)(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
>
> [. . .]
>
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;"

Should a Court evaluating an agency's right to deference not consider these same questions? Should an agency's use of deference be disqualified? 1. In any proceeding in which the Secretary of Agriculture's impartiality might reasonably be questioned? 2. Where the Secretary has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding? 3. Where the Secretary has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding? 4. Where the Secretary is a party to the proceeding, or an officer, director, or trustee of a party? 5. Where the Secretary of Agriculture knows the agency has an

interest that could be substantially affected by the outcome of the proceeding. Should the agency be granted "Deference to substantially affect the outcome of any Civil or Criminal case or should the facts be presented to a jury and a reasonable interpretation of the law as promulgated in the Code of Federal Regulations "CFR" be made by them as so stated by Article III and the Seventh Amendment to the constitution?

Article III of the Constitution grants the right to a trial by jury. The jury makes decisions and findings of fact as to whether an individual is guilty of a crime or of breaking laws. The jury decides whether the Law is fair and just. Jury trial in civil cases is a 7th amendment right should deference in interpretation of the law not be left to the jurors for an interpretation by consensus of the defendant's peers and not some perverted corrupt, self-opinionated director of appeals who is protecting the system and powers in Government that be. A jury of peers will be able to see from the people's prospective.

Is each of these and more not, specifically designed to ensure judges operate within the law and provide fair unbiased application of the law and procedures? Are each of these not designed to ensure due process? All of these are applicable to judges applying, interpreting, and setting precedent, for the laws of this country; should they not also be applicable to the agency's that interpret the statutes and promulgate them into regulations with full force of the law and especially when the agency itself is the accused? Is it not a common right or reason that no agency should be a judge in its case?

E. Federal Rules of Evidence

The Federal Rules of Evidence Rule 401. Definition of "Relevant Evidence" States: ""Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible States: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court. Pursuant to statutory authority. Evidence which is not relevant is not admissible."

7 CFR 11.4(b) "The Federal Rules of Evidence, 28 U.S.C App., shall not apply to proceedings under this part. "A regulation promulgated by the Secretary for the proceedings of NAD.

The Secretary of Agriculture has promulgated rules for the operation of the National Appeals Division NAD, stating, "The Federal Rules of Evidence shall not apply" to NAD's Proceedings. The Agency with regards to Petitioners denied the presentation of evidence regarding specific grounds the agency gave for denial of a loan application. The agency proceeded to segregate the crimes from the damages caused by those crimes by insisting that evidence of torts not be presented in the administrative appeal but, follow the requirements of the FTCA 28 U.S.C § 2675(a). The damages caused by those crimes would be subjected to the limits of judicial review of administrative proceedings absent the evidence of

negligence, fraud, and discrimination. This is not fair procedure.

F. Agency Misinterpretation of Statutory Text

The agency proceeded to gain the Courts grant of *Chevron* deference to literally alter the promulgated law reading 7 CFR 764.151(b) (App.79a), as if it said "and" where in fact it says "or" effectively the court has granted the agency the opportunity to alter their promulgated law to eliminate damages caused by torts of the agency. The relevant law in this case granted, *Chevron* deference, 7 CFR 764.151(b) is published in the Code of Federal Regulations by the agency and says "Make capital improvements to a farm owned by the applicant for construction, purchase, or improvement of farm dwellings, service buildings "OR" other facilities and improvements essential to the farming operation. "'Emphasis added' the words and an or have very different conjunctive meanings in the English language and the constructs of legal meaning. It is not correct to substitute "and" meaning "inclusive of" with "or" meaning "alternatively". Such a substitutions makes no sense because no farm dwelling would ever be essential to a farming operation. What has happened to adhering to the letter of the law which in this case the letters are "or" not "and" Furthermore, the addition of alternatively other facilities and improvements to the farming operation is an expansion of the statute's provisions, an expansive addition to the legislative statute 7 U.S.C § 1923 (App.80a), which describes no such purpose for the use of direct loans funds and certainly was not intended to restrict capital

improvements by wording not found in the relevant statute.

The very clear legislative language of 7 U.S.C § 1923–Purpose of Loans (a) Allowed purposes

(1) Direct Loans States:

A farmer or rancher may use a direct loan made under this subchapter only for

(A) Acquiring or enlarging a farm or ranch;

(B) Making capital improvements to a farm or ranch. c. *See* 7 U.S.C § 1923 app. 80a for items

(C)—(E).

The Agency and the District Judge argue that Congress delegated the Secretary of Agriculture authority to define relevant terms necessary for the implementation of the program and the meaning of the statute 7 U.S.C § 1923 (B) is not "unambiguously clear" on Congress's intent as to what is meant by "Capital Improvements" This term "Capital Improvements" has been around since the 13th century to mean improvements relating to or being assets that add to the long term net worth of a corporation (*see merriam-webster.com*).

If Congress had any intent for Capital Improvements to be limited to those that were essential to the farming operation it would certainly have known how to draft such legislation. Again no dwelling is essential to a farm. This is simply a fallacious argument as any capital expenditure to improve a capital asset "a farm or ranch" is by definition a capital improvement. There is no

ambiguity expressed by the statement at all and no justification for the agency to make such an argument to establish limitations on the types or kinds of assets to be improved on a farm or ranch.

The Agency and the Court have similarly argued that Congress intent was that Farm loans are only for the underprivileged. Consequently, the agency again is due significant deference to their interpretation of the Statute. *See* Memorandum Opinion of the Western District Court of Virginia at App.11a "Considering that Congress' intention in establishing the Farm Ownership Loan Program was "to aid the 'underprivileged' farmer" and therefore limiting the use of funds to only those dwellings which are modest, in size, cost and design, "and/or"[2] homes that adequately[3] meet the family's needs" is consonant with that purpose." They have based this reasoning citing *Curry v. Block*, 541 F.Supp. 506, 511(S.D.Ga.1982).

However this simply is abuse of *Chevron* deference again overstating the emphasis of the use

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2 There are countless examples of the judiciary's scorn for the use of "and/or" in legal documents. In this case they've read the Farm Service Agency Handbook.(App.114a), to contain the or when none exists. How is it the court continues to ignore the Letter of the Law?

3 Petitioners were never allowed to argue the dwelling met our needs. The agency's choice of applying the rule altered after it had already been breached prevented such an argument. Petitioners could not concede the house was not modest "AND" met our needs but, could certainly have argued it met our needs though it was not modest.

of funds for "only the underprivileged" This is refuted in the plain language of the statute.

B. 7 U.S.C § 1923 (App.80a)

1.

(a) Allowed Purposes

(1) Direct Loans

A farmer or rancher may use a direct loan made under this subchapter only for-

a. Acquiring or enlarging a farm or ranch;

b. Making capital improvements to a farm or ranch;

(B)2(b) Preferences

(1) Has a dependant Family;

(2) To the extent practicable, is able to make an initial down payment on the farm or ranch; or

(3) Is an owner of livestock or farm or ranch equipment that is necessary to successfully

(4) carry, out farming or ranching operations.

How is "only the underprivileged" supported by the legislative intent that capital improvements can be made to enlarge a farm or ranch owned by the applicant? Are they indigent or "underprivileged" when they own the property? Has Congress stated a limit on the value of the farm? Is it legislative intent that, farm or ranch equipment already owned be of limited value or worn out? If it's only the "under-

privileged" why is the stated legislative preference for farmers who can make a down payment or already own a farm, ranch, or livestock?

The agency and the court have applied an unintended interpretation to *Curry v. Block.* The case merely pointed out the legislation intended to grant access to the underprivileged being those unable to get credit elsewhere not that it was only to apply to the poor and underprivileged. Consider the following excerpts from *Curry v. Block*.[4]

G. *Curry v. Block*

1. History of Federal Involvement in Agricultural Credit

"The federal government has been involved in extending agricultural credit for some 120 years. The first such involvement was initiated in 1863 with the passage of the Homestead Act; an act designed to provide farming opportunities for small-scale, family farmers—still a goal for federal intervention in agricultural credit."

"Then, in 1935, the earliest predecessor to the FmHA, the Resettlement Administration, was created by Executive Order. This agency was authorized to make small loans to farmers with the goal toward helping families settle in the rural areas."

"In 1972, the farmer loan program and the rural housing loan program were consolidated through

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[4] Emphasis added through out these excerpts to highlight relevant information.

an amendment to the Consolidated Farms Home Administration Act of 1961. This amendment changed the name of the 1961 Act to the Consolidated Farm and Rural Development Act and adopted provisions relevant to Rural Housing loans. It did not, however, change the nature of the farmer loan program; thus this program stands today basically as it has for almost half a century."

"In summary, federal intervention in agricultural credit shows a long history of farmer loans designed 'to aid the family farmer who cannot obtain credit from a different source.'"[5]

2. The Statutory and Regulatory Framework

"The Consolidated Farm and Rural Development Act as it existed in 1978 (and presently) is divided into four subtitles. The first three subtitles contain the substantive provisions of the Act while the fourth contains the administrative provisions.

Subtitle A, headed "Real Estate Loans," authorizes the Secretary to make or insure loans to eligible persons. "Those persons eligible for these loans include 'family farmers' unable to obtain sufficient credit elsewhere. 7 U.S.C.

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[5] Emphasis added to show just what this case defined as "underprivileged." A requirement of loan eligibility, Petitioners met as a direct consequence of congressional implementation of Dodd Frank Reg b. in 2011.

§ 1922.[6] To insure repayment, the Secretary is directed to take such security interest (generally the land) 'as he may determine to be necessary.'" 7 U.S.C. § 1927.

3. Nature of the Program

"A court must look to the legislation as a whole in order to discern its statutory purpose." *Plaskolite, Inc. v. Baxt Industries, Inc.,* 486 F.Supp. 213, 216 (N.D.Ga.1980). An examination of the prefatory material reveals that the farmers loan program is a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high credit risk farmers."

In Summary

The Federal Government has been extending farm credit for over 120 years. The act was designed to provide farming opportunities for small-scale family farmers. The agency was authorized to make small loans to farmers with the goal toward helping families settle in rural areas. The Bankhead-Jones Farm Tenant Act did not change the nature of federal involvement in agricultural credit but was enacted to simplify and improve credit services to farmers and promote farm ownership. The Rural Development Act did not change the nature of the farmer loan program as it stands today basically, as it has for almost half century.

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[6] Petitioners met all the requirements of 7 U.S.C. § 1922.

> Federal intervention in agricultural credit shows a long history of farmer loans designed to aid the family farmer who cannot obtain credit from a different source. Subtitle A authorizes the Secretary to make or insure loans to eligible persons for improving farms, Including buildings, land, water development, use, conservation, recreational uses, "facilities", and enterprises needed to supplement farm income. In fact the program is designed for a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high risk farmers.[7]

If the Agency intended for their promulgated law to enforce such a limitation on the use of funds for Capital improvement it could most certainly have been worded far better to express such limitations than by the use of the word "OR" "alternatively" together with the wording "other facilities and improvements essential to the farming operation." Which, clearly implies the agency believes there may be other uses for farm ownership funds congress did not specify in the legislative statute for which funds could be used if they are essential to the farming operation. But, construing this regulation to say that improvements to a dwelling may not be made that are not essential to the farm is purely an Agency abusing *Chevron* deference to avoid financial damages attaching to criminal torts.

If Congress wished to legislate some definition of underprivileged that must be met for a farmer to be

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[7] *See Curry v. Block.* As complete support of this summary.

eligible beyond the stipulation that applicant must not be able to obtain credit elsewhere, then Congress should have no problem making such changes to the statute to eliminate the courts perception that the program is a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high credit risk farmers.

H. No Agency Should be Judge in its Own Case

To quote Justice Scalia in NATIONAL LAW REVIEW, Dec. 4, 2014, "I doubt the Government's pretensions to deference. They collide with the norm that legislatures, not executive officers, define crimes. When King James I tried to create new crimes by royal command, the judges responded "the King cannot create any offence by his prohibition or proclamation, which was not an offence before." James I, however, did not have the benefit of *Chevron* deference. With deference to agency interpretations of statutory provisions to which criminal prohibitions are attached, federal administrators can in effect create (and uncreate) new crimes at will, so long as they do not roam beyond ambiguities that the laws contain [internal citations omitted]. . . . "

There are countless citations of Due process which all encompass the concept that fundamental fairness must remain part of the process. It is the right to hear and the right to be heard. Segregating the crimes from the damages they cause or the damages caused by the criminals perpetrating them, is a racket any American would find shocking of a Government Agency established to administer

legislative law, and a clear violation of the Constitutional right to Due Process.

The Secretary of Agriculture has established his own judicial process, one in which the Federal Rules of evidence do not apply. One in which crimes and the damages they cause are appealed in segregated proceedings, where *Chevron* deference is abused by USDA agencies, NAD, and the Secretary to create new crimes and dispose of current federal statutes at will, "so long as they do not roam beyond ambiguities the laws contain." Justice Scalia, NATIONAL LAW REVIEW, Dec. 4, 2014.

It is unquestionable, the drafters of the Constitution with the specificity with which they crafted the segregation of powers in Articles I, II, and III never envisioned an Executive branch of the Federal Government operating its own judicial processes where the federal rules of evidence are inapplicable, Segregation of crimes and the damages caused by those crimes could be forced down separate avenues for hearings and the executive branch would have the power to change laws at will in its' own defense. There is no valid logical reasoning on which to substantiate this as a fair, and equitable process for the hearing of a grievance. It's a perfect example of unilateral, unchecked Executive action and is precisely the danger that the Framers of the constitution sought to avoid in our constitutional system. It is precisely why the framers of the constitution found trial by jury so important as to place it in Article III of the constitution and expand its use in civil suit in the Seventh Amendment.

This is not Due Process, it's a Racketeering operation.

No jury in the United States would view such a racket by a Government Agency as a fair and impartial proceeding.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW OF THIS PETITION BECAUSE IT HAS RELEVANT ELEMENTS OF EACH OF THE SUPREME COURTS GOVERNING RULES OF REVIEW FOR GRANTING CERTIORARI RULES 10 (A), (B), AND (C)

a. The Federal District court has, and the Court of Appeals affirmed judicial proceedings far departed from the accepted and usual course of judicial proceedings, which call for an exercise of this Courts' decision and supervisory power.

b. The Federal Court's decision and the affirmation of the appellate court conflicts with this and other appellate court decisions as well as the decisions of this court on RICO.

c. This case asks multiple important questions of federal law that should be settled by this court.

II. THIS CASE AFFORDS THIS COURT AN EXCELLENT OPPORTUNITY TO ADDRESS WHETHER FEDERAL AGENCIES SHOULD BE ALLOWED *CHEVRON* DEFERENCE IN A CIVIL AND CRIMINAL CONTEXT

It questions the stability and foundation of the judicial system and the jury's responsibility to keep Governments laws just.

III. THIS CASE REPRESENTS A LONG-OVERDUE EFFORT TO UTILIZE THE PRIVATE ATTORNEY PRIVILEGES, GRANTED BY THE LEGISLATIVE AUTHORITY OF CONGRESS TO A PRIVATE CITIZEN WITH RICO

An effort to eliminate a RICO enterprise created, operated, and sustained by an executive branch of the Government. And an effort to resolve fundamental separation of power issues as the framers of the Constitution intended. It is an excellent opportunity for the court to address the proper use of the private attorney general provisions of RICO and other statutes.

IV. RELATION TO HISTORY AND THE IMPLICATIONS OF THIS CASE ON ITS CONTINUANCE

See: Pigford v. Glickman and Pigford II, Keepseagle v. Vilsack, Love v. Vilsack, Garcia v. Vilsack, David Cantu et al v. The United States. Bernardi v. Madigan. See the story of Grace Paxton and James Robertson, former Mississippi Supreme Court justice, See the story of Both Obregon and Salazar's families which filed discrimination complaints with the USDA, but say they never heard anything back.

The Federal District Court of Virginia, Danville Districts Judge Jackson L. Kiser dismissed allegations against Federal, State employees and the USDA alleging numerous torts, and the operation of a RICO enterprise for lack of subject matter jurisdiction, and for the plaintiff's failure to provide an alternative wavier of Sovereign Immunity. *See* Memorandum Opinion of the Western District court of Virginia (Aug 15, 2014) (App. 35-42a).

However, the Court proceeded with judicial review over Plaintiffs objection to the Courts Jurisdictional rights to proceed. The court however, granted the Agency significant *Chevron* deference with their interpretation of the relevant statute and promulgated agency rules thereby, reducing or eliminating the monetary damages caused by the criminal acts of the agency, its personnel, and the enterprise. The right to a jury trial in civil and criminal matters bound in the constitution and the separation of Judicial and executive powers have been usurped by *Chevron* deference wielded by a tyrannous, despotic, Government operated RICO enterprise in the executive branch of the U.S Government.

The Courts' actions effected consummation of the very Enterprise objective complained of in the complaint. This action segregated the crimes from the damages those crimes caused. (Plaintiffs Complaint September 16, 2013) (App.107a) "Plaintiff(s) allege "USDA et Al" has willfully ignored Plaintiff(s) challenges to avoid monetizing the torts committed in this case."

The Court's ruling on Jurisdiction in this matter is contrary to prior appeals court precedents and supportive rulings of this court. Petitioners found no Supreme Court precedent for a Federal Agency having ever been alleged of running a RICO enterprise, however, there is significant precedent to substantiate that a RICO enterprise does not have sovereign immunity and that RICO is applicable to governmental units, *See United States v. Angelilli*, 660 F.2d 23, 31-33 (2d Cir. 1981) "We view the language of 1961(4) as unambiguously encompassing governmental units, . . . and the substance of RICO'S provisions demonstrate a clear Congressional intent that RICO be interpreted to apply to the activities that corrupt public or governmental entities."), cert. denied, 455 U.S. 910 (1982); *See* also *G. Robert Blakely, The Civil RICO Fraud Action in Context: Reflections on Bennett v. Berg,* 58 NOTRE DAME L. REV. 237, 298-299 (1982) (Collecting decisions). In *Cianci*, 378 F.3d at 78-88, where the First Circuit affirmed the RICO convictions of the mayor of Providence, Rhode Island and associates who operated affairs of an associated-in-fact enterprise consisting of themselves, the city and its agencies and entities to enrich themselves, the court stated that "[a] RICO enterprise animated by an illicit common purpose can be comprised of an association-in-fact of municipal entities and human members when the latter exploits the former to carry out that purpose." That is precisely what the Secretary of Agriculture is doing with NAD, FSA, and the state mediation programs he has established.

Borrowing from the Words of Judge Rebecca R. Pallmeyer of the 7th Circuit Court of Appeals in

United States of America v. Lawrence E. Warner and George H. Ryan, Sr., 506 F.3d 517 (7th Cir. 2007) with alterations for relevance in underline. In arguing that Federal Agencies and federal and state employees, may not be considered "legal entities" under the racketeering statute, the Federal District Court miscast a straightforward issue of statutory interpretation into an issue of federalism. Br58. Their reliance on cases dealing with federalism or state sovereignty, such as *Alden v. Maine*, 527 U.S. 706, 748(1999) is misplaced. Nothing in RICO precludes the USDA from addressing corruption or infringes in any way on the legitimate functioning of Federal Government or on its sovereignty.

The District Court and the Court of Appeals have overlooked the fundamental principle that the racketeering enterprise, whether it be a legitimate business, governmental entity or association in fact, is merely the vehicle through which defendants conduct alleged racketeering activities. *See United States v. McDade*, 28 F.3d 283, 296 (3d Cir. 1995) (proper to charge Congressional committee as enterprise, since "major purpose of the RICO statute was to protect legitimate enterprises by attacking and removing those who had infiltrated them for unlawful purpose")(citations omitted). To define a governmental unit as an enterprise does not impugn its employees or subjects, nor disadvantage the entity. *See also United States v. Long*, 651 F.2d 239, 241(4th Cir.1981); *United States v. Clark*, 646 F.2d 1259, 1261-67 (8th Cir 1981) *United States v. Altomare*, 625 F.2d 5 (4th Cir. 1980); (state prosecutor's office constitutes an enterprise*); United*

States v. Baker, 617 F.2d 1060 (4th Cir. 1980) (sheriff's department constitutes enterprise).

A RICO operation run by a Federal agency affecting interstate commerce for unlawful purposes, in crimes against the very citizens the agency is legislatively obligated to assist is precisely the type of activity the civil provisions of RICO with private attorney general provisions were intended to address.

Can a Federal Government Agency and its employees comprise a RICO enterprise? Is a Government operated RICO enterprise protected by sovereign immunity?

There is a significant body of precedent supporting the interpretation of "enterprise" as including public and governmental entities and that there is no restriction upon the associations embraced by the definition of "enterprise" and that such "enterprises" are not protected by immunity. *See* the significant body citations in *United States of America v. Lawrence E. Warner and George H. Ryan, Sr.* at 74-75.

Can the torts of a RICO "enterprise" be committed while acting within the scope of the agencies office of employment?

28 U.S.C § 2675(a) makes it clear that the torts of negligence, fraud, wrongful acts, and omissions can be committed by Government employees while acting within the scope of office or employment. However, the damages assessed in a RICO suit are not damages for torts. Those damages are left for suit under 28 U.S.C § 2675(a). RICO "enterprise" damages are strictly defined in 18 U.S.C. § 1964(c) as

damages only for injuries to a plaintiffs business or property by reason of a violation of section 1962 as alleged in this case. The Petitioners suit was not brought under the FTCA, not brought for negligence, or fraud, but for the operation of an "enterprise" causing damages to the Petitioners business and property as defined by 18 U.S.C § 1964(c). *See* Mem of Opin WDCVA March 24, 2014. (App.37a) *See also Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985). "If the defendant engages in a pattern of racketeering activity in a manner forbidden by § 1962, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c)."

See also the statements of dissent at 82 "In addition, the statute permits recovery only for injury to business or property. It therefore excludes recovery for personal injuries. However, many of the predicate acts listed in § 1961 threaten or inflict personal injuries—such as murder and kidnaping. If Congress in fact intended the victims of the predicate acts to recover for their injuries, as the Court holds it did, it is inexplicable why Congress would have limited recovery to business or property injury. It simply makes no sense to allow recovery by some, but not other victims of predicate acts, and to make recovery turn solely on whether the defendant has chosen to inflict personal pain or harm to property in order to accomplish its end."

Is the United States Liable respecting the provisions of title 18 U.S.C § 1964(c) relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances? Yes

according to 28 U.S.C § 2675(a) "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances". But, this action falls within the prevue of both the ruling and the dissension in this court in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479(1985).

An action for the torts would be appropriate only after Petitioners and the courts resolve the issue of agency deference vs. jury trial in civil and criminal proceedings because the damages caused by those torts will only be fairly assessed if the full extent of the damages were monetized

Are the Private Attorney General provisions of 18 U.S.C § 1964(c) punitive damages? No these are criminal penalties for the operation of a criminal enterprise. Penalties specified by the legislature in the statute. *See* 18 U.S.C § 1964(c) "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in <u>any appropriate United States district court</u> and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee," (emphasis added).

Petitioners would argue an applicant alleging unlawful denial of a loan application by a Federal Agency committing numerous torts and a conspiracy and operation of a RICO enterprise to avoid financial damages by the Agency is a Petitioner suffering legal wrong because of agency action, and adversely affected and aggrieved by agency action within the relevant constructs of 18 U.S.C. § 1964(c). Is such a

proceeding not specifically provided for in 5 U.S.C. § 702 "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. "And 5 U.S.C. § 703 "Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement."

See the comments of this Court on 5 U.S.C. § 702 providing this generalized approach in *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153-4 (1970). This Court generalized the approach by interpreting the Administrative Procedure Act provision that "any person aggrieved" can seek judicial review as creating a right to appeal as a private attorney general.

There is no question with the DOJ defending the agency in this case and believed to have assisted in the conspiracy of denial there's a prosecutorial gap to justify action in this case by a private citizen.

"The right to trial by Jury was of significant importance to the founding fathers of this country. America's founders recognized that trial by jury in both criminal and civil cases offered unparalleled protection for their hard-won freedoms, both individually and collectively. In fact, the right to trial by jury was so important that the founders made it part of the supreme law of the land. Article III of the U.S. Constitution states: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury."

Two years before the first musket was fired in America's War for Independence, a Boston lawyer wrote: representative government and trial by jury are the heart and lungs of liberty that lawyer—a passionate patriot by the name of John Adams—was not alone in his belief that trial by jury was a powerful defense against tyranny. "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution," a Virginia lawyer wrote around the same time. His name Thomas Jefferson.

In June of 1776, delegates of the Virginia Convention adopted a declaration of rights that included the following statement: " . . . In controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred." Less than one month later, representatives of all 13 colonies signed the Declaration of Independence, which cited "depriving us in many cases of the right to trial by jury"—a right granted to every British subject by Magna Carta in 1215—as one of the chief reasons for breaking with the King and Mother England. These and other royal abuses of power were front and center when the founding fathers gathered in Philadelphia to draft a national Constitution in 1787. They believed that the combination of an independent judiciary and the right to be tried by a jury of peers would protect Americans from whatever form tyranny might take. "The friends and adversaries of the plan of the [Constitutional] Convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the

former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government," wrote Alexander Hamilton in the Federalist essays describing the proposed new constitution. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. "Public opinion so strongly favored a Bill of Rights that the first congress proposed 12 constitutional amendments to the state legislature in 1789. Two of the ten amendments ratified spelled out jury trial rights not specifically described in the articles of the Constitution. The Sixth Amendment extended the rights of criminal defendants to a speedy and public trial, an impartial jury, and the ability to confront adverse witnesses and to the aid of counsel. The Seventh Amendment extended the right to a jury trial to civil cases. "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." Clearly, our founding fathers recognized the value of trial by jury in both criminal and civil cases offered unparalleled protection for our freedoms, both individually and collectively. Justice for all is a beautiful thing. This just wouldn't be America without it."[8] Reproduced in

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[8] Copied in significant parts from a white paper with permission from the Georgia Civil Justice Foundation © 2006-2008.

significant part from a white paper on trial by jury at the Georgia Civil Justice Foundation, 2006-2008.

Chief Justice Harlan F. Stone said the juror "is voting on the justice of the law according to his own conscience and convictions and not someone else's. The law itself is on trial quite as much as the case which is to be decided."

CONCLUSION

Justice Louis Brandeis offered this view "'Decency, security and liberty alike demand that government officials shall be subjected to the rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to come a law unto himself. It invites anarchy. *United States v. Olmstead*, 277 U.S. 438 (1928)."

Petitioners respectfully request this petition for a writ of certiorari be granted to review the judgment and opinion of the Court of Appeals for the Fourth Circuit.

Respectfully Submitted,

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February 23, 2015

APPENDIX TABLE OF CONTENTS

OPINION OF THE FOURTH CIRCUIT
(NOVEMBER 24, 2014)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHRISTOPHER B. JULIAN; RENEE G. JULIAN,

Plaintiffs–Appellants,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; James Rigney, USDA Farm Service Agency Farm Loan Officer; RONALD A. KRASZEWSKI, USDA Farm Service Agency Farm Loan Manager; WANDA JOHNSON, Virginia Agricultural Mediation Program Project Director; J. CALVIN PARRISH, USDA Farm Service Agency State Executive Director; JERRY L. KING, USDA National Appeals Division Hearing Officer; BARBARA MCLEAN; CHRIS P. BEYERHELM, USDA Farm Service Agency Deputy Administrator for Farm Loan Programs; ROGER KLURFELD, USDA National Appeals Division Director,

Defendants–Appellees.

No. 14-1480 & No. 14-1925

Appeal from the United States District Court
for the Western District of Virginia, at Danville.
Jackson L. Kiser, Senior District Judge.
(4:13–cv–00054–JLK–RSB)

Before KING and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

PER CURIAM:

Christopher B. Julian and Renee G. Julian appeal the district court's orders denying relief on their civil complaint against the United States Department of Agriculture, seven federal employees, and one state employee. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Julian v. U.S. Dep't of Agric.,* No. 4:13–cv–00054–JLK–RSB (W.D.Va. Mar. 24, 2014; Aug. 15, 2014). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

MEMORANDUM OPINION OF THE WESTERN DISTRICT COURT OF VIRGINIA (AUGUST 15, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CHRISTOPHER B. JULIAN and
RENEE G. JULIAN,

Plaintiffs,

v.

JAMES RIGNEY, ET AL.,

Defendants.

No. 4:13–cv–00054

Before: Hon. Jackson L. KISER,
Senior United States District Judge

This matter is before the Court on Defendant United States Department of Agriculture's ("USDA") Motion for Summary Judgment. All other defendants were dismissed from this action pursuant to their various motions to dismiss. (*See* Order, Mar. 24, 2014 [ECF No. 46].) All that remains is a review of the USDA's decision to deny Plaintiffs a Farm Ownership Loan. The matter has been fully briefed by the parties, and both sides were given the opportunity to argue their positions in open court on

August 7, 2014. The matter is now ripe for decision. For the reasons stated herein, I will grant Defendant's Motion for Summary Judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

On October 10, 2012, Plaintiffs Christopher B. Julian and Renee G. Julian ("Plaintiffs") applied for a Farm Ownership ("FO") loan with the Farm Service Agency ("FSA") of the U.S. Department of Agriculture ("USDA"). (Compl. Ex. A, at 1 [ECF No. 3].) The FSA issued a Notice of Complete Application on November 21, 2012, informing Plaintiffs that their application was deemed complete as of November 19, 2012. (*Id.* Ex. D, at 3.) On November 28, 2012, FSA issued a letter informing Plaintiffs that their FO loan application was denied. (*Id.* Ex. A.) In the letter, the FSA explained that Plaintiffs' proposed use of loan funds was not authorized for the type of loan requested,[2] and notified Plaintiffs of their rights to appeal. (*Id.* Ex. A, at 1–3.)

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[1] A more detailed factual history is set forth in the Memorandum Opinion granting several motions to dismiss. (*See* Mem. Op., Mar. 24, 2014 [ECF No. 45].)

[2] The FSA letter provided three reasons for the denial. First, the FSA alleged that Plaintiffs "requested FO loan funds to pay living expenses via paying ones self for labor," and explained that FO loan funds may only be used to acquire or enlarge a farm, or make a down payment on a farm. (Compl. Ex. A, at 1.) Second, while FO loans may be used to make capital improvements that are "essential to the farming operation," the FSA determined that "improvements completed as you have proposed are not essential," and "exceed what is adequate to meet the family's needs as defined by FSA." (*Id.*) Finally, the

Following an unsuccessful attempt at mediation, Plaintiffs appealed their loan denial to USDA's National Appeals Division ("NAD"). (*Id.* Exs. Q, AE.) According to the Notice of Appeal, Plaintiffs' request for appeal was complete on March 4, 2013. (*Id.* Ex. Q, at 1.) During the prehearing held on March 19, 2013, the FSA withdrew one of its justifications (that Plaintiffs were essentially trying to refinance an existing loan) as a reason for the FO loan denial. (*Id.* at 8; Ex. U, at 2.) As a result, the Hearing Officer informed Plaintiffs that this item would not be allowed as a point of discussion during the hearing. (*Id.* at 8.) Plaintiffs objected to this restriction in a letter dated March 22, 2013. (*Id.* Ex. R.) In a letter to Plaintiffs dated March 28, 2013, the Hearing Officer declined to reconsider his ruling on the scope of the hearing, and laid out the core issues to be discussed.[3] (*Id.* Ex. U, at 2.)

The Hearing Officer conducted an in-person appeal hearing on April 17, 2013, and issued his conclusion that the loan denial was not erroneous on May 16, 2013. (*Id.* Ex. AE, at 2, 5.) Plaintiffs

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FSA alleged that Plaintiffs requested the loan to "make loan payments," and indicated that "FO loan funds may not be used to make loan payments, i.e., refinance loans." (*Id.*)

[3] The Hearing Officer identified three (3) core issues on appeal: (1) "Is Appellant's proposal to be paid $70,000 from loan funds an eligible FO expense?" (2) "Is Agency in accordance with the Code of Federal Regulations in denying FO assistance because a dwelling may be more than adequate to meet family needs?" (3) "If so, in this case, is Appellant's dwelling more than adequate to meet their family needs when considering size, cost and design, and thus not eligible for FO assistance?" (Compl. Ex. U, at 2.)

requested the Director's Review of the NAD determination, and on July 24, 2013, the Director of the National Appeals Division issued his decision. (*Id.* Ex. AA.)

The Director upheld the Appeal Determination on the grounds that the house with the improvements exceeded what is adequate to meet the family's needs, and did not decide whether the improvements were essential to Plaintiffs' farming operation. (Compl. Ex. AA, at 3.) According to the Director, Plaintiffs had requested $172,000 for materials and $128,000 for labor in order to finish construction on a house that they had begun building in 2010. (*Id.* Ex. AA, at 1–2.) In the Director's Review Determination, he noted:

> Currently, [Plaintiffs'] household consists of three individuals. [Plaintiffs'] house will be 4,600 square feet, with 2,400 square feet on the first level and 2,200 square feet in the basement, plus an attached two-car garage. [Plaintiffs] plan[] to construct a recreation room, a third bedroom, a fitness area, a second master suite, and a winery in the basement. The blueprints for [Plaintiffs'] home also show an 11′6″ by 11′6″ walk-in closet, a morning porch, two foyers, a deck, and a screened porch on the second floor. Based on this evidence, [Plaintiffs have] not proven that the house adequately meets [the] family's needs and is modest in size, cost, and design.

(*Id.* Ex. AA, at 3) (internal agency citations omitted). In light of the proposed winery, it is worth noting

that Plaintiffs' proposed farm was intended to be a vineyard.

Plaintiffs, proceeding pro se and *in forma pauperis,* filed suit in this Court on September 16, 2013. (*Id.* at 1.) Plaintiffs named nine (9) defendants, including eight (8) federal agencies or employees and a single state employee. (*Id.* at 1–3.) I granted Defendants' Motions to Dismiss and dismissed all claims except the claim for review of the agency's decision. (*See* Mem. Op., Mar. 24, 2014 [ECF No. 45].) The USDA moved for summary judgment on July 16, 2014, and Plaintiffs filed their response on August 4, 2014. The parties appeared for oral argument on August 7, 2014, and the matter is now ripe for disposition.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *George & Co. LLC v. Imagination Entertainment Ltd.,* 575 F.3d 383, 392 (4th Cir.2009). A genuine dispute of material fact exists "[w]here the record taken as a whole could . . . lead a rational trier of fact to find for the nonmoving party." *Ricci v. DeStefano,* 557 U.S. 557, 586 (2009) (internal quotation marks and citing reference omitted); *see also Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A genuine dispute cannot be created where there is only a scintilla of evidence favoring the nonmovant; rather, the Court must look to the quantum of proof applicable to the claim to determine whether a genuine dispute exists. *Scott v. Harris,* 550 U.S. 372, 380 (2007); *Anderson,* 477 U.S.

at 249–50, 254. A fact is material where it might affect the outcome of the case in light of the controlling law. *Anderson,* 477 U.S. at 248. On a motion for summary judgment, the facts are taken in the light most favorable to the non-moving party insofar as there is a genuine dispute about those facts. *Scott,* 550 U.S. at 380. At this stage, however, the Court's role is not to weigh the evidence, but simply to determine whether a genuine dispute exists making it appropriate for the case to proceed to trial. *Anderson,* 477 U.S. at 249. It has been noted that "summary judgment is particularly appropriate . . . [w]here the unresolved issues are primarily legal rather than factual" in nature. *Koehn v. Indian Hills Cmty. Coll.,* 371 F.3d 394, 396 (8th Cir.2004).

DISCUSSION

This case presents the very limited question of whether the United States Department of Agriculture ("USDA"), by and through its agents at the USDA, acted in accordance with the law when it interpreted the Consolidated Farm and Rural Development Act of 1961 by promulgating regulations, and whether its interpretation and application of the relevant regulations was proper.

It is well-settled that, when a district court is asked to review an agency's regulations, the court is obligated to follow the two-step analysis originally set forth in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). Under that framework:

> First, [the court] must determine whether the statute directly addresses the precise issue before [it]. "If the intent of Congress is clear, that ends the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Second, if the statute is silent or ambiguous in expressing Congressional intent, [the court] must determine whether the agency's interpretation is based on a "permissible construction of the statute."

Snowa v. C.I.R., 123 F.3d 190, 195–96 (4th Cir.1997) (quoting *Chevron,* 467 U.S. at 842–43). This formula is referred to as the *Chevron* analysis.

Under the authorizing statutes, it is clear that Congress intended to afford the Secretary of Agriculture and the USDA the leeway to interpret and regulate the Farm Ownership ("FO") Loan Program, 7 U.S.C. § 1922 *et seq.* The statute explicitly states: "The Secretary may make and insure loans under this subchapter to farmers and ranchers . . . subject to the conditions specified in this section." 7 U.S.C. § 1922(a)(1) (2014). Moreover, Congress gave the Secretary explicit authority to define relevant terms necessary for the implementation of the program. *See, e.g., id.* (" . . . a family farm, as defined by the Secretary. . . . "). Thus, it is clear that Congress intended for the Secretary to fill in the gaps in the law, so long as the Secretary's regulations did not conflict with the clear meaning of the statute.

When reviewing an Agency's action under the *Chevron* analysis, the court must first determine

whether the statute directly addresses the relevant question. Here, the question is whether a farm loan may be used for the type and extent of renovations Plaintiffs requested. As relates to the present case, the statute clearly permits a farmer to "use a direct loan . . . ***only for*** . . . making capital improvements to a farm or ranch. . . . " *Id.* § 1923(a)(1)(B). Thus, it is clear that the statute addresses, at least generically, the question presented. The statute is not, however, "unambiguously clear" on Congress's intent as to *what* is meant by "capital improvements." Under *Chevron,* because the statute is silent on the definition of "capital improvements," the court must turn to the Agency's regulations to determine if they are a reasonable extension of Congress' intent. *See Snowa,* 123 F.3d at 195–96.

For the second step of the *Chevron* analysis, I must decide whether the Agency's "interpretation is based on a 'permissible construction of the statute.'" *Id.* The relevant regulations state that FO loans "may only be used to . . . [m]ake capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation ." 7 C.F.R. § 764.151(b) (2014). The USDA Farm Service Agency's ("FSA") handbook offers the following guidance on "capital improvements" and directly references 7 C.F.R. § 764.151(b):

> FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either [*sic*] adequately meets family needs and [*sic*] is modest in size, cost, and design, provided the structure is related

> to the farming enterprise. The dwelling shall be located on the farm when FO funds are used to purchase the dwelling. However, if the applicant already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.

FSA Handbook 3–FLP (Rev.2) Amend. 4, ¶ 131C (Oct. 20, 2011) (hereinafter "FSA Handbook"). In its decision regarding Plaintiff's requested loan, the FSA cited this section as its basis to deny Plaintiffs' application. In its original denial letter, the FSA Farm Loan Manager stated that "funds can be used to build a dwelling on the farm that adequately meets the family's needs and is modest in size, cost and design. The improvements completed as you proposed are not essential to the farming operation. The improvements exceed what is adequate to meet the family's needs as defined by FSA." (Compl. Ex. A, pg. 1 [ECF No. 3–1].) On internal appeal, that decision was upheld. (*See id.* Ex. AE, pg. 4 [ECF No. 3–31].)

Here, considering that Congress' intention in establishing the Farm Ownership Loan Program was "to aid the 'underprivileged' farmer," *Curry v. Block,* 541 F.Supp. 506, 511 (S.D.Ga.1982), there can be little doubt that limiting the funds to only those dwellings which are modest in size, cost and design, and/or homes that "adequately meet[] the family's needs" is consonant with that purpose. Thus, under *Chevron,* the Court should afford "substantial deference" and "considerable weight" to the Agency's interpretation and promulgated regulations. *Pashby v. Delia,* 709 F.3d 307, 338 (4th Cir.2013) (quoting *Chevron,* 467 U.S. at 844).

The closest Plaintiffs come to making a counter-argument to Defendant's position is their statement that "Defendants ask the court for deference in interpretation of an interpretation of a statute that is itself so poorly written as to be a violation of Due Process all its own." (Pls.' Resp. in Opp. to Def.'s Mot. for Summ. J., pg. 9, Aug. 4, 2014 [ECF No. 73] (hereinafter "Pls.' Resp.").) Plaintiffs believe that the FSA Handbook is so ambiguously worded that it is unenforceable. *See* FSA Handbook ¶ 131C ("FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either [*sic*] adequately meets family needs and [*sic*] is modest in size, cost, and design, provided the structure is related to the farming enterprise."). While there is some ambiguity as a result of the mismatched "either/and," I am able to dispense with Plaintiffs' case without relying on the Handbook language. The applicable regulations state that FO funds may *only* be used on "improvements ***essential to the farming operation.***" 7 C.F.R. § 764.151(b) (emphasis added). No one disputes that Plaintiffs sought funds to finish a home that included: two master bedroom suites; a fitness area; a recreation room; an "in-law" suite; a morning porch; two foyers; and a wine cellar in the basement. (*See* Compl. Ex. AA pg. 3 [ECF No. 3–27].) The home in question would be over 4,600 square feet in size, and Plaintiffs have openly referred to the completed structure as their "dream house." (*See id.;* R. at 227.) Even without relying on the FSA Handbook, there can be no serious contention that a home of the size and amenities proposed by Plaintiffs is "essential to the farming operations" of a three-member family. (*See*

Compl. Ex. AA pg. 3 .) Thus, even without relying on the admittedly confusing[4] Handbook provision, the Agency's decision comports with the applicable regulations, which are entitled to appropriate deference under *Chevron.*

Moreover, Plaintiffs' position regarding interpretation of the relevant passage of the Handbook advocates a strained reading of the applicable section. Plaintiffs contend that the final line of paragraph 131C of the Handbook is, in essence, separate from the preceding requirements:

> FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either [*sic*] adequately meets family needs and [*sic*] is modest in size, cost,

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[4] Although the Handbook is confusing, it is not so ambiguous as to render it unenforceable. Rather than step into the morass of what version the Agency meant (either/or vs. both/and) and what it is reasonable for Plaintiffs to understand, because the question presented is easily answered by reference to the regulations only, it seems prudent to leave the question of the Handbook's interpretation to the case where it is dispositive.

It is worth pointing out that Plaintiffs are correct that "agency manuals" are not entitled to the same *Chevron* deference as agency regulations. They are, however, entitled to *some* consideration. "*Chevron* did nothing to eliminate *Skidmore [v. Swift & Co.]'s* holding that an agency's interpretation may merit some deference whatever its form, given the 'specialized experience and broader investigations and information' available to the agency, and given the value of uniformity in its administrative and judicial understandings of what a national law requires." *United States v. Mead Corp.,* 533 U.S. 218, 234 (2001). Nevertheless, because the regulation covers the question presented, there is no need to review the Handbook provision, even under this lower standard.

> and design, provided the structure is related to the farming enterprise. The dwelling shall be located on the farm when FO funds are used to purchase the dwelling. However, if the applicant already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.

FSA Handbook ¶ 131C. Plaintiffs contend that "the ***guideline*** [regarding modest in size, cost, and design] was not intended to be applicable to [i]mprovements and this is evidenced by the last sentence. . . . This statement, the last in the rule, reflects no requirement that improvements to existing dwellings, requires the dwellings to be modest in size cost and design." (Pls.' Resp., pg. 5.)

Plaintiffs' proposed construction would set aside generic rules of construction and comprehension. Their proposed reading essentially divorces sentence one of the paragraph from sentence three, meaning that sentences of the same paragraph have no continuity of purpose or interpretation. This is simply not the case. The only fair reading of the paragraph is that it permits funds to be used to purchase or improve any structure that is located on the farm. It also permits funds to be used to improve or repair a dwelling that is near the farm, provided the dwelling meets the other limitations.

Plaintiffs actually argue against themselves on this point. They contend that the limitations on the dwelling do not apply to dwellings that are merely *near* the farm. They also vehemently point out, however, that "Plaintiffs [*sic*] dwelling is, was, and always has been on the farm. . . . " (Pls.' Resp. pg. 5.)

Thus, even if Plaintiffs interpretation was reasonable (and it is not), by their own admission it would not apply to their case; their home is *on* the farm, not merely *near* it.

Insofar as Plaintiffs argue that the "modest" limitation does not apply to improvements to existing dwellings on the farm, the plain language of the Handbook belies such an interpretation. *see* FSA Handbook ¶ 131C ("FO funds can be used to . . . improve . . . a dwelling that either [*sic*] adequately meets family needs and [*sic*] is modest in size, cost, and design, provided the structure is related to the farming enterprise."). To conclude as Plaintiffs do would require clauses within the same sentence to be read completely in isolation. No rule of statutory construction would support such a reading.

Because the regulations promulgated by the USDA are permissible and enforceable under *Chevron,* the final question is whether the Agency's implementation of the regulations in Plaintiffs' case was arbitrary or not in accordance with the law. Plaintiffs were afforded multiple opportunities to be heard and to argue their position to the USDA. Moreover, they have tacitly admitted that their proposed home does not meet the Agency's regulation regarding its size, scope, and design. (*See* R. at 223 [ECF No. 50–6] ("[W]e would concede the dwelling may not meet FSA'a definition of modest in size, cost, and cost. . . . "); R. at 227 [ECF No. 50–7] (noting that Plaintiffs invested over $600,000.00 of their own funds into the project, and that they were attempting to build their "dream house on a farm").) Despite Plaintiffs' protestations, there can be little doubt that the proposed structure runs afoul of the Agency's

valid and enforceable regulations. I cannot say that the Agency's decision to deny Plaintiffs the FO Loan was arbitrary or not in accordance with the law. For this reason, Defendant is entitled to summary judgment.

CONCLUSION

The Agency's regulations with regard to administration of the Farm Ownership Loan Program are a reasonable interpretation of the statute and are entitled to substantial deference. In applying the regulations to Plaintiffs' loan application, the Agency reasonably applied the regulations, and its decision was not arbitrary, capricious, or not in accordance with the law. For this reason, the Agency's determination should be upheld and Defendant's Motion for Summary Judgment will be granted.

The Clerk is directed to forward a copy of this Memorandum Opinion and accompanying Order to Plaintiffs and all counsel of record.

/s/ Jackson L. Kiser
Senior United States District Judge

Entered this 15th day of August, 2014.

MEMORANDUM OPINION OF THE WESTERN DISTRICT COURT OF VIRGINIA (MARCH 24, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CHRISTOPHER B. JULIAN ET AL.,

Plaintiffs,

v.

JAMES RIGNEY, ET AL.,

Defendants.

No. 4:13–cv–00054.

Before: Hon. Jackson L. KISER,
Senior District Judge

Plaintiffs Christopher B. Julian and Renee G. Julian ("Plaintiffs") applied for and were denied a Farm Ownership loan through the Farm Service Agency ("FSA") of the U.S. Department of Agriculture ("USDA"). As a result of the denial, Plaintiffs, proceeding *pro se* and *in forma pauperis,* filed suit in this Court against the USDA, seven federal employees, and one state employee. On October 18, 2013, state employee Wanda Johnson filed a Motion to Dismiss [ECF No. 16]. Plaintiffs filed a Motion for Partial Summary Judgment on

January 6, 2014 [ECF No. 27], and the remaining Federal Defendants collectively filed a Motion to Dismiss on January 14, 2014 [ECF No. 28]. Each of the three dispositive motions was met with an appropriate written response, and was followed by a reply brief.

On February 25, 2014, I heard oral arguments from all sides, outlining their respective positions on the facts, law, and agency record before the Court. Having thoroughly reviewed the record and arguments of counsel, the matter is now ripe for decision. For the reasons stated below, I will **GRANT** Defendant Johnson's Motion to Dismiss, **DENY** Plaintiffs' Motion for Partial Summary Judgment, and **GRANT IN PART** and **DENY IN PART** Federal Defendants' Motion to Dismiss. Specifically, I will **DENY** Federal Defendants' Motion to Dismiss with respect to Plaintiffs' request for judicial review of the final agency decision, and **GRANT** the Motion with respect to all other claims against the USDA, and all claims against the following employee-defendants, in any capacity: (1) James Rigney; (2) Ronald Kraszewski; (3) J. Calvin Parrish; (4) Jerry L. King; (5) Roger Klurfeld; (6) Christopher P. Beyerhelm; and (7) Barbara McLean. The USDA will remain as the sole defendant, and the suit will proceed as an action for judicial review of the final decision of USDA National Appeals Division Director Roger Klurfeld.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On October 10, 2012, Plaintiffs Christopher B. Julian and Renee G. Julian applied for a Farm

Ownership ("FO") loan through the Farm Service Agency ("FSA") of the U.S. Department of Agriculture ("USDA"). (Compl. Ex. A, at 1 [ECF No. 3].) The FSA, acting through Farm Loan Officer James Rigney, issued a Notice of Complete Application on November 21, 2012, informing Plaintiffs that their application was deemed complete as of November 19, 2012.[1] (*Id.* Ex. D, at 3.) On November 28, 2012, FSA Farm Loan Manager Ronald Kraszewski issued a letter informing Plaintiffs that their loan application was denied. (*Id.* Ex. A.) In the letter, the FSA explained that Plaintiffs' proposed use of loan funds was not authorized for the type of loan requested,[2] and

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[1] Prior to receiving the Notice of Complete Application, Plaintiffs first received a Confirmation Letter, dated October 10, 2012, and a Notice of Incomplete Application, dated October 19, 2012. (Mem. in Opp'n to Defs.' Mot. to Dismiss Exs. AO, AP [ECF No. 38].) The Notice of Incomplete Application instructed Plaintiffs to provide additional information by November 8, 2012. (*Id.* Ex. AP.) On November 13, 2012, Plaintiffs received a second Notice of Incomplete Application, dated November 9, 2012, which required additional information (beyond that requested in the first Notice of Incomplete Application) and specified a deadline of November 19, 2012. (Compl. Ex. D, at 1–2.) The Notice stated that failure to comply with the deadline would cause Plaintiffs' loan application to be withdrawn with no right to review, mediation, or appeal. (*Id.* Ex. D, at 1.) The second Notice was dated November 9, 2012, but was postmarked October 22, 2012. (Mem. in Opp'n to Defs.' Mot. to Dismiss Ex. AQ.) The FSA subsequently issued its Notice of Complete Application on November 21, 2012. (Compl. Ex. D, at 3.)

[2] The FSA letter provided three reasons for the denial. First, the FSA alleged that Plaintiffs "requested FO loan funds to pay living expenses via paying ones self for labor [sic]," and

notified Plaintiffs of their rights to appeal. (*Id.* Ex. A, at 1–3.) Plaintiffs were informed that they may: (1) request reconsideration by the Farm Loan Manager; (2) request mediation through the Virginia state mediation program, as part of the FSA's informal appeals process; or (3) appeal the determination to the National Appeals Division ("NAD") of the USDA. (*Id.* Ex. A, at 2–3.)

On December 10, 2012, Plaintiffs requested mediation via a letter to the Virginia Agricultural Mediation Program ("VAMP") with Virginia State University. (*Id.* Ex. F.) VAMP Project Director Wanda Johnson informed Plaintiffs, in an email dated January 10, 2013, that their request was timely, and indicated that she would "be in touch with [Plaintiffs] probably tomorrow regarding the mediation." (*Id.* Ex. C.) Unbeknownst to Plaintiffs, however, the USDA had revoked its certification of the Virginia state mediation program as of October 2012. (*Id.* at 6; Ex. C.) It remains unclear precisely how and when officers of the FSA, or VAMP itself, learned of the USDA revocation.[3]

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explained that loan funds may only be used to acquire or enlarge a farm, or make a down payment on a farm. (Compl. Ex. A, at 1.) Second, while funds may be used to make capital improvements that are "essential to the farming operation," the FSA determined that "improvements completed as you have proposed are not essential," and "exceed what is adequate to meet the family's needs as defined by FSA." (*Id.*) Finally, the FSA alleged that Plaintiffs requested the loan to "make loan payments," and indicated that "FO loan funds may not be used to make loan payments, i.e., refinance loans." (*Id.*)

[3] The pleadings suggest that VAMP Project Director Wanda Johnson and the University are responsible for filing the

Plaintiffs claim that they made several attempts to contact VAMP Project Director Johnson and "USDA et al" regarding mediation. (*Id.* at 6.) On January 24, 2013, Plaintiffs allege that they contacted the FSA through an online assistance system, and first became aware of the loss of certification in a subsequent email exchange. (*Id.* at 6; Ex. G, at 1.) Following this exchange, Plaintiffs received a letter from FSA State Executive Director J. Calvin Parrish that was dated January 24, 2013. (*Id.* Ex. H.) The letter indicated that "[a]t this time, Virginia does not have a State Certified Mediation Program," and informed Plaintiffs that they would need to pay for half the cost of mediation if they choose to pursue it. (*Id.* Ex. H, at 1.) The letter included a list of registered mediators in Virginia.

In a letter dated February 5, 2013, Plaintiffs informed FSA State Executive Director Parrish that they had requested mediation through the North Carolina Agricultural Mediation Program ("NCAMP"). (*Id.* at 6–7; Ex. I.) Noting that they were asked to pay a credit report fee of $20.25 with their original loan application, Plaintiffs requested a copy of their credit reports. (*Id.* Ex. I .) In a letter dated February 8, 2013, FSA Farm Loan Officer Rigney provided Plaintiffs with a credit report; the report was also dated February 8, 2013. (*Id.* Ex. K.) As part

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necessary certification paperwork with the USDA. In an email to Plaintiffs dated January 28, 2013, Johnson indicated that she was recovering from a heart attack, which had caused her to miss at least one filing deadline. (Compl.Ex. C.) She explained that she was working with the University to prepare the necessary documentation, and expected to be re-certified for April 2013. (*Id.*)

of the NCAMP mediation process, Plaintiffs signed an agreement to mediate and a confidentiality statement, indicating that Plaintiffs would keep confidential any information learned during the mediation process. (*Id.* Ex. N.)

On approximately March 13, 2013, Plaintiffs made several Freedom of Information Act ("FOIA") requests through the FOIA Office of the FSA.[4] (*Id.* at 11; Ex. W.) In a letter dated March 22, 2013, FSA State Executive Director Parrish responded with a number of documents that were responsive to Plaintiffs' request. (*Id.* Ex. W.)

In addition to requesting mediation, Plaintiffs appealed their loan denial to the USDA's National Appeals Division ("NAD"). (*Id.* Exs. Q, AE.) Plaintiffs' request for appeal was complete on March 4, 2013. (*Id.* Ex. Q, at 1.) During the prehearing, held on March 19, 2013, the FSA withdrew one of its justifications (that Plaintiffs were essentially trying

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[4] Specifically, Plaintiffs requested: (1) "[a]ny available internal audit reports available on our application;" (2) "[v]ery specifically, a detailed review of the date each communication was printed from the loan origination system along with specific review of the dates on the communication itself. For all correspondence sent to the appellant regarding the loan application between October 10th and November 28th [sic];" (3) "[a] copy of FSA's internal procedures when the status of a state mediation program changes;" (4) "[a] copy of any procedural check list FSA has before issuing a declination letter;" (5) "[a] copy of FSA's internal procedures for making changes to FSA's Farm Loan Program Handbooks;" and [via a later email attached as part of Exhibit W] (6) "a copy of [James Rigney and Ronald Kraszewski's] most current resumes and any undocumented training you've had that you would like to add." (Compl. 11–12; Ex. W.)

to refinance an existing loan) as a reason for the loan denial. (*Id.* at 8; Ex. U, at 2.) As a result, NAD Hearing Officer Jerry L. King informed Plaintiffs that this issue would not be allowed as a point of discussion during the hearing. (*Id.* at 8.) Plaintiffs objected to this restriction in a letter to Hearing Officer King, dated March 22, 2013, and asserted their belief that the FSA had inappropriately accessed their credit reports on February 8, 2013. (*Id.* Ex. R.)

In a letter to Plaintiffs, dated March 28, 2013, Hearing Officer King declined to reconsider his ruling on the scope of the hearing, and laid out the core issues for discussion.[5] (*Id.* Ex. U, at 2.) With respect to their credit report grievances, Hearing Officer King directed Plaintiffs to the USDA Office of Inspector General. (*Id.*) Noting that Plaintiffs had accused the FSA of prejudicial bias, he provided instructions for completing a USDA Program Discrimination Complaint Form with the USDA's Office of Adjudication. (*Id.* Ex. U, at 2–3.) Hearing Officer King conducted an in-person hearing of Plaintiffs' appeal on April 17, 2013, and issued his conclusion that the loan denial was not erroneous on May 16, 2013. (*Id.* Ex. AE, at 2, 5.) Plaintiffs

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[5] Hearing Officer King identified three (3) core issues on appeal: (1) "Is Appellant's proposal to be paid $70,000 from loan funds an eligible FO expense?" (2) "Is Agency in accordance with the Code of Federal Regulations in denying FO assistance because a dwelling may be more than adequate to meet family needs?" (3) "If so, in this case, is Appellant's dwelling more than adequate to meet their family needs when considering size, cost and design, and thus not eligible for FO assistance?" (Compl. Ex. U, at 2.)

subsequently requested a Director's Review of the NAD determination,[6] and on July 24, 2013, NAD Director Roger Klurfeld issued a decision upholding the NAD Appeal Determination.[7] (*Id.* Ex. AA.)

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[6] Plaintiffs sent a 21–page letter, dated June 17, 2013, to the Director of the USDA NAD, the USDA Office of the Inspector General, the Consumer Financial Protection Bureau, and the USDA Assistant Secretary for Civil Rights. (Compl.Ex.AD.) In addition to requesting a Director's Review of the NAD Appeal Determination, the letter sought "to file complaints; of misconduct, by FSA personnel and it's administration with the USDA Office of Inspector General [sic]"; "to provide the Consumer Financial Protection Bureau with accurate information on our loan application and not the false statements made by FSA and forwarded to them by Chris P. Beyerhelm"; "to file complaints of discrimination with the Office of Assistant Secretary for civil rights"; and to provide "public record and transparency of government agency activities." (*Id.* Ex. AD, at 1.)

[7] The Director upheld the Appeal Determination on the grounds that the house, with the improvements, exceeds what is adequate to meet the family's needs, but did not decide whether the improvements were essential to Plaintiffs' farming operation. (Compl. Ex. AA, at 3.) According to the Director, Plaintiffs had requested $172,000 for materials and $128,000 for labor in order to finish construction on a house that they had begun building in 2010. (*Id.* Ex. AA, at 1–2.) In the Director Review Determination, he noted:

> Currently, [Plaintiffs'] household consists of three individuals. [Plaintiffs'] house will be 4,600 square feet, with 2,400 square feet on the first level and 2,200 square feet in the basement, plus an attached two-car garage. [Plaintiffs] plan[ ] to construct a recreation room, a third bedroom, a fitness area, a second master suite, and a winery in the basement. The blueprints for [Plaintiffs'] home also show an 11′ 6″ by 11 C6″ walk-in closet, a morning porch, two

Plaintiffs, proceeding *pro se* and *in forma pauperis,* filed suit in this Court on September 16, 2013. (*Id.* at 1.) In addition to a request for judicial review of the final agency decision, Plaintiffs allege a denial of due process and a number of other tort claims, including negligence, fraud, fraudulent misrepresentation, conspiracy, racketeering, and violations of the Fair Credit Reporting Act. Plaintiffs name nine (9) defendants, including eight (8) federal agencies or employees (the U.S. Department of Agriculture; USDA FSA Loan Officer James Rigney; USDA FSA Loan Manager Ronald A. Kraszewski; USDA FSA Executive Director J. Calvin Parrish; USDA FSA Deputy Administrator for Farm Loan Programs Chris P. Beyerhelm; USDA FSA National FOIA/PA Specialist Barbara McLean; USDA NAD Hearing Officer Jerry L. King; and USDA NAD Director Roger Klurfeld) ("Federal Defendants"), and a single state employee, VAMP Project Director Wanda Johnson ("Defendant Johnson"). (*Id.* at 1–3.)

In addition to an *ad damnum* clause requesting approximately $14 million in damages (representing $1 million per month since January 1, 2013), Plaintiffs ask that $1 million be awarded to each of five other individuals who are not parties before the

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> foyers, a deck, and a screened porch on the second floor. Based on this evidence, [Plaintiffs have] not proven that the house adequately meets [the] family's needs and is modest in size, cost, and design.

(*Id.* Ex. AA, at 3) (internal citations omitted). In light of the proposed winery, it is worth noting that Plaintiffs had intended to develop a vineyard on the farm.

Court.[8] (*Id.* at 21–22.) Plaintiffs request that "all settlement amounts be net of taxes," and seek refunds in the amount of $20.25 for a credit report and $350.00 for mediation costs, both compounded with interest at 24.99%. (*Id.* at 22–23.) Plaintiffs ask the Court to require the USDA to prosecute FSA Farm Loan Manager Ronald A. Kraszewski for perjury, and require "USDA et al" to "create and provide a comprehensive guide for appellant rights." (*Id.*) Plaintiffs also request attorney's fees for self-representation. (*Id.* at 23.)

On October 18, 2013, Defendant Johnson filed a Motion to Dismiss [ECF No. 16]. Plaintiffs filed a Response in Opposition on November 8, 2013 [ECF No. 22], and Defendant Johnson filed a Reply on November 15, 2013 [ECF No. 26]. On January 6, 2014, Plaintiffs filed a Motion for Partial Summary Judgment on paragraph 11 of the Complaint [ECF No. 27].[9]

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[8] The individuals are Plaintiffs' former employees, John Sailor and Cody Dalton, who Plaintiffs claim would have received wages from the farm; Dayl Dawson, the owner of a home that Plaintiffs are no longer able to rent; and Plaintiffs' mothers, Jane A. Julian and Retha Graham, who Plaintiffs claim would have lived with them in the finished house. (Com pl.21–22.)

[9] Paragraph 11 of the Complaint is an argument concerning the mediation agreement and confidentiality statement that Plaintiffs signed as part of the NCAMP mediation process. In essence, Plaintiffs argue that their lack of knowledge of sovereign immunity constitutes fraud in the inducement, because sovereign immunity could shield Defendants from liability if a contractual dispute arose. (Compl. 7–8; *see also* Mot. for Partial Summ. J. 2–3 [ECF No. 27].)

On January 14, 2014, Federal Defendants collectively filed a Motion to Dismiss [ECF No. 28], and a Memorandum in support thereof [ECF No. 29]. On January 29, 2014, Federal Defendants filed a Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment [ECF No. 37]. Plaintiffs filed a Memorandum in Opposition to Federal Defendants' Motion to Dismiss on February 3, 2014 [ECF No. 38],[10] and a Declaration in Support thereof [ECF No. 39]. Plaintiffs filed a Reply to Federal Defendants' Response in Opposition to Partial Summary Judgment on February 5, 2014 [ECF No. 40]. Federal Defendants filed a Reply Brief to Plaintiff's Response to their Motion to Dismiss on February 10, 2014 [ECF No. 41]. On February 25, 2014, I heard oral arguments from all parties on the three motions before the Court. After thorough briefing, the matter is now ripe for decision.

STANDARD OF REVIEW

As a preliminary matter, *pro se* complaints must be construed liberally, imposing "less stringent standards than the formal pleadings drafted by

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[10] Federal Defendants allege that Plaintiffs' Memorandum in opposition to their Motion to Dismiss was untimely. (Defs.' Reply Br. 1 [ECF No. 41].) They argue that in the Roseboro Notice issued on January 15, 2014 [ECF No. 30], Plaintiffs were given fourteen (14) days in which to file a response, making it due no later than January 29, 2014. This argument, however, appears to ignore the "mail rule," Fed.R.Civ.P. 6(d), which adds 3 days to the time period when service is made pursuant to Rule 5(b)(2)(C), (D), (E), or (F). Adjusting the clock to take into account the mail rule, Plaintiffs' response was due no later than February 3, 2014, which is the date it was filed. Accordingly, Plaintiffs' Memorandum was timely.

lawyers." *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble,* 429 U.S. 97, 106 (1976)). The Federal Rules of Civil Procedure mirror many of the same concerns, and require pleadings to be "construed so as to do justice." Fed.R.Civ.P. 8(e). To the extent possible, I must therefore look beyond the form of Plaintiffs' Complaint, and evaluate its claims on the basis of their substance. Regardless of how inartfully pleaded it may be, Plaintiffs should not be penalized for the form or inelegance of their Complaint. I cannot, however, act as Plaintiffs' attorney. *See Pliler v. Ford,* 542 U.S. 225, 231 (2004) ("District judges have no obligation to act as counsel or paralegal to *pro se* litigants."). Although I may liberally construe the factual allegations in the Complaint, I must apply the proper legal standard in testing the allegations.

I. Rule 12(b)(1) Motion to Dismiss

Federal Defendants, in part, move to dismiss for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1). When a defendant presents other defenses in addition to challenging the subject matter jurisdiction of the court, the question of subject matter jurisdiction must be resolved first. *See Owens–Illinois, Inc. v. Meade,* 186 F.3d 435, 442 n. 4 (4th Cir.1999). Plaintiffs bear the burden of proving subject matter jurisdiction by a preponderance of the evidence. *See Evans v. B.F. Perkins Co.,* 166 F.3d 642, 647 (4th Cir.1999); *Richmond, Fredericksburg & Potomac R.R. Co. v. United States,* 945 F.2d 765, 768 (4th Cir.1991).

In contrast to "the procedure in a 12(b)(6) motion where there is a presumption reserving the truth

finding role to the ultimate factfinder," when a defendant challenges subject matter jurisdiction pursuant to Rule 12(b)(1), the court "weighs the evidence to determine its jurisdiction." *Adams v. Bain,* 697 F.2d 1213, 1219 (4th Cir.1982) (internal citations omitted). The court accepts all well-pleaded factual allegations as true, but is not obligated to accept a plaintiff's legal arguments or conclusions. *Glenn v. Lafon,* 427 F.Supp.2d 675, 677 (W.D.Va.2006) (citing *Jenkins v. McKeithen,* 395 U.S. 411 (1969); *Falwell v. City of Lynchburg,* 198 F.Supp.2d 765, 771–72 (W.D.Va.2002)).

When considering subject matter jurisdiction under Rule 12(b)(1), the court "regard[s] the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Evans,* 166 F.3d at 647 (quoting *Richmond R.R. Co.,* 945 F.2d at 768). In such a case, the court applies the standard applicable to a motion for summary judgment, under which the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists. *Glenn,* 427 F.Supp.2d at 677 (citing *Richmond R.R. Co.,* 945 F.2d at 768). A complaint will be dismissed for lack of subject matter jurisdiction only if a plaintiff can prove no set of facts in support of his claim which would entitle him to federal subject matter jurisdiction, and the moving party is entitled to prevail as a matter of law. *Glenn,* 427 F.Supp.2d at 677; *Richmond R.R. Co.,* 945 F.2d at 768 (internal citations omitted).

II. Rule 12(b)(6) Motion to Dismiss

To survive a Rule 12(b)(6) 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 *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 556 U.S. at 678 (citing *Twombly,* 550 U.S. at 556). The standard of plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly,* 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (citing *Twombly,* 550 U.S. at 557).

In determining facial plausibility, I must accept all factual allegations contained in the complaint as true. *Id.* The complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and sufficient "[f]actual allegations . . . to raise a right to relief above the speculative level. . . . " *Twombly,* 550 U.S. at 555 (internal citations omitted). The complaint must therefore "allege facts sufficient to state all the elements of [the] claim." *Bass v. E.I. DuPont de Nemours & Co.,* 324 F.3d 761, 765 (4th Cir.2003). Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a pleading that merely offers "labels and

conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555.

III. Rule 56 Motion for Partial Summary Judgment

Summary judgment is appropriate where there is no genuine dispute of material fact and the movant is entitled to judgment on a claim or defense as a matter of law. Fed.R.Civ.P. 56(a); *George & Co. LLC v. Imagination Entertainment Ltd.,* 575 F.3d 383, 392 (4th Cir .2009). A genuine dispute of material fact exists "[w]here the record taken as a whole could . . . lead a rational trier of fact to find for the nonmoving party." *Ricci v. DeStefano,* 557 U.S. 557, 586 (2009) (internal quotation marks and citations omitted); *see also Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A genuine dispute cannot be created where there is only a scintilla of evidence favoring the nonmovant; rather, the Court must look to the quantum of proof applicable to the claim to determine whether a genuine dispute exists. *Scott v. Harris,* 550 U.S. 372, 380 (2007); *Anderson,* 477 U.S. at 249–50, 254. A fact is material where it might affect the outcome of the case in light of the controlling law. *Anderson,* 477 U.S. at 248.

Insofar as there is a "genuine" dispute about the facts, those facts are taken in the light most favorable to the non-moving party. *Scott,* 550 U.S. at 380. At this stage, however, the Court's role is not to weigh the evidence, but simply to determine whether a genuine dispute exists making it appropriate for the case to proceed to trial. *Anderson,* 477 U.S. at 249. "[S]ummary judgment is particularly appropriate . . . [w]here the unresolved issues are

primarily legal rather than factual" in nature. *Koehn v. Indian Hills Cmty. Coll.,* 371 F.3d 394, 396 (8th Cir.2004).

DISCUSSION

Plaintiffs have adopted a "kitchen sink" approach to litigation, but in essence the Complaint argues that negligence and deliberate misconduct were so prevalent throughout the FSA loan application process that it amounts to a deprivation of constitutional due process. To buttress this theory, Plaintiffs accuse Federal Defendants and Defendant Johnson of negligence, fraud, fraudulent misrepresentation, conspiracy, racketeering, and violation of the Fair Credit Reporting Act ("FCRA"). In addition to their constitutional claims, Plaintiffs seek judicial review of the final agency decision of the USDA. While Plaintiffs have provided a great deal of information, there is a general lack of clarity with respect to the assignment of claims against particular parties.

Accordingly, I construe Plaintiffs' claims as follows: (1) constitutional tort claims against Federal Defendants pursuant to *Bivens v. Six Unknown Named Agents,* 403 U.S. 388 (1971); (2) constitutional tort claims against Defendant Johnson pursuant to 42 U.S.C. § 1983; (3) assorted statutory and tort claims against Federal Defendants; (4) assorted statutory and tort claims against Defendant Johnson; and (5) a request for judicial review of the final agency decision pursuant to the Administrative

Procedures Act ("APA").[11] I assume that Plaintiffs are suing all parties, except the USDA, in both their individual and official capacities.[12] Plaintiffs primarily seek money damages, but also request two forms of equitable relief: (1) that the Court require Federal Defendants to "create and provide a complete and comprehensive guide for appellant rights;" and (2) require Federal Defendants to "prosecute to the fullest extent of the law Ronald A. Kraszewski for perjury." (Com pl.22–23.)

A court facing a 12(b)(6) motion to dismiss "can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v.*

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[11] In addition, Plaintiffs raise several claims and requests for equitable relief for the first time in later responsive pleadings. For example, after Defendant Johnson filed her Motion to Dismiss, Plaintiffs included in their response an allegation that Defendant Johnson was also liable for negligent infliction of emotional distress. (Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Wanda Johnson 10 [ECF No. 22].) Outside of an amended complaint, such extraneous allegations are improper and will not be considered. *See Presley v. South Carolina,* No. 8:13–cv–952–RMG, 2013 WL 6193361, at *3 (D.S.C. Nov. 26, 2013) ("[F]or purposes of a Rule 12(b)(6) motion, a court may rely on only the complaint's allegations and those documents attached as exhibits or incorporated by reference.") (citing *Simons v. Montgomery Cnty. Police Officers,* 762 F.2d 30, 31 (4th Cir.1985)).

[12] Plaintiffs fail to specify in the Complaint, but emphasize in later responsive pleadings that it was their intent to sue all parties in their individual and official capacities. (*See, e.* g.*,* Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Wanda Johnson 18, 21 [ECF No. 22]; Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 9, 15–16 [ECF No. 38].)

Iqbal, 556 U.S. 662, 679 (2009). Thus, I first note that Plaintiffs cannot prevail in their effort to obtain money damages on behalf of five individuals who are neither before the Court, nor parties to the current action. *See Kowalski v. Tesmer,* 543 U.S. 125, 129–30 (2004) (A party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). Further, attorney's fees are not available for self-representation. *See, e.g., Kay v. Ehrler,* 499 U.S. 432, 433–38 (1991) (holding that even an attorney who represented himself in a successful civil rights case could not recover attorney's fees under 42 U.S.C. § 1988).

Further, Plaintiffs fail to allege any adequate basis for the provision of equitable relief. They fail to identify any specific injury that will be redressed if the Court orders Federal Defendants to develop a comprehensive guide to appellants' rights.[13] Moreover, their request that I order the prosecution of Ronald Kraszewski for perjury would violate constitutional separation of powers.[14] Accordingly, I will confine the discussion to Plaintiffs' claims for money damages and their request for judicial review of the agency decision.

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[13] A plaintiff has Article III standing to seek injunctive or declaratory relief only if they demonstrate a likelihood of suffering the same injury in the future. *See City of Los Angeles v. Lyons,* 461 U.S. 95, 111–13 (1983).

[14] Such an order would violate the constitutional structure by usurping executive authority. *See* U.S. Const. art. II, § 3 (The President "shall take care that the laws be faithfully executed....").

Ultimately, as discussed in Parts I–VI *infra,* Plaintiffs fail to state a claim for denial of procedural or substantive due process. The Eleventh Amendment entitles Defendant Johnson to immunity from suit for damages claims in her official capacity. Sovereign immunity entitles the USDA and individual Federal Defendants to immunity from suit for damages claims in their official capacities. Plaintiffs fail to allege that the individual Federal Defendants violated any clearly established statutory or constitutional rights, or otherwise acted outside of the scope of their employment. Accordingly, the individual Federal Defendants are entitled to qualified immunity in their individual capacities. The request for judicial review of the final agency decision survives dismissal. Plaintiffs fail to establish that they are entitled to partial summary judgment.

I. Sovereign Immunity and the Eleventh Amendment

Plaintiffs bring claims against the USDA, individual Federal Defendants, and Defendant Johnson in their official capacities. If these claims are prohibited by the doctrine of sovereign immunity and the Eleventh Amendment, however, this Court is without jurisdiction to entertain them. Sovereign immunity is jurisdictional in nature; "[i]t is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell,* 463 U.S. 206, 212 (1983). The same is true with respect to the Eleventh Amendment; "although a case may arise under the Constitution and laws of the United States, the judicial power does not extend

to it if the suit is sought to be prosecuted against a [state without] her consent, by one of her own citizens." *Principality of Monaco v. Mississippi,* 292 U.S. 313, 322 (1934) (citing *Hans v. Louisiana,* 134 U.S. 1 (1890)).

A. U.S. Department of Agriculture

"Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC v. Meyer,* 510 U.S. 471, 475 (1994) (citing *Loeffler v. Frank,* 486 U.S. 549, 554 (1988); *Federal Housing Administration v. Burr,* 309 U.S. 242, 244 (1940)). With respect to allegations against the USDA, Plaintiffs' claims fall into one of two categories: (1) tort claims against the USDA; or (2) a request for judicial review of the final agency decision. As a result, two corresponding waivers of sovereign immunity are potentially relevant: (1) the Federal Tort Claims Act; and (2) the Administrative Procedures Act.[15]

Under the Federal Tort Claims Act ("FTCA"), federal courts are authorized to hear suits against the United States for damages arising from "the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment," so long as the wrongful conduct would violate the law where it occurred. 28 U.S.C. §§ 1346(b), 2674 (2013). Although the FTCA constitutes a limited waiver of sovereign immunity and might generally facilitate the types of

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[15] Plaintiffs' claims under the Administrative Procedures Act are discussed in Part V *infra.*

claims which Plaintiffs assert, Plaintiffs nevertheless fail to state a claim under the rubric of the FTCA.

First, Plaintiffs not only fail to invoke the FTCA in the Complaint, but actively *reject* its application to their case in subsequent pleadings. In response to Federal Defendants' Motion to Dismiss, Plaintiffs argue that they "did not file this action as a suit[] for negligence under the Federal Tort Claims [Act]," and "consequently, its provisions should have no bearing on jurisdiction in this action." (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 16 [ECF No. 38].) Of course, as masters of their claims, Plaintiffs may reject the FTCA as a jurisdictional basis.[16] Without supplying an alternative waiver of sovereign immunity, however, Plaintiffs leave the Court without jurisdiction to hear these claims.

Further, even if they had invoked the FTCA, Plaintiffs fail to comply with a number of statutory requirements. First, Plaintiffs fail to plead a specific theory of liability with respect to the USDA.[17]

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[16] *See, e.* g*., Caterpillar Inc. v. Williams,* 482 U.S. 386, 392 (1987) ("The [well-pleaded complaint] rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law."); *The Fair v. Kohler Die & Specialty Co.,* 228 U.S. 22, 25 (1913) ("Of course, the party who brings a suit is master to decide what law he will rely upon."); *Merrell Dow Pharmaceuticals, Inc. v. Thompson,* 478 U.S. 804, 809 n. 6 (1986) ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced.").

[17] The Complaint does not offer a particular theory of liability with respect to the agency itself, beyond generally alleging negligence, misconduct, and a lack of training and education on the part of its agents and employees. Without a specific theory of liability, the Complaint necessarily fails to "state a claim to

Second, to the extent Plaintiffs raise claims which might be cognizable under the FTCA, the United States is the only proper defendant. 28 U.S.C. §§ 2679(a), (b); *Iodice v. United States,* 289 F.3d 270, 273 n. 1 (4th Cir.2002); *Allgeier v. United States,* 909 F.2d 869, 871 (6th Cir.1990) ("Failure to name the United States as defendant in an FTCA suit results in a fatal lack of jurisdiction."). Third, the FTCA requires that a plaintiff formally present an administrative claim to the agency, in writing, prior to filing suit. 28 U.S.C. § 2675. Failure to exhaust administrative remedies deprives the Court of subject matter jurisdiction, *see McNeil v. United States,* 508 U.S. 106 (1993), and Plaintiffs acknowledge that they fail to satisfy this requirement. (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 17 [ECF No. 38].) Accordingly, all claims against the USDA for money damages are dismissed for lack of subject matter jurisdiction.

B. Individual Federal Defendants

In addition to allegations against the USDA as an agency, Plaintiffs raise claims against seven

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relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Further, there is no *Bivens* cause of action against federal agencies. *FDIC v. Meyer,* 510 U.S. 471, 486 (1994) ("An extension of *Bivens* to agencies of the Federal Government is not supported by the logic of *Bivens* itself."); *Cioca v. Rumsfeld,* 720 F.3d 505, 510 (4th Cir.2013); *Holly v. Scott,* 434 F.3d 287, 289 (4th Cir.2006). If Plaintiffs claim that their constitutional rights were violated by the conduct of a federal employee, a *Bivens* action against the individual federal employee, rather than the agency itself, is the appropriate avenue for redress. *See Bivens v. Six Unknown Named Agents,* 403 U.S. 388, 395–97 (1971).

federal employees in both their official and individual capacities. A suit against a government official in their *official* capacity "generally represent[s] only another way of pleading an action against an entity of which an officer is an agent," and as long as the entity receives "notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham,* 473 U.S. 159, 165–66 (1985) (citations and internal quotation marks omitted).

As discussed above, Plaintiffs fail to identify any waiver of sovereign immunity that would allow them to sue the individual Federal Defendants in their official capacities for actions taken within the scope of their employment. An official-capacity suit against employees of a federal agency is no different than a suit against the agency itself, and in the absence of a waiver, "sovereign immunity shields the Federal Government and its agencies from suit." *FDIC v. Meyer,* 510 U.S. 471, 475 (1994) (citations omitted). Accordingly, all claims for money damages against Federal Defendants in their official capacities are dismissed for lack of jurisdiction.

C. State Defendant Johnson

As the sole *state* government employee-defendant, Defendant Johnson argues that the official-capacity claims against her are prohibited by the Eleventh Amendment and the doctrine of sovereign immunity. (Mot. to Dismiss 5 [ECF No. 16].) Reflecting broad principles of sovereign immunity, the Eleventh Amendment provides that "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity,

commenced or prosecuted against one of the United States by Citizens of another State. . . . " U.S. Const. amend. XI; *see Alden v. Maine,* 527 U.S. 706, 712–13 (1999). Although the text of the Amendment explicitly prohibits suits "by citizens of another state," the Supreme Court has made clear that "an unconsenting State is immune from suits brought in federal court by her own citizens as well as by citizens of another state." *Lee–Thomas v. Prince George's Cnty. Pub. Sch.,* 666 F.3d 244, 248 (4th Cir.2012) (quoting *Port Auth. Trans–Hudson Corp. v. Feeney,* 495 U.S. 299, 304 (1990)). "The ultimate guarantee of the Eleventh Amendment is that non-consenting states may not be sued by private individuals in federal court." *Bd. of Trustees of Univ. of Ala. v. Garrett,* 531 U.S. 356, 363 (2001) (citation omitted).

Beyond the state itself, sovereign immunity under the Eleventh Amendment extends to "state agents and state instrumentalities." *Lee–Thomas,* 666 F.3d at 248 (quoting *Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 429 (1997)). Defendant Johnson characterizes herself as an "employee of Virginia," a characterization that Plaintiffs have not challenged. (Mot. to Dismiss 5 [ECF No. 16].) As the Supreme Court has instructed, "[s]uits against state officials in their official capacity . . . should be treated as suits against the State." *Hafer v. Melo,* 502 U.S. 21, 25 (1991) (internal citations omitted). As a result, Plaintiffs must identify some exception to the Eleventh Amendment in order to proceed with their claims against Defendant Johnson.

There are three recognized exceptions to the Eleventh Amendment. *Lee–Thomas,* 666 F.3d at 249.

First, Congress may abrogate state sovereign immunity under certain limited circumstances. *See Garrett,* 531 U.S. at 363 (citations omitted). Second, a state can waive its Eleventh Amendment immunity. *See Lapides v. Bd. of Regents of Univ. Sys. of Ga.,* 535 U.S. 613, 618 (2002). Third, under the principles of *Ex Parte Young,* "the Eleventh Amendment permits suit for prospective injunctive relief against state officials acting in violation of federal law." *See Frew ex rel. Frew v. Hawkins,* 540 U.S. 431, 437 (2004) (citing *Ex Parte Young,* 209 U.S. 123 (1908)).

Plaintiffs fail to provide any evidence of waiver or congressional abrogation, and the Complaint makes no mention of injunctive relief with respect to Defendant Johnson. Instead, Plaintiffs request purely retrospective relief in the form of money damages. (*See* Compl. 20–23.) In order to determine whether a suit is permissible under *Ex Parte Young,* a court "need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Va. Office of Prot. & Advocacy v. Stewart,* 131 S.Ct. 1632, 1639 (2011) (quoting *Verizon Md. Inc. v. Public Serv. Comm'n of Md.,* 535 U.S. 635, 645 (2002)).

At all times relevant to litigation, Defendant Johnson was acting within the scope of her employment. After their difficulties obtaining VAMP mediation, Plaintiffs were subsequently able to obtain mediation through NCAMP. They have no further need for mediation; the relief sought with respect to Defendant Johnson is purely retrospective. "Federal courts may not award retrospective relief,

for instance, money damages or its equivalent, if the State invokes its immunity." *Hawkins,* 540 U.S. at 437 (citing *Edelman v. Jordan,* 415 U.S. 651, 668 (1974)). Accordingly, all claims against Defendant Johnson in her official capacity are dismissed for lack of subject matter jurisdiction.

II. Constitutional Tort Claims

Plaintiffs allege that Federal Defendants and Defendant Johnson violated their civil and constitutional rights. Although Plaintiffs are often unclear with respect to *which* rights were allegedly violated, they primarily invoke their right to due process. Plaintiffs also argue that they received discriminatory treatment at the hands of the USDA, but fall short of an Equal Protection claim.[18] Plaintiffs do not allege any other violations of the Constitution. Accordingly, I will construe Plaintiffs' constitutional tort claims as claims for denial of procedural and/or substantive due process.

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[18] Plaintiffs seem to concede that they are not members of any constitutionally protected class, and have not alleged that their loan application was treated differently from others who were similarly situated. *See Village of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000) (per curiam) ("Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment."). Accordingly, Plaintiffs raise no valid claims under the Equal Protection Clause.

A. Procedural Due Process

In order to establish a violation of procedural due process, Plaintiffs must show that: (1) they had a property interest, (2) of which the Government deprived them, (3) without due process of law. *United States v. Hicks,* 438 Fed. App'x 216, 218 (4th Cir.2011) (per curiam) (citing *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach,* 420 F.3d 322 (4th Cir.2005)). Procedural due process requires, at a minimum, fair notice and an opportunity to be heard. *Matthews v. Eldridge,* 424 U.S. 319, 333 (1976). Further, a violation of procedural due process "is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Zinermon v. Burch,* 494 U.S. 113, 126 (1990). There is no violation of procedural due process where a meaningful post-deprivation remedy for the loss is available. *Hudson v. Palmer,* 468 U.S. 517, 533 (1984).

Plaintiffs fail to state a claim for deprivation of procedural due process for several reasons. First, Plaintiffs fail to demonstrate the existence of a legitimate property interest, and conflate their eligibility for a loan with an entitlement to the proceeds thereof. Filing a loan application does not confer any property interest in a future loan. *See, e.g., Lyng v. Payne,* 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *Sindoni v. Young,* No. 95–1205, 1995 WL 555554, at *2 (4th Cir. Sept. 20, 1995) (per curiam) (unpublished) ("The filing of a request for an

emergency loan under the [Farmers Home Administration] does not 'confer a property interest protected by the due process clause of the Fifth Amendment.' . . . Applicants have no entitlement to such loan proceeds; thus no property interest."); *Martin v. Marriner,* 904 F.2d 120, 121 (1st Cir.1990) (per curiam).

Second, Plaintiffs fail in their claim that 7 C.F.R. § 780.6 establishes a "liberty interest" in mediation that can sustain a claim for denial of procedural due process. Section 780.6, which provides a list of procedures that are "available" when a decision is appealable, contains no mandatory language and creates no private cause of action. A similar line of reasoning was rejected by the Eighth Circuit, which noted:

> [W]hile the various statutory and regulatory provisions . . . entitled [plaintiffs] to apply for [Farmers Home Administration] loans and establish a regulatory procedure for processing and reviewing loan applications, these provisions do not transform . . . unilateral hope, desire, or abstract need for a FmHA loan into a legitimate claim of entitlement to the loan itself. Thus, these provisions create no property interest on which [plaintiffs'] constitutional tort claim may properly be based.

DeJournett v. Block, 799 F.2d 430, 432 (8th Cir.1986) (citing *Board of Regents v. Roth,* 408 U.S. 564, 577 (1972)).

Third, even if the USDA had deprived them of a legitimate property or liberty interest, Plaintiffs

would still be unable to satisfy their burden of establishing that the relevant loan procedures were unconstitutional. In *Matthews v. Eldridge,* 424 U.S. 319, 334–35 (1976), the Supreme Court established a three-part balancing test for considering whether a governmental deprivation of a protected property or liberty interest violates due process. The Court stated that the following three considerations must be weighed:

> [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Matthews, 424 U.S. at 335; *see also Bradley v. Colonial Mental Health and Retardation Services Bd.,* 856 F.2d 703, 709 (4th Cir.1988). This test reflects the idea that "due process is a flexible concept," which does not require that "procedures used to guard against an erroneous deprivation . . . be so comprehensive as to preclude any possibility of error," and recognizes that "marginal gains from affording an additional procedural safeguard often may be outweighed by the societal cost of providing such a safeguard." *Walters v. National Ass'n of Radiation Survivors,* 473 U.S. 305, 320–21 (1985).

Finally, a number of meaningful post-deprivation remedies were available after the denial of Plaintiffs' loan application. Plaintiffs availed themselves of state mediation, an NAD appeal hearing, and an NAD Director's Review of the hearing decision, all with notice and an opportunity to be heard. Even if Plaintiffs had a legitimate liberty or property interest that was implicated by the denial of their loan application, the available procedures were more than adequate to satisfy the demands of due process. Accordingly, Plaintiffs' claims for a violation of procedural due process are dismissed for failure to state a claim.

B. Substantive Due Process

Alternatively, Plaintiffs may intend to state a claim for a violation of substantive due process. In order to establish a violation of substantive due process, Plaintiffs must demonstrate: (1) that they had a fundamental liberty or property interest; (2) that the state deprived them of this interest; and (3) "that the state's action falls so far beyond the outer limits of legitimate governmental action that *no process* could cure the deficiency." *Sylvia Development Corp. v. Calvert County,* 48 F.3d 810, 827 (4th Cir.1995) (citing *Love,* 47 F.3d at 122) (emphasis in original).

"Substantive due process is a far narrower concept than procedural; it is an absolute check on certain governmental actions notwithstanding the fairness of the procedures used to implement them." *Love v. Pepersack,* 47 F.3d 120, 122 (4th Cir.1995) (internal citations and quotation marks omitted). The residual protections of substantive due process

"run only to state action so arbitrary and irrational, so unjustified by any circumstance or governmental interest, as to be literally incapable of avoidance by any pre-deprivation procedural protections or of adequate rectification by any post-deprivation state remedies." *Rucker v. Harford County,* 946 F.2d 278, 281 (4th Cir.1991). Substantive due process analysis must first begin by asking whether the conduct of the government official "shocks the contemporary conscience." *See County of Sacramento v. Lewis,* 523 U.S. 833, 846–47 (1998).

Plaintiffs' substantive due process claims suffer the same fatal flaw as their claims for procedural due process: Plaintiffs have no fundamental liberty or property interest in proceeds from the loan. *See, e.g., Lyng v. Payne,* 476 U.S. 926, 942 (1986). Even if I accept, *arguendo,* Plaintiffs' argument that Federal Defendants and Defendant Johnson owed Plaintiffs a duty of care, and agree that they failed to exercise such care in the consideration of Plaintiffs' loan application, a lack of due care is insufficient to establish a deprivation of due process:

> Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law.

Daniels v. Williams, 474 U.S. 327, 332 (1986). Accordingly, Plaintiffs' claims for a violation of substantive due process are dismissed for failure to state a claim.

III. Qualified Immunity

Defendant Johnson and the individual Federal Defendants argue that qualified immunity prohibits claims for money damages against them in their individual capacities. As a rule, "government official performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Jackson v. Long,* 102 F.3d 722, 728 (4th Cir.1996) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). Qualified immunity shields "all but the plainly incompetent or those who knowingly violate the law," *Malley v. Briggs,* 475 U.S. 335, 341 (1986), and protects "from bad guesses in gray areas and ensures that they are liable only for transgressing bright lines." *Waterman v. Batton,* 393 F.3d 471, 476 (4th Cir.2005) (citation and internal quotation marks omitted). Because qualified immunity is "immunity from suit rather than a mere defense to liability," *Mitchell v. Forsyth,* 472 U.S. 511, 526 (1985), a court should determine whether a defendant is entitled to qualified immunity at the earliest possible stage. *Harris v. Hayter,* 970 F.Supp. 500, 503 (W.D.Va.1997) (citing *Jackson,* 102 F.3d at 727).

In the Fourth Circuit, courts evaluating the merits of a qualified immunity defense must first establish the "official status" of defendants invoking its protection. *See In re Allen,* 106 F.3d 582, 594 (4th Cir.1997). *Allen* instructs that "an official may claim qualified immunity as long as his actions are not clearly established to be beyond the boundaries of his

discretionary authority."[19] *Id.* at 593. The burden is on the defendant to "demonstrat[e] that the conduct of which the plaintiff complains 'falls within the scope of the defendant's duties.'" *Id.* In order to facilitate this analysis, the Fourth Circuit provides the following framework:

> [A] court must ask whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official's discretionary duties. The scope of immunity "should be determined by the relation of the [injury] complained of to the duties entrusted to the officer." An official acts beyond the scope of his authority only if the injury occurred during the performance of an act clearly established to be outside of the limits of that authority.

Id. at 594 (internal citations omitted).

Plaintiffs argue that the individual Federal Defendants intentionally violated the USDA's code of conduct, thereby removing themselves from the scope of their own authority. (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 15–16 [ECF No. 38].) As the Fourth Circuit makes clear, however, this is not the proper focus of the inquiry.[20] The relevant inquiry is

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[19] "Of course an official may still be liable for acts within his authority that violate clearly established law." *In re Allen,* 106 F.3d at 593 n. 3 (citing *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)).

[20] In addition to the analytical framework, in *Allen* the Fourth Circuit provides two examples of courts that "properly focus[ ] upon the scope of the defendant's duties[.]"*In re Allen,* 106 F.3d

not, as Plaintiffs argue, whether the individual Federal Defendants acted within the scope of their discretionary authority when they denied Plaintiffs' loan application for fraudulent or malicious purposes; rather, it is whether they acted within the scope of their discretionary authority when they denied the loan application. It is "neither whether the official properly exercised his discretionary duties, nor whether he violated the law. If these were the relevant inquiries, any illegal action would, by definition, fall outside the scope of an official's authority." *In re Allen,* 106 F.3d at 594 (citation omitted).

While each individual Federal Defendant played a slightly different role in the loan denial and subsequent appeals process, and the relevant inquiry focuses appropriately on the specific role of each, at no point have Plaintiffs argued that *any* Federal Defendant took any action which would be improper

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at 594–95. For example, in *Sims v. Metropolitan Dade County,* the Eleventh Circuit properly "inquired whether suspending an employee was within the scope of the supervisors' discretionary duties, *not,* as the plaintiff employee urged, whether suspending an employee *for exercising First Amendment rights* was within the scope of those supervisory duties." *Id.* (citing *Sims v. Metropolitan Dade County,* 972 F.2d 1230 (11th Cir.1992)) (emphasis added). Similarly, with respect to the matter that was before the court, the Fourth Circuit explained that the proper inquiry "is whether McGraw's action-forming his own "government agency" corporation under the auspices of the Attorney General's Office-was clearly established to be beyond the scope of his authority," and "*not* whether McGraw exceeded the scope of his authority by forming this corporation *in retaliation for speech critical of him*." *Id.* at 595 (second emphasis added).

if done for a legitimate purpose. Rather than an improper *act,* they allege that Federal Defendants engaged in a malicious conspiracy to act with an improper *purpose.* I am mindful of the Fourth Circuit's guidance that "[t]he scope of immunity 'should be determined by the relation of the [injury] complained of to the duties entrusted to the officer.'" *Id.* at 594 (citations omitted). If Plaintiffs' alleged injury is the denial of a loan application, its relation to the duties entrusted to the officers is clear. For these employees, the consideration (and occasional denial) of loan applications and appeals is the very *raison d'être.* As a result, I find that the individual Federal Defendants were acting within the scope of their discretionary authority. Accordingly, insofar as their conduct conformed to clearly established law, the individual Federal Defendants are entitled to qualified immunity from suit for money damages in their individual capacities.

With respect to Defendant Johnson, the analysis is complicated by a lack of clarity in the pleadings. Plaintiffs argue that she is not entitled to qualified immunity because she was merely engaged in the "ministerial" function of handling mediation requests. (Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Wanda Johnson 19 [ECF No. 22].) The precise nature of the alleged conduct, however, is not clear from the Complaint. Plaintiffs accuse Defendant Johnson of making fraudulent misrepresentations, but fail to specify what Defendant Johnson misrepresented .[21] They essentially allege

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[21] From the Complaint, I can only assume that Plaintiffs believe Defendant Johnson fraudulently misled them through

that Defendant Johnson negligently allowed the USDA certification to lapse, and mishandled their request for mediation. Plaintiffs and Defendant Johnson also disagree about the relevance and application of the qualified immunity test announced in *James v. Jane,* 221 Va. 43 (1980).[22]

At this stage, however, a ruling on the merits of qualified immunity with respect to Defendant Johnson would be improvident. As discussed in Part II *supra,* Plaintiffs fail to state a claim for a violation of due process, and as discussed in Part IV *infra,* Plaintiffs fail to adequately plead any other claims against Defendant Johnson. Accordingly, while I believe that Defendant Johnson is likely entitled to qualified immunity, I find it unnecessary to reach the merits of such a claim.

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her general implied representations that VAMP was a valid program. (*See* Compl. 4–6.)

[22] In her Motion to Dismiss, Defendant Johnson relies on federal precedent to argue that she has not violated any clearly established right, and is therefore entitled to qualified immunity. (Mot. to Dismiss 5–6 [ECF No. 16].) Plaintiffs, in turn, cite *James v. Jane* and contend that qualified immunity should be denied on the grounds that handling mediation requests is a ministerial function. (Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Wanda Johnson 19 [ECF No. 22]) (citing *James v. Jane,* 221 Va. 43 (1980). In her Reply, Defendant Johnson argues that *James* applies only to negligence claims, and not to alleged constitutional violations. (Reply to Mem. of Law in Opp'n to Mot. to Dismiss 3 [ECF No. 26].) She maintains that Plaintiffs fail to state a negligence claim against her in the Complaint, but argues that even under the *James* test, she is entitled to qualified immunity. (*Id.* at 3–5.)

IV. Negligence, Intentional Torts, and Statutory Tort Claims

Plaintiffs' claims, as discussed in Parts I and III *supra,* are barred by the doctrines of sovereign and qualified immunity. Even if these claims were not barred, however, they would nevertheless fail for the reasons below.

A. Negligence and Gross Negligence

In order to state a claim for negligence under Virginia law, Plaintiffs must allege: (1) a legal duty on the part of the defendant; (2) breach of that duty; (3) that such breach was the proximate cause of the injury; and (4) resulting damage to the plaintiff. *Blue Ridge Serv. Corp. v. Saxon Shoes, Inc.,* 271 Va. 206, 218 (2006) (internal citation omitted). Plaintiffs claim that Federal Defendants and Defendant Johnson were negligent in a number of ways.

With respect to Federal Defendants, Plaintiffs first allege that it was negligent for FSA Deputy Administrator Chris P. Beyerhelm to approve what they characterize as an overly confusing rule with grammatical errors (which they argue was a cause of their loan denial), and to allow it to be included in the FSA regulations for over a year. (Compl.12.) They claim that it was negligent to not require FSA employees to cite regulations in full, without alteration, when communicating with loan applicants in writing. (*Id.* at 12, 17–18.) Plaintiffs also allege that it was negligent for the FSA to direct them to a state mediation program which was no longer certified, and for having insufficient procedures in

place to deal with a state mediation program that loses USDA certification. (*Id.* at 4–6, 11–12.)

With respect to the FOIA requests, Plaintiffs claim that "in some cases [they were] provided with inaccurate information, no information, or information which indicated negligence. . . . " (*Id.* at 11.) They allege that the lack of response to an element of their FOIA request, the request for documentation of agency procedures for preparation of a loan denial letter, was either "negligent or malicious since such documentation did exist." (*Id.* at 12.) Plaintiffs do not offer any evidence to support their claim that further responsive documents exist and were withheld.

With respect to Defendant Johnson, Plaintiffs claim that it was negligent to allow the USDA certification of VAMP to lapse, and to not have adequate procedures in place to track mediation requests. (*Id.* at 16.) According to Plaintiffs, Defendant Johnson's alleged negligence prevented them from obtaining mediation from December 2012 to January 2013. (*Id.* at 4–8.) In addition, Plaintiffs repeatedly claim that the individual Federal Defendants and Defendant Johnson lack the training and education that are commensurate with their levels of responsibility.[23] Plaintiffs fail to indicate a

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[23] For example, Plaintiffs accuse "USDA et al" of falsely stating during the NAD appeal hearing that Plaintiffs requested to pay living expenses with loan proceeds, and claim that this is evidence of a lack of education. (Compl.10.) From the résumés and training histories Plaintiffs obtained concerning Farm Loan Manager Kraszewski and Farm Loan Officer Rigney, Plaintiffs allege a general lack of education and training that constitutes negligence. (*Id.* at 12.) Without specifying, Plaintiffs allege

specific theory of liability or highlight any particular deficiencies in their training that might be addressed through an order of the Court.

Despite the extraordinary breadth of their allegations, Plaintiffs fail to state adequately any claims of negligence. "All negligence causes of action are based on allegations that a person having a duty of care to another person violated that duty of care through actions that were the proximate cause of injury to the other person." *Steward v. Holland Family Properties, LLC,* 284 Va. 282, 286 (2012) (citation omitted). In the Complaint, Plaintiffs fail to allege any duty owed to them on the part of Defendant Johnson or any Federal Defendant. After Defendant Johnson filed her Motion to Dismiss, Plaintiffs replied that "[i]t's Res Ipsa Loquitur . . . [t]hat an employee of a State University with the title of University of Virginia State Mediation Program Director and prescribed as the appropriate contact by an agency of the U.S.D.A. has a duty of Due Care to handle mediation request[s]." (Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Wanda Johnson 5 [ECF No. 22].) In their response to Federal Defendants' Motion to Dismiss, Plaintiffs argue that duties are "defined by the Agencies [sic] own process handbooks." (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 15 [ECF No. 38].)

"other additional material misrepresentations of fact attributable to 'USDA et al'(s) lack of educational and program training," and accuse "USDA et al" personnel of not having the appropriate training to "discern the difference between labor cost and living expenses...." (*Id.* at 12, 17.) Plaintiffs make a number of similar allegations in other responsive pleadings.

"The issue whether a legal duty in tort exists is a pure question of law." *Kellermann v. McDonough,* 278 Va. 478, 487 (2009). As a question of law, therefore, I have no obligation to accept conclusions that such a duty exists. I find that Plaintiffs' reliance on the doctrine of res ipsa loquitur is misplaced.[24] Further, the existence of a handbook, or even a statute, directing the performance of an employee is not necessarily sufficient to establish a duty per se. "The standard of care required to comply with the duty of care may be established by the common law or statute. However, a statute setting the standard of care does not create the duty of care." *Steward,* 284 Va. at 286 (citations omitted). While it would be inaccurate to say that Federal Defendants and Defendant Johnson owe Plaintiffs *no* duty of care,[25] Plaintiffs fail to establish that Federal Defendants and Defendant Johnson owe them any particular

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[24] Generally speaking, the doctrine of res ipsa loquitur applies in negligence cases where "the instrumentality which caused an injury is within the exclusive possession and control of the person charged with negligence, and such person has, or should have, exclusive knowledge of the way that instrumentality was used, and the injury would not ordinarily have occurred if it had been properly used." *Danville Cmty. Hosp. v. Thompson,* 186 Va. 746, 757–58 (1947). While the doctrine may be applied to overcome the *factual* absence of evidence, it has no bearing on the *legal* question of duty.

[25] An individual has a general duty of care under the law to act in the manner any ordinary, prudent and reasonable person would do under similar circumstances. *See, e.* g*., Norfolk & W. Ry. Co. v. Mace,* 151 Va. 458, 465 (1928). This duty of care, however, is only owed to foreseeable plaintiffs a defendant reasonably believed would be harmed by its action. *See Palsgraf v. Long Island Railroad,* 248 N.Y. 339 (1928).

duty of care by virtue of Plaintiffs' status as loan applicants.

Even if I accept, *arguendo,* that such a duty exists, Plaintiffs' claims nevertheless fail for lack of proximate causation and resulting injury. "The proximate cause of an event is that act or omission which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred." *Blue Ridge Serv. Corp. v. Saxon Shoes, Inc.,* 271 Va. 206, 218 (2006) (quoting *Beale v. Jones,* 210 Va. 519, 522 (1970)). In addition, "evidence tending to show causal connection must be sufficient to take the question out of the realm of mere conjecture, or speculation, and into the realm of legitimate inference, before a question of fact for submission to the jury has been made out." *Id.*

Beyond the two-month delay in obtaining mediation,[26] Plaintiffs fail to specify any injury that resulted from the alleged negligence. Presumably, the denial of the loan application itself is the alleged injury. Even if nearly everyone involved was careless in the discharge of their responsibilities, however, the reasoning of the agency's decision would nevertheless still support the denial of their loan application.[27] Any other damages that Plaintiffs

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[26] The two-month delay is insufficient to establish a legal injury. Plaintiffs were never entitled to advance through mediation or the administrative process at a faster pace, and therefore cannot be "injured," in the legal sense of the word, by such a delay.

[27] This is not to say that I necessarily find the underlying reasoning of the agency to be correct, but rather that the

claim resulted from the mishandling of their loan application are too remote and speculative to have been proximately caused by the alleged conduct. Plaintiffs fail to advance the question of causation beyond mere speculation and into the realm of legitimate inference. As a result, without adequately pleading a legal duty, breach of that duty, proximate causation, and resulting injury, Plaintiffs fail to establish the prima facie elements of a cause of action for negligence.

There are three degrees of negligence in Virginia: (1) ordinary or simple; (2) gross; and (3) willful, wanton, and reckless. *Griffin v. Shively,* 227 Va. 317, 321 (1984). Gross negligence is "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded men although something less than willful recklessness." *Id.* (internal citations omitted). While Defendant Johnson argues that Plaintiffs fail to allege gross negligence in the Complaint, (Reply to Mem. of Law in Opp'n to Mot. to Dismiss 5 [ECF No. 26]), in any event the outcome is the same. If Plaintiffs fail to state a claim for negligence, an alternative claim for gross negligence necessarily fails as well. Accordingly, Plaintiffs' claims of negligence and gross negligence are dismissed for failure to state a claim.

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reasoning (the loan was for an ineligible purpose) would still apply with equal force in the event that agency personnel negligently handled Plaintiffs' loan application.

B. Actual Fraud, Constructive Fraud, Fraudulent Misrepresentation

In order to sustain a claim of actual fraud, constructive fraud, or fraudulent misrepresentation under the law of Virginia, a plaintiff is required to plead: (1) a false representation of material fact; (2) made intentionally (for actual fraud), or negligently (for constructive fraud); (3) reliance on that false representation to their detriment; and (4) resulting damage. *Klaiber v. Freemason Assocs.,* 266 Va. 478, 485 (2003). Pursuant to Rule 9(b), a party alleging fraud or mistake "must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed.R.Civ.P. 9(b).

With respect to Federal Defendants, Plaintiffs claim that the initial loan denial letter contained misrepresentations of fact and fraudulent citations to the Code of Federal Regulations and other guidelines. (Compl. 4; Ex. A.) The basis for their claim of fraud is essentially that USDA personnel paraphrased the regulations, which Plaintiffs argue was a deliberate attempt to mislead them. (*Id.* Exs. A, B.) They characterize other statements in the letter-that Plaintiffs intended to use loan funds to refinance an existing loan, and had requested living expenses under the guise of labor costs-as misrepresentations of fact.[28] (*Id.* at 4, 17.) Plaintiffs

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[28] Plaintiffs claim that they never requested loan funds to refinance an existing loan, and argue that they had no outstanding debt at the time. (Compl.4, 17.) The agency later withdrew this justification as a reason for the denial of the loan.

claim that the letter was an intentional effort to deceive and defraud them, and allege mail fraud on the grounds that the letter was sent via certified U.S. mail. (*Id.* at 4.) In addition to the denial letter, Plaintiffs accuse NAD Director Roger Klurfeld of making material misrepresentations of fact in connection with the NAD Director's Review of their case. (*Id.* at 14–15.) In support of their claim, Plaintiffs argue that Director Klurfeld misstated a portion of their argument on appeal in his Director's Review decision. (*Id.* at 14.)

Plaintiffs also allege that the FSA required a fee of $20.25 for a credit report as part of the loan application. (*Id.* at 5, 7, 23.) They claim that a credit report was never obtained, and argue that the agency therefore fraudulently accepted payment for services not rendered. (*Id.* at 7.) Additionally, as part of the NCAMP mediation process, Plaintiffs signed a mediation agreement and confidentiality statement. (*Id.* at 7–8.) Plaintiffs claim to have only learned after mediation that USDA personnel may have sovereign immunity, and argue that as a result, the agreements are the product of fraudulent inducement. (*Id.*)

With respect to Defendant Johnson, Plaintiffs generally accuse her of making fraudulent and/or negligent misrepresentations, presumably concerning the status of VAMP mediation. (*Id.* at 4–6 .) Plaintiffs were unable to obtain mediation from December to January, and allege that this was the result of a conspiracy to defraud. (*Id.* at 6.) Defendant Johnson

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(*Id.* at 8 .) Plaintiffs claim that they requested labor costs, not living expenses. (*Id.* at 16–17.)

argues that she did not intentionally or negligently make any false representations; she only told Plaintiffs that they would "*likely*" get mediation in Wytheville, Virginia, and was not aware of the loss of USDA certification at the time. (Mot. to Dismiss 7 [ECF No. 16].) She further argues that there was no detriment or resulting damages to Plaintiffs, as they were subsequently able to obtain mediation through NCAMP. (*Id.*)

The majority of Plaintiffs' claims must fail for the simple reason that they fail to indicate precisely *which* material facts were allegedly misrepresented. Further, where Plaintiffs do specify the factual bases for their claims, they entirely neglect to plead "reliance on that false representation to their detriment." *Klaiber,* 266 Va. at 485. Given the heightened requirements for pleading fraud embodied in Rule 9(b), these failures alone are fatal to Plaintiffs' claims. Even if they had included the elements to otherwise make out a prima facie claim of fraud, however, Plaintiffs' claims would fail for lack of damages.[29]

With respect to the remaining miscellaneous allegations of fraud, Plaintiffs similarly fail to state a

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[29] "An allegation of fraud in the abstract does not give rise to a cause of action; it must be accompanied by allegation and proof of damage." *Community Bank v. Wright,* 221 Va. 172, 175 (1980) (citing *Lloyd v. Smith,* 150 Va. 132, 149 (1928)). Further, "the rule as to what constitutes damage [for fraud], in any case, may broadly be stated to be that there is no damage where the position of the complaining party is no worse than it would be had the alleged fraud not been committed." *Community Bank,* 221 Va. at 175 (quoting *Cooper v. Wesco Builders, Inc.,* 76 Idaho 278, 281 (1955)).

claim. Regarding the NCAMP mediation agreements, discussed further in Part VI *infra,* Plaintiffs falsely equate a unilateral mistake of law (their lack of knowledge concerning sovereign immunity) with a false representation by the USDA. I am aware that Plaintiffs lack the benefit of legal training and expertise; nevertheless, *ignorantia juris haud excusat* (ignorance of the law is no excuse). *See Clifton Mfg. Co. v. United States,* 76 F.2d 577, 579–80 (4th Cir.1935). Further, even if Plaintiffs were able to identify a civil cause of action for mail fraud, without adequately alleging any fraud in the predicate loan denial letter, any claim for mail fraud necessarily fails as well.

The $20.25 credit report fee, on the other hand, if considered as part of a single standalone transaction, presents a closer question. What this argument ignores, however, is the true nature of the fee. Plaintiffs did not pay $20.25 for a credit report. There was no expectation that Plaintiffs would necessarily receive a copy, and one was not even requested until their loan had been denied and Plaintiffs were engaged in mediation months later. Instead, the fee is more accurately characterized as a line-item expense contributing to an application fee for the loan. Plaintiffs paid $20.25 to submit their application for consideration, which is what they allege happened. Whether their loan application was *properly* denied is irrelevant; it is enough that the application was denied for reasons entirely removed and disconnected from Plaintiffs' credit report. Hence, Plaintiffs' position is "no worse than it would be had the alleged fraud not been committed," *Community Bank,* 221 Va. at 175 (quoting *Cooper,* 76

Idaho at 281), and Plaintiffs fail to adequately plead the alleged fraud.

Plaintiffs fail to plead the necessary elements of a claim for actual fraud, constructive fraud, or fraudulent misrepresentation. Even if I were to accept that Plaintiffs had alleged these elements, albeit in a cursory fashion, they fail to "state with particularity the circumstances constituting fraud or mistake." Fed.R.Civ.P. 9(b). Accordingly, Plaintiffs' claims of fraud and fraudulent misrepresentation are dismissed for failure to state a claim.

C. Conspiracy

Under Virginia law, a cause of action for common law conspiracy requires: (1) two or more persons acting in concert; (2) for some unlawful purpose or for some lawful purpose by unlawful means; and (3) resulting damages. *Tomlin v. IBM,* No. CL–2011–8763, 2012 WL 7850902, at *13 (Va.Cir.Ct. Feb. 13, 2012) (citing *Country Vintner, Inc. v. Latour,* 272 Va. 402, 412 (2006)). In the Complaint, Plaintiffs allege two distinct claims of conspiracy. First, as a result of their inability to obtain VAMP mediation, Plaintiffs allege that Defendant Johnson and "USDA et al" personnel engaged in a conspiracy to defraud. (Compl.6.) Second, Plaintiffs claim that "USDA et al" conspired "to deny Plaintiff(s) rights in a Federal Farm Credit program," and "deny their constitutional rights in an effort to make plaintiff(s) suffer significant and emotional hardship. . . . " (*Id.* at 19.) Although these allegations are raised with almost no specificity, Plaintiffs insinuate that all of the individuals

involved in the loan application and administrative review process were working together against them.

To survive a motion to dismiss, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 556 (2007)). The plausibility standard "asks for more than a sheer *possibility* that a defendant has acted unlawfully." *Id.* (citing *Twombly,* 550 U.S. at 557). With respect to their claims of conspiracy, I find that Plaintiffs fail to plead sufficient factual content for the Court to draw any reasonable inference that Federal Defendants and/or Defendant Johnson are liable for conspiracy.

Plaintiffs' chief error is their failure to plead any form of concerted action. Plaintiffs argue that Defendant Johnson and Federal Defendants are "associated in fact," but fail to offer any factual support to buttress this unsubstantiated legal conclusion. (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 9 [ECF No. 38].) Plaintiffs fail to elaborate on the alleged association, or offer any other form of concerted action that might satisfy a necessary element of their claim. Without any facts to suggest that the alleged conspirators acted in concert—the *sine qua non* of a conspiracy—Plaintiffs fail to state a claim. In addition, with respect to the specific allegation of a conspiracy to defraud, Plaintiffs fail to plead the underlying fraud. Accordingly, Plaintiffs' claims of conspiracy are dismissed for failure to state a claim.

D. Racketeering

In conjunction with their conspiracy allegations, Plaintiffs invoke the Racketeer Influenced and Corrupt Organizations ("RICO") Act. *See* 18 U.S.C. §§ 1961–1968. The Complaint alleges that the USDA has "abused [its] Government powers as a Racketeer Influenced Corrupt Organization to steal the constitutional rights of Plaintiff(s)," while "hiding behind sovereign immunity with the intent to deny Plaintiff(s) lawful access to the Farm Loan Program." (Compl.19.) At oral argument, Federal Defendants summarized the RICO allegations contained in the Complaint as a single "throwaway line," a characterization that seems entirely accurate.

Pursuant to 18 U.S.C. § 1964(c), civil remedies are available when a plaintiff suffers an injury to his business or property as a result of a violation of 18 U.S.C. § 1962. *See Alley v. Angelone,* 962 F.Supp. 827, 832 (E.D.Va.1997). In order to state a claim under § 1964(c), a plaintiff must plead *all* elements of the alleged violation of § 1962. *Id.* (citing *Sedima, S.P.R.L. v. Imrex, Co.,* 473 U.S. 479, 496 (1985) (abrogated on other grounds)). Plaintiffs must therefore plead four (4) elements: (1) conduct (2) of an enterprise (3) through a *pattern* (4) of racketeering activity.[30] *Sedima,* 473 U.S. at 496

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[30] In relevant part, the statute provides that it shall be "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c).

(emphasis added). Although the statute provides that a "'pattern of racketeering activity' requires at least two acts of racketeering activity," 18 U.S.C. § 1961(5), even *two* acts may be insufficient. *Sedima,* 473 U.S. at 496 n. 14 ("The implication is that while two acts are necessary, they may not be sufficient."). As a result, "[f]or purposes of establishing a conspiracy for recovery under [§] 1964, plaintiffs must allege *with specificity* two or more predicate acts of racketeering within the meaning of [§] 1962." *Alley,* 962 F.Supp. at 832 (citing *Laterza v. American Broadcasting Co., Inc.,* 581 F.Supp. 408, 413 (S.D.N.Y.1984)) (emphasis added).

Plaintiffs fail to include any of the necessary elements of a racketeering claim, and fail to plead *any* specific predicate acts of racketeering. In later responsive pleadings, Plaintiffs attempt to remedy this deficiency by alleging fraud pursuant to 18 U .S.C. § 1028, mail fraud pursuant to 18 U.S.C. § 1341, and obstruction of justice pursuant to 18 U.S.C. § 1503 as predicate racketeering offenses. (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 9–10 [ECF No. 38].) In addition to these elements not being alleged in the Complaint, I find that the statutes are either irrelevant, or Plaintiffs fail to state a claim for the alleged offense.[31] Without pleading any predicate acts of racketeering, Plaintiffs

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[31] 18 U.S.C. § 1028 addresses fraud as it relates to identification documents and authentication features, while 18 U.S.C. § 1503 prohibits influencing or injuring an officer or juror. Neither statute is relevant to the facts of this case. Further, as discussed in Section B of Part IV *supra,* Plaintiffs fail to state a claim for mail fraud.

fail to make out even a prima facie claim to relief under 18 U.S.C. § 1964(c). Accordingly, all RICO allegations are dismissed for failure to state a claim.

In addition to the civil claims, Plaintiffs raise several other issues that implicate the RICO statute. First, Plaintiffs contend that this action is "of general public importance," as defined in 18 U.S.C. § 1966.[32] As the statute makes clear, however, such election is only available in civil actions instituted by the United States. Second, Plaintiffs attempt to defeat sovereign immunity by arguing that since "[C]ongress abrogated sovereign immunity in creation of the Federal Tort Claim A[ct,] so to[o] should that abrogation apply to [the RICO Act], as RICO was designed to augment existing civil and criminal remedies[.]" (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 15 [ECF No. 38].) This argument also fails, as federal courts "must construe waivers [of sovereign immunity] strictly in favor of the sovereign . . . and not enlarge the waiver beyond what the language requires." *Library of Congress v.. Shaw,* 478 U.S. 310, 318 (1986) (citing *Ruckelshaus v. Sierra Club,* 463 U.S. 680, 685–86 (1983); *McMahon v. United States,* 342 U.S. 25, 27 (1951); *Eastern Transportation Co. v. United States,* 272

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[32] 18 U.S.C. § 1966 provides for the expedition of certain civil actions. It provides that "[i]n any civil action *instituted under this chapter by the United States* in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance." The chief judge or presiding district judge is then given a copy of the certificate, and "shall designate immediately a judge of that district to hear and determine action." 18 U.S.C. § 1966 (emphasis added).

U.S. 675, 686 (1927)) (internal quotation marks omitted).

E. Fair Credit Reporting Act

Plaintiffs claim that Federal Defendants violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681–1681v, by requesting and providing a *current* credit report, as opposed to one dating back to the time of their loan application, when Plaintiffs requested a copy of their credit report during NCAMP mediation. (Compl.7, 15–16 .) The FCRA provides a private cause of action to enforce certain provisions of the statute. *See Saunders v. Branch Banking and Trust Co. of Va.,* 526 F.3d 142, 149 (4th Cir.2008). Beyond their conclusion that it was unlawful, however, Plaintiffs fail to allege with any specificity how Federal Defendants violated the FCRA, or even which section(s) of the FCRA they allegedly violated. Without any additional information, Plaintiffs fail to make out even a prima facie case for a violation of the FCRA. Accordingly, Plaintiffs' FCRA claims are dismissed for failure to state a claim.

F. Constitutional Challenge to the FTCA

In their response to Federal Defendants' Motion to Dismiss, Plaintiffs assert that "[t]his motion for argument presents a constitutional challenge to the provisions of the FTCA as it conflicts with the provisions of Title 18 § 1964(c)." (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 25 [ECF No. 38].) This argument is presented under the heading "One Small Historical Note," and no additional explanation is provided. (*Id.* at 24–25.) Without

presenting any argument in support of this assertion, Plaintiffs' alleged constitutional challenge is dismissed for failure to state a claim.

V. Judicial Review of the Final Agency Decision

In addition to the civil tort claims discussed above, Plaintiffs request judicial review of the final decision of the USDA. (Compl.19 .) "Judicial review of final decisions of the NAD is to be in accordance with Chapter 7 of Title 5 of the United States Code." *Balfour Land Co., L.P. v. United States,* No. 7:08–cv–34, 2009 WL 1796068, at *4 (M.D. Ga. June 22, 2009) (citing 7 U.S.C. § 6999); *see also Beard v. Glickman,* 189 F.Supp.2d 994, 998 (C.D.Cal.2001). Through the Administrative Procedures Act ("APA"), Congress enacted a limited waiver of sovereign immunity to authorize judicial review of final agency actions for claims "seeking relief other than money damages." 5 U.S.C. § 702. With respect to form and venue, the law provides that such an action "may be brought against the United States, *the agency by its official title,* or the appropriate officer." 5 U.S.C. § 703 (emphasis added). As a consequence, with respect *only* to Plaintiffs' request for judicial review of the final NAD decision, and *only* to the extent such a claim is brought against the USDA as an agency, I find that Plaintiffs have identified an appropriate waiver of sovereign immunity.

Under the APA, "an agency's decision, including its action, findings and conclusions, should not be overturned unless it is unsupported by substantial evidence, or if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* (citing 5 U.S.C. § 706(2); *United States v. Snoring*

Relief Labs Inc., 210 F.3d 1081, 1085 (9th Cir.2000)). A decision is arbitrary and capricious if:

> [T]he agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

In this context, courts "perform only the limited, albeit important, task of reviewing agency action to determine whether the agency conformed with controlling statutes, and whether the agency has committed a clear error of judgment." *Holly Hill Farm Corp. v. United States,* 447 F.3d 258, 263 (4th Cir.2006) (citations and internal quotation marks omitted). "[T]he ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402, 416 (1971), *abrogated on other grounds by Califino v. Sanders,* 430 U.S. 99, 105 (1977).

Plaintiffs allege a number of deficiencies in the administrative review process and final decision of NAD Director Roger Klurfeld. Primarily, Plaintiffs claim that the agency applied an incorrect standard to deny their loan application. Rather than the FSA regulations that were in effect when Plaintiffs applied for the loan, they argue that a version of the

regulations from 2008, the year that Plaintiffs designed and began construction on the house, should apply instead.[33] Plaintiffs seem to concede that the home they proposed to complete with proceeds from the loan is not a modest dwelling.[34] This admission is significant, because from the initial loan denial letter to the final stages of NAD review, Plaintiffs were told that loan proceeds may only be used to purchase, improve, or build a dwelling if it

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[33] Plaintiffs contend that the prior version of Page 7–2, Para. 131 C should apply for two reasons. They argue that the rule previously required a dwelling to *either* meet family needs, *or* be modest in size, cost, and design. When the rule was changed in 2011, Plaintiffs contend, the "or" was amended to "and," but the "either" remained as a typo, which renders the rule "incomprehensible" in their view, since the clause contains no alternative. (Compl.8.) In essence, the argument is similar to a "void-for-vagueness" challenge to the existing regulations. Further, Plaintiffs argue that since the rule controls the design of a dwelling, the agency should apply the rule in effect when their house was designed, and not when they applied for the loan. (*Id.*) These two arguments form the basis of Plaintiffs' claim that their house may not be modest, but is nevertheless permissible under the regulations, because "nothing could possibly have met the families' needs anymore than the welfare of this dwelling." (*Id.* at 8–9.)

[34] For example, in Plaintiffs' NAD appeal brief, attached to the Complaint as Exhibit Z, Plaintiffs argue that "[w]hile we would concede the dwelling may not meet FSA's definition of modest in size, cost, and design, it should be no more subject to the requirement than is a dwelling located close to the farm[.]" (Compl. Ex. Z, at 5.) In the same brief, Plaintiffs claim to have "personally invested almost $600,000 in identifiable cost of my own capital into this project and community," and argue that they are receiving "prejudicial treatment simply because we tried to build our dream house on a farm ... without first getting their approval." (*Id.* Ex. Z, at 9.)

"adequately meets family needs and is modest in size, cost, and design . . . ;" a restriction that their house was found to exceed. (*See* Compl. Ex. A, at 1; Ex. AA, at 2–3.) Plaintiffs maintain that the 2008 regulation should apply, and argue that it should be interpreted to require that the dwelling *either* adequately meet family needs *or* be modest in size, cost, and design. (*Id.* at 8–9, 18.)

Plaintiffs also claim that NAD Director Roger Klurfeld misstated Plaintiffs' argument on appeal. (*Id.* at 14.) Plaintiffs allege that they argued that the rule (requiring dwellings to be modest) did not apply to them because it did not apply to existing dwellings; Director Klurfeld, Plaintiffs contend, misrepresented this argument, and stated that Plaintiffs had argued that the rule did not apply to them because the dwelling was not located on the farm. (*Id.*) Plaintiffs claim that they were denied the opportunity to argue that the proposed dwelling adequately meets their family needs. (*Id.* at 14–15.)

Plaintiffs allege facts which tend to support a finding that the decision of NAD Director Klurfeld is a "final decision" for purposes of judicial review. According to Plaintiffs, NAD Director Klurfeld's letter concluding his Director's Review stated that it "is a final order of the Department of Agriculture and concludes *all* administrative processing of your appeal." (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 16–17 [ECF No. 38]) (emphasis in original).

Plaintiffs also allege what amounts to a claim of futility with respective to administrative review.[35]

For these reasons, and in light of the liberal construction afforded to *pro se* pleadings, I find that Plaintiffs state a claim for judicial review of the final agency decision sufficient to survive Federal Defendants' Motion to Dismiss. Whether Plaintiffs are entitled to prevail is another matter, but at this stage of the proceedings, it would be premature to pass judgment on the merits of Plaintiffs' request.[36] In particular, the Court would benefit from additional argument concerning the following issues: (1) whether the USDA has rendered a final decision over which this Court has jurisdiction; (2) if so, are there any obstacles that would prevent the Court from engaging in judicial review pursuant to 5 U.S.C. § 706(2); and (3) if not, was the final decision of the agency, including its action, findings, and conclusions, unsupported by substantial evidence, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law. Accordingly, Plaintiffs' request for judicial review of the final agency decision survives as an action

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[35] "Plaintiffs have met with fraud, negligence, obstruction of justice and apparent conspiracies of corruption at every proper venue of grievance. Should any different response be expected in the filing of an administrative claim ... with a Racketeer Influenced Corrupt Organization?" (Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 17 [ECF No. 38].)

[36] I note that the remaining issues are primarily legal in nature. With the benefit of additional argument, the Court is therefore willing to entertain a motion for summary judgment, pursuant to Fed.R.Civ.P. 56(a), if either party so chooses.

against the USDA, and Federal Defendants' Motion to Dismiss will be denied.

VI. Plaintiffs' Motion for Partial Summary Judgment

Finally, Plaintiffs move for partial summary judgment with respect to paragraph 11 of the Complaint, dealing with the mediation agreement and confidentiality statement that they signed as part of the NCAMP mediation process. (Mot. for Partial Summ. J. [ECF No. 27].) Plaintiffs learned after mediation that USDA personnel may have sovereign immunity, and claim that the agreements were therefore based on fraudulent inducement. (*Id.* at 2) According to Plaintiffs, Federal Defendants "did not have capacity to enter into the agreement because they do not have legal authority to relinquish their sovereign immunity." (*Id.* at 3.) Plaintiffs equate the existence of sovereign immunity to a lack of consideration, and argue that it renders the agreements null and void. (*Id.*) Plaintiffs ask the Court to "find these agreements null and void relinquishing any and all responsibility of plaintiffs to keep confidential any information learned during mediation." (*Id.*)

Summary judgment is only appropriate where there is no genuine dispute of material fact and the movant is entitled to judgment on a claim or defense as a matter of law. Fed.R.Civ.P. 56(a); *George & Co. LLC v. Imagination Entertainment Ltd.,* 575 F.3d 383, 392 (4th Cir. 2009). Under Virginia law, a plaintiff asserting a cause of action for fraudulent inducement bears the burden of proving by clear and convincing evidence the following elements: "(1) a

false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." *Persaud Companies, Inc. v. IBCS Group, Inc.,* 425 F. App'x 223, 226 (4th Cir.2011) (quoting *Evaluation Research Corp. v.. Alequin,* 247 Va. 143 (1994)). Plaintiffs, however, fail to allege any false representation, and arguably fail to plead even a single element of a claim for fraudulent inducement. Even if the law of North Carolina were to apply, Plaintiffs nevertheless fail to state a claim for fraudulent inducement.[37]

Plaintiffs' remaining claims—that Federal Defendants lack capacity, and that the agreements lack consideration—present novel arguments, which Plaintiffs are unable to support with even a single legal authority. A genuine dispute of material fact exists "[w]here the record taken as a whole could . . . lead a rational trier of fact to find for the nonmoving party." *Ricci v. DeStefano,* 557 U.S. 557, 586 (2009) (internal quotation marks and citations omitted); *see also Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). That a rational trier of fact would accept Plaintiffs' novel and largely unsubstantiated arguments is by no means certain.

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[37] Under the law of North Carolina, the essential elements of a claim for fraud in the inducement are: "(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Media Network, Inc. v. Long Haymes Carr, Inc.,* 678 S.E.2d 671, 684 (N.C.Ct.App.2009) (quoting *Rowan County Bd. of Educ. v. U.* S. *Gypsum Co.,* 418 S.E.2d 648, 658 (N.C.1992)). Plaintiffs fail to allege the necessary elements of such a claim.

Accordingly, Plaintiffs fail to establish their entitlement to judgment as a matter of law, and the Motion for Partial Summary Judgment is denied.

CONCLUSION

For the foregoing reasons, Defendant Johnson's Motion to Dismiss is **GRANTED.** Plaintiffs' Motion for Partial Summary Judgment is **DENIED.** Federal Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART.** Specifically, Federal Defendants' Motion to Dismiss is **DENIED** with respect to Plaintiffs' request for judicial review of the final agency decision, and **GRANTED** with respect to all other claims against the USDA, and all claims against the following employee-defendants, in any capacity: (1) James Rigney; (2) Ronald Kraszewski; (3) J. Calvin Parrish; (4) Jerry L. King; (5) Roger Klurfeld; (6) Christopher P. Beyerhelm; and (7) Barbara McLean. The USDA remains as the sole defendant, and the suit will proceed as an action for judicial review of the final decision of NAD Director Roger Klurfeld.[38]

The Clerk is directed to send a copy of this Memorandum Opinion and accompanying Order to Plaintiffs and all counsel of record.

ORDER

Plaintiffs Christopher B. Julian and Renee G. Julian ("Plaintiffs") applied for and were denied a

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[38] Plaintiffs are advised that the remaining available remedies are limited to a reversal of the final decision of the administrative agency, *i.* e.*,* money damages and attorney's fees are not available moving forward.

Farm Ownership loan through the Farm Service Agency ("FSA") of the U.S. Department of Agriculture ("USDA"). As a result of the denial, Plaintiffs, proceeding *pro se* and *in forma pauperis,* filed suit in this Court against the USDA, seven federal employees, and one state employee. On October 18, 2013, state employee Wanda Johnson filed a Motion to Dismiss [ECF No. 16]. Plaintiffs filed a Motion for Partial Summary Judgment on January 6, 2014 [ECF No. 27], and the remaining Federal Defendants collectively filed a Motion to Dismiss on January 14, 2014 [ECF No. 28]. On February 25, 2014, I heard oral arguments from all sides, outlining their respective positions on the facts, law, and agency record before the Court. Having thoroughly reviewed the record and arguments of counsel, the matter is now ripe for decision.

For the reasons stated in the accompanying Memorandum Opinion, I find that Plaintiffs fail to state a claim for a violation of procedural or substantive due process. The Eleventh Amendment entitles Defendant Johnson to immunity from suit for damages claims in her official capacity. Sovereign immunity entitles the USDA and individual Federal Defendants to immunity from suit for damages claims in their official capacities. Plaintiffs fail to allege that the individual Federal Defendants violated any clearly established statutory or constitutional rights, or otherwise acted outside of the scope of their employment. Accordingly, the individual Federal Defendants are entitled to qualified immunity in their individual capacities. The request for judicial review of the final agency

decision survives dismissal. Plaintiffs fail to establish that they are entitled to partial summary judgment.

Accordingly, I hereby **GRANT** Defendant Johnson's Motion to Dismiss, **DENY** Plaintiffs' Motion for Partial Summary Judgment, and **GRANT IN PART** and **DENY IN PART** Federal Defendants' Motion to Dismiss. Specifically, Federal Defendants' Motion to Dismiss is **DENIED** with respect to Plaintiffs' request for judicial review of the final agency decision, and **GRANTED** with respect to all other claims against the USDA, and all claims against the following employee-defendants, in any capacity: (1) James Rigney; (2) Ronald Kraszewski; (3) J. Calvin Parrish; (4) Jerry L. King; (5) Roger Klurfeld; (6) Christopher P. Beyerhelm; and (7) Barbara McLean. The USDA remains as the sole defendant, and the suit will proceed as an action for judicial review of the final decision of USDA National Appeals Division Director Roger Klurfeld.

The Clerk is directed to send a copy of this Order and accompanying Memorandum Opinion to Plaintiffs and all counsel of record.

/s/ Jackson L. Kiser
Senior United States District Judge

Entered this 24th day of August, 2014.

RELEVANT STATUTORY PROVISIONS

A. §764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

(b) Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

B. 7 U.S.C § 1923 - Purposes of loans

(a) Allowed purposes

(1) Direct loans

A farmer or rancher may use a direct loan made under this subchapter only for—

(A) Acquiring or enlarging a farm or ranch;

(B) Making capital improvements to a farm or ranch;

(C) Paying loan closing costs related to acquiring, enlarging, or improving a farm or ranch;

(D) Paying for activities to promote soil and water conservation and protection described in section 1924 (/uscode/text/7/1924) of this title on a farm or ranch; or

(E) Refinancing a temporary bridge loan made by a commercial or cooperative lender to a farmer or rancher for the acquisition of land for a farm or ranch, if—

(i) The Secretary approved an application for a direct farm ownership loan to the farmer or rancher for acquisition of the land; and

(ii) Funds for direct farm ownership loans under section 1994

(2) Guaranteed loans

A farmer or rancher may use a loan guaranteed under this subchapter only for—

(A) Acquiring or enlarging a farm or ranch;

(B) Making capital improvements to a farm or ranch;

(C) Paying loan closing costs related to acquiring, enlarging, or improving a farm or ranch;

(D) Paying for activities to promote soil and water conservation and protection described in section 1924 (/uscode/text/7/1924) of this title on a farm or ranch; or

(E) Refinancing indebtedness.

(b) Preferences

In making or guaranteeing a loan under this subchapter for purchase of a farm or ranch, the Secretary shall give preference to a person who—

(1) Has a dependent family;

(2) To the extent practicable, is able to make an initial down payment on the farm or ranch; or

(3) Is an owner of livestock or farm or ranch equipment that is necessary to successfully carry out farming or ranching operations.

(c) Hazard insurance requirement

(1) In general

After the Secretary makes the determination required by paragraph (2), the Secretary may not

make a loan to a farmer or rancher under this subchapter unless the farmer or rancher has, or agrees to obtain, hazard insurance on any real property to be acquired or improved with the loan.

(2) Determination

Not later than 180 days after April 4, 1996, the Secretary shall determine the appropriate level of insurance to be required under paragraph (1).

COMPLAINT
(SEPTEMBER 16, 2013)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DISTRICT

CHRISTOPHER B. and RENEE G. JULIAN,

Plaintiffs,

v.

USDA Farm Service Agency Farm Loan
Officer JAMES RIGNEY
USDA Farm Service Agency Farm Loan
Manager RONALD A. KRASZEWSKI
Virginia Agricultural Mediation Program
Project Director WANDA JOHNSON
USDA Farm Service Agency, J. CALVIN PARRISH
USDA Farm Service Agency
Management Services Division
USDA Farm Service Agency Deputy
Administrator for Farm Loan Programs
CHRIS P. BEYERHELM
USDA National Appeals Division
Director ROGER KLURFELD
USDA Office of Adjudication
D. LEON KING,

Defendants.

NO. 4:13CV00054

1. Parties in this Complaint

a. PLANTIFF(S)

Christopher B. and Renee G. Julian
474 Orchard View Drive
Ararat, Virginia 24053
980-254-1295

2. b. DEFENDANTS

Defendant 1:

USDA Farm Service Agency Farm Loan Officer
James Rigney
1983 US Hwy 29, Suite D
Chatham. Virginia 24531

Defendant 2:

USDA Farm Service Agency Farm Loan Manager
Ronald A. Kraszewski
19783 US Hwy 29 Suite D
Chatham, Virginia 24531

Defendant 3:

Virginia Agricultural Mediation Program
Virginia State University
Project Director Wanda Johnson
P.O. Box 9081
Petersburg, Virginia 23806

Defendant 4:

USDA Virginia Farm Service Agency
J. Calvin Parrish
1606 Santa Rosa Road, Suite 138

Richmond, VA 23229

Defendant 5:

U.S Department Of Agriculture
1400 Independence Ave, S.W.
Washington, DC 20250

Defendant 6:

USDA/ Farm Service Agency
Management Services Division
1400 Independence Ave, SW Suite 0078
Washington, DC 20250

Defendant 7:

USDA National appeals Division
Jerry L. King Hearing Officer
193 Downing Street
Roanoke, Virginia 24019

Defendant 8:

USDA FSA National FOIA/PA Office
RM, 3617-South AG Stop 0506
Washington, DC 20250

Defendant 9:

USDA Farm Service Agency Deputy Administrator for Farm Loan Programs
Chris P. Beyerhelm
Farm Service Agency stop 0520
1400 Independence Avenue SW
Washington, DC 20250-0520

Defendant 10:

USDA National Appeals Division
Roger Klurfeld Director
3101 Park Center Drive, Suite 1100
Alexandria, Virginia 22302

Defendant 11:

USDA Office of the Assistant
Secretary for Civil Rights
Office of Adjudication Program Intake Division
D. Leon King
Acting Chief, Program Intake Division
355 E. Street SW, 7th Floor
Washington, DC 20024

3. Jurisdiction

Jurisdiction is proper in this court for the following:

a. U.S.C. 28 1361.

b. Christopher B and Renee G. Julian hereafter "The plaintiff(s)" in this matter are residents of the state of Virginia, in the town of Ararat and the county of Patrick.

c. The USDA it's affiliates and individuals named as defendants above hereafter "USDA et al" are defendant(s) in this matter.

4. Allegations:

5. On November 28th 2012 "USDA et al" mailed via certified US mail a declination letter denying the plaintiff(s) a Farm Ownership "F/O" Loan. The declination letter had multiple "wanton", "negligent", material misrepresentations of fact given as

explanation for denial of the application for an F/O loan. Additionally, there were multiple fraudulent citations of the code of federal regulations "CFR" and the FSA Farm Ownership F/O Loan program handbook 3 FLP (Rev2) Amend 4. Plaintiff(s) allege that these representations were intentionally altered to deceive the applicants and having been fraudulent in nature and presented through the US Postal service constituted mail fraud. **Exhibit A**. is said letter. **Exhibit B** shows the regulations and rules compared to the presentation in **Exhibit A. Exhibits have been provided on DVD.**

6. The Declination letter of November 28, 2013 was accompanied with instructions providing options to challenge the denial decision one of which was mediation through the Virginia Agricultural Mediation Program with Virginia State University. However, intentional or not it was negligent as it was not the correct venue for mediation at the time the communication was sent. The "USDA et al" had revoked the States mediation certification as of October 1st 2012 according to the States Program Director. See **Exhibit A** and refer to second email in **Exhibit C** dated January 28, 2013.

7. Plaintiff(s) chose to pursue mediation for the following reasons. The application had been denied 8 working days after having been marked complete. Plaintiff(s) were aware at the time of receiving the declination that no credit report had been pulled. Plaintiff(s) had been expecting a call to perform appraisals and none had been done. Plaintiff(s) reviewed the denial explanations and discovered the material false representations of the Code of Federal Regulations and rules from the loan program

handbook and felt each and every reason given to be inaccurate, false, or inappropriate application of the rules and regulations. The farm loan manager, whom we had never met, signed the declination letter and upon performing a Google search Plaintiff(s) discovered he lived or had lived in the adjacent county, which raised concerns for Plaintiff(s). See **Exhibit D** Page 3. and 4. For dates and signatures. See **Exhibit E** for Google search.

8. On December 10th 2012 Plaintiff(s) mailed a letter to the State Mediation Program as directed, requesting mediation and explaining our objections to the denial justifications. **Exhibit F** By January 7th 2013, we had not received any communication(s) at all regarding our mediation. This was disconcerting to Plaintiff(s) given the seriousness of the situation. Plaintiff(s) located the name and phone number on the Arizona State University web site for the Virginia Mediation Program Director Wanda Johnson and contacted her by phone. On this phone call the Program Director informed us they had received our mediation request but had not done anything due to the holidays. Plaintiff(s) were informed on that call that our mediation would be scheduled within days likely with a mediator from Wytheville VA. On January 9th 2013, Plaintiff(s) emailed the program director to get assurance that the time clock kept by the "USDA et al" for mediation had effectively been stopped when the program director received our mediation request. Plaintiff(s) received an email from the program director confirming that our mediation request was timely and the clock had been stopped and stated that we would likely get mediation confirmed on January 10

2013. See **Exhibit C** First Email Dated January 10 2013. Hearing nothing with no communication from the mediation program or the "USDA et al" and having made multiple unanswered calls to the Program Director, we contacted the "USDA et al" through online assistance on January 24 2013 and during the email exchange with them Plaintiff(s) learned that the Virginia State Mediation program had lost it's "USDA et al" mediation certification and that "USDA et al" Pete Adamson Farm Loan Chief for Virginia had just been made aware 1. That plaintiff(s) mediation request had not been acted on. 2. The Virginia State University had lost it's "USDA et al" mediation certification. See **Exhibit G**. Page 4 of 6 dated January 24, 2013. Subsequently, Plaintiff(s) asked the Program Director for further information and were informed that certification had actually been lost in October 1 2012. Refer to **Exhibit C** for email dated January 28, 2013 therefore, recklessly, fraudulently, maliciously or negligently the Virginia State Program director made material misrepresentations of fact to the Plaintiff(s). Given our assumption that "USDA et al" personnel often work with the Mediation Program Director we had to ask ourselves 2 questions. 1. Did "USDA et al" personnel intentionally direct Plaintiff(s) to a mediation program they knew was no longer valid? 2. Was there conspiracy to defraud the Plaintiff(s) between the mediation Program Director and "USDA et al" personnel?

9. Once the Plaintiff(s) submitted our issues to the "USDA et al" through the online system, Plaintiff(s) received a communication from "USDA et al" Virginia State Executive Director J. Calvin Parrish.

Exhibit H. The communication was written as if it was an initial response to our mediation request and did not acknowledge any issue had occurred with the State mediation program run by the Virginia State University.

10. The Mediation process was arranged by Plaintiff(s) through the North Carolina Agricultural Mediation Program "NCAMP" and the process moved slowly, delayed by "USDA et al" personnel. Plaintiff(s), knowing a credit report had never been obtained requested "USDA et al" personnel provide a copy of the credit report used in making the loan decision. Both through NCAMP and by letter to "USDA et al" Calvin Parrish On February 5th 2013 **Exhibit I**. On February 8th we reminded NCAMP of our request for the credit report and NCAMP requested it from "USDA et al" James Rigney **Exhibit J** page 1 email from Joan Kimmel dated February 8, 2013 On February 8, 2013 "USDA et al" made a hard pull of Plaintiff(s) credit report in violation of the Fair Credit Reporting Act "FCRA". "USDA et al" James F. Rigney presented the February 8th 2013 report to Plaintiff(s) as if it were the requested copy of the credit report used in making the loan evaluation. **Exhibit K** Page 1 Plaintiff(s) allege that "USDA et al" collected a fee with the loan application specifically for the acquisition of a credit report—a report they did not obtain prior to declining the loan**. Exhibit L** pages 1 & 2 Plaintiff(s) contend that program rules specifically require the loan officer upon marking a loan application complete to obtain a credit report. **Exhibit M.** Therefore, "USDA et al" committed fraud in accepting payment for a service never provided.

11. Plaintiff(s) were asked to sign 2 agreements for the purpose of mediation. 1. An agreement to mediate. 2. A confidentiality agreement agreeing to keep information learned during mediation confidential. **Exhibit N.** Prior to the meeting Plaintiff(s) requested from NCAMP signed copies of the agreements signed by "USDA et al". Plaintiff(s) stated a desire to ensure that all parties were entering into this agreement on an equal basis. NCAMP responded that the agreements were for administrative purpose only. Plaintiff(s) stated that the agreements contained specific legal agreements and wanted copies prior to mediation. **Exhibit O**. Plaintiff(s) learned after mediation that "USDA et al" personnel have sovereign immunity. Consequently, Plaintiff(s) allege that these agreements are based on fraudulent inducement. That in fact sovereign immunity is revocable only by congressional action and therefore, in signing these agreements "USDA et al" personnel gave nothing and factually cannot be held accountable for breach of the agreements. Plaintiff(s) believe that every time "USDA et al" personnel enter into these agreements it is factually fraud in the inducement. That under contract law, this makes the agreements null and void and could be grounds for a class action lawsuit against "USDA et al"

12. Mediation was delayed until February 27, 2013 by "USDA et al" and was a waste of time and Plaintiff(s) money although, during mediation "USDA et al" personnel dropped item 3 in paragraph 4 as a reason for denial of the loan. A pre hearing with a NAD hearing officer was scheduled for March 19th, 1 day prior to the deadline set by NAD for

presentation of arguments. In the Pre Hearing plaintiff(s) were informed that item 3 in paragraph 4 would not be allowed as a discussion point in our hearing. Plaintiff(s) objected to this contending that every line item in the declination letter to be evidentiary and supportive to our burden of proof in this matter. Following multiple request inclusion in the hearing was denied by "USDA et al" Jerrl L. King hearing officer. During the pre-hearing Plaintiff(s) requested a ruling on which rendition of page 7-2 Par 131 C of 3-FLP would be applicable in our case. The rule had been changed on October 20, 2011. Plaintiff(s) dwelling had been substantially designed in 2008, and construction efforts began in 2008. The alteration of the rule required that a dwelling not only meet family needs but also be modest in size, cost, and design. "The prior version of the rule had been either or" However, the altered rule is grammatically broken as written in the handbook Either was not removed but the or was changed to and. It therefore expresses the existence of an alternative to this requirement, but none is given. We provided this information in the pre hearing but the hearing officer would not accept the statement as fact that the rule was actually broken insisting that it was simply a matter of interpretation. **Exhibit P** (note long audio file of the pre hearing). Plaintiff(s) reluctantly accepted the hearing officers decision that the rule would be applied as written between the time of application and declination of the loan. Given the rule-required control over design of a dwelling it seemed to Plaintiff(s) more appropriate that the rule in place at the time of design was appropriate. Plaintiff(s) took this ruling to mean

three things. 1. That factually the rule was broken and presented an alternative that did not exist which would preclude it from being used as written for denial. 2. The rule as written prevented us from making the argument that the dwelling met our family's needs because our dwelling would be perceived as more than modest in size, cost and design. 3. That the rule as written would prevent "USDA et al" from using as an argument that the dwelling was more than adequate to meet family needs because as written—we would not be able to challenge that contention. While Plaintiff(s) dwelling might be perceived to be more than modest in size, cost and design, the fact is nothing could possibly have met the families' needs anymore than the welfare of this dwelling. Plaintiff(s) had all of their net worth invested in the farm and dwelling as well as 7 years of their labor and efforts. Furthermore, Plaintiff(s) contend that the rule was, is, and has been for all relevant times inapplicable to the loan as requested. Plaintiff(s) Loan request was entirely for capital improvements to a farm and dwelling owned by the applicant. That based on the rules as written improvements to an existing dwelling are not subject to the means test on a dwelling. The hearing officer extended the time frame for briefs however; plaintiff(s) felt it prudent to meet the deadline March 20, 2013 as stated by the National Appeals Division "NAD" Appeal notice of March 4, 2013. **Exhibit Q** Plaintiff(s) having already prepared briefs with allegations of prejudice, fraud, negligence and inappropriate access to credit files in violation of FCRA causing irreparable damage to plaintiff(s)

credit profile submitted the briefs as prepared on March 20, 2013.

13. On March 22, 2013 Plaintiff(s) wrote to the "USDA et al" and requested that they reconsider including in the hearing discussion the third reason given for denial. **Exhibit R.** Plaintiff(s) believe this item added significant wait to the argument that "USDA et al" had been "wanton", "negligent", "fraudulent", "incompetent" and "prejudicial" in their evaluation of our loan request and that these characteristics are prevalent throughout all of the reasons given for denial. Plaintiff(s) believe denying inclusion of this item in the discussions was in conflict with program rules specifically 1-APP(Rev.2)Amend.1 Par.96 A, B and C. **Exhibit S.** Plaintiff(s) did not have any outstanding debt secured by real estate and this was evidenced by the schedule of liabilities **Exhibit T** provided with the application and would additionally, have been evidenced by a credit report had "USDA et al" actually acquired one and is evidenced by the Credit report illegally acquired on February 8, 2013 in **Exhibit K.**

14. On March 28, 2013 "USDA et al" responded to our request for reconsideration and again denied the inclusion in the hearing discussions. This communication additionally, informed us a NAD hearing was not the appropriate place to present allegations of misconduct, waste, fraud, or abuse by "USDA et al" personnel. It furthermore implied that our allegations of prejudicial treatment were discrimination and needed to be taken up with the "USDA et al" Office of civil rights. **Exhibit U.** However, Plaintiff(s) have since learned we are not

in a class that can be subjected to discrimination based on "USDA et al" eligible discriminatory classes. These constraints on the presentation of our case prevent holding "USDA et al" personnel accountable or responsible for their actions or competence in making their loan denial decisions or the presentation of those decisions to "Plaintiff(s). Plaintiff(s) allege this is a civil rights denial of due process. That while "USDA et al" conducts these hearings as if they were a court they do so in a manner that shields personnel from accountability and responsibility, they hide behind a sovereign immunity while denying Plaintiff(s) basic civil rights in presenting facts and denied Plaintiff(s) rights to due process.

15. On March 13, 2013 "USDA et al" submitted the agency record to the "USDA et al" hearing officer and copied Plaintiff(s). With close to a 100 pages provided to "USDA et al" with the F/O Loan application. "USDA et al" submitted for the record 1 page out of a 3-page document and a copy of Plaintiff(s) house plans as the items they reviewed in denying Plaintiff(s) loan application. **Exhibits V 1 & 2** "USDA et al" stated in this communication that Plaintiff(s) had requested to pay living expenses with the loan. This was not true and is evidence of "USDA(s) et al" lack of proper educational training and failure to discuss any aspect of the loan request with the Plaintiff(s). Plaintiff(s) allege "USDA et al" intentionally did not present the other 2 pages of the original document as it contradicted there claim as did the schedule that we had requested living expenses be paid with Loan Funds. "USDA et al" knew or should have known that this allegation was

not true. "USDA et al" contended in pre hearing that a request to pay labor was the same as a request for living expenses. Refer to **Exhibit P** This is also stated on the declination letter. **Exhibit A** "VIA paying oneself for labor" "USDA et al" additionally formulated a complaint that Plaintiff(s) dwelling was more than adequate to meet family needs. However, because of the pre hearing rulings Plaintiff(s) were not given an opportunity for rebuttal of this contention.

16. Plaintiff(s) made multiple FOIA request to "USDA et al" Farm Service Agency State Executive director J. Calvin Parrish and the answers to these request were in some cases provided with inaccurate information, no information, or information which indicated negligence of the agency in their business processes, educational training and procedures. **Exhibit W** shows the FOIA request and a line item response to the request except the request for resume and training histories. Plaintiff(s) have until recently assumed that the response for audit reports (item 1) on our application indicated no audit reporting was available. However, in preparing this pleading several factors led Plaintiff(s) to ask if no audit reports were available because "USDA et al" personnel may not have ever entered Plaintiff(s) application information into the loan origination system DLS. The following facts leaded Plaintiff(s) to ask this question. The agency did not produce as part of the Agency Record any of the original loan application documents. The failure to pull a credit report may have occurred from failure to make entry to the system. The Lack of Audit reports may be because there was nothing on the system to report off

of. Plaintiff(s) have recently requested FOIA information on the system and requested to view the loan documents on the system and are still awaiting a response. In item 2 Plaintiffs were given copies of the communications sent by "USDA et al" personnel however, the information needed to make an assessment on the timing of those communications (when the documents were actually printed was not provided). Item 3 Plaintiff(s) allege these documents show the agency has no specific procedures for handling the mediation program when the state loses it's mediation certification. Plaintiff(s) allege this is negligent and impacted the timing and handling prolonging plaintiff(s) administrative process causing financial and emotional stress. Plaintiff(s) allege that for Item 4 "USDA el al" provided documentation on procedures or preparation of Loan Approval and none on preparation of a Loan denial letter. Plaintiff(s) allege this was 'negligent' or malicious since such documentation did exists. Furthermore, Plaintiff(s) allege this documentation is seriously deficient and negligent in failing not to require employees to cite the code of federal regulations or their own program rules without alteration. Item 5 Plaintiff(s) allege this item was a single PDF program manual but was not provided for plaintiff(s) review until April 22, 2013 4 days after the hearing. Plaintiff(s) allege this documentation shows multiple review processes in place to ensure the accuracy of rules in the program manuals. The incomprehensible rule being interpreted extremely broad to deny plaintiff(s) application was reviewed and signed off on by "USDA et al" Farm Service Agency Deputy Administrator of farm loans Chris P. Beyerhelm. Plaintiff(s) allege

that it was negligent for this rule with grammatical errors and vague and confusing language to ever be published and to have been maintained in the manuals for over a year. From the Resume and training histories provided to Plaintiff(s); Plaintiff(s) allege that "USDA et al" has not required Farm Service Agency Farm Loan Manager Ronald A. Kraszewski or Farm Service Agency Farm Loan Officer James Rigney to have the appropriate education or training for their job responsibilities and is therefore, negligent in the administration of the Farm Service Agency Farm Loan Program.

17. In prehearing filings to the hearing officer "USDA et al" personnel made repeated numerous allegations attempting with false information and allegations to influence the hearing officer that Plaintiff(s) had requested living expenses with their loan request. There are other additional material misrepresentations of fact attributable to "USDA et al"(s) lack of educational and program training as well as lack of knowledge of the programs manuals. These are exhibited in the Farm Service Agency filings to the Hearing Officer **Exhibit X 1 and X 2**.

18. In the hearing on April 17 2013 the hearing officer informed and each individual testifying confirmed that they were giving testimony under penalty of perjury. **Exhibit Y** Audio recording of the hearing. On 2 separate occasions during the hearing "USDA et al" personnel Ronald A. Kraszewski testified he had conversations with the Plaintiff(s) where Plaintiff(s) had requested to use loan funds for living expenses. Plaintiff(s) allege this to be perjury and consequently, a deliberate attempt to obstruct justice. Plaintiff(s) have recordings (admissible or

not) of every conversation they ever had with this individual. Additionally, Plaintiff(s) documented in writing prior to mediation they had never corresponded with this individual. See **Exhibit G** Page 2 Par 5. Plaintiff(s) further documented in the hearing briefs mailed on March 20 Plaintiff(s) had never heard of Ronald A. Kraszewski prior to receiving the declination letter. **Exhibit Z** page 10 last paragraph. Plaintiff(s) could not have known at the time "USDA et al" Ronald A. Kraszewski would testify to the contrary. The fact that "USDA et al" personnel classified Plaintiff(s) request to use loan funds to pay labor as living expenses is additionally documented on the declination letter itself. **Exhibit A.**

19. Plaintiff(s) allege that throughout the pre hearing and hearing the "USDA et al" National Appeals Division Hearing Officer attempted to find justification anyway possible to justify the findings of "USDA et al" and consistently attempted to intimidate Plaintiff(s) Plaintiff(s) allege the findings by the hearing officer were materially lacking in responding to Plaintiff(s) arguments. That the hearing officer provided no logical support for his findings no substantive argument to support his conclusions. No factual rebuttal or even mention of our arguments to the rules inapplicability to improvements to an existing dwelling. The one attempt to justify his ruling was that the Agency was due significant deference in interpreting their own rules. As to our argument that the rule was broken it was completely ignored. Basically, we found the hearing officers justification simply to be because he says so. Plaintiff(s) note that the hearing officer did

find Plaintiff(s) had never requested living expenses, which should be equivalent to finding perjury on the part of "USDA et al" personnel Farm Service Agency Farm Loan Manager Ronald Kraszewski.

20. On June 17th 2013 Plaintiff(s) filed for a Director review with NAD and concurrently filed the complaints of Fraud, Negligence, and Perjury, with the USDA Office of Inspector General as previously directed by "USDA et al" National Appeals division Hearing Officer Jerry L. King. Additionally, Plaintiff(s) filed the complaint with the "USDA et al" Office of assistant secretary for civil rights and with the Consumer Financial Protection Bureau. **Exhibit AD**

21. On July 24th 2013 the Director of the National appeals division issued his ruling on our review request. Plaintiff(s) were dismayed by the director's findings. The director stated in his findings material misrepresentations of fact. That Plaintiff(s) dwelling was not on the farm and that plaintiffs had argued the rules were not applicable to our case for this reason. **Exhibit AA** .This was completely inaccurate to our knowledge. To plaintiff(s) knowledge our dwelling has been and always was for all relevant times on the farm as stated multiple times in our hearing briefs. Again Plaintiff(s) do not believe the rule being applied is applicable at all to improvements to an existing dwelling. The statement that we would make the argument that the rules were inapplicable based on our dwelling not being on the farm is a false, inaccurate and unconscionable statement. It provides absolutely no comfort in the review process or in the documentation the Director had to review. Once again the review focuses on whether the dwelling adequately meets family

needs—a contention which we were not afforded the opportunity to argue. Plaintiff(s) further note that during the hearings Plaintiff(s) were asked if the dwelling was more than modest in size cost and design but never once asked about the dwelling meeting our family needs. Although, we did make some arguments to that fact in our original briefs of March 20th 2013 **Exhibit Z** as they had been prepared prior to the ruling on which version of the rule was applicable. Plaintiff(s) noted that although we had been told in the Pre-Prehearing Plaintiff(s) could take the case to federal court the directors review did not convey any further rights plaintiff(s) had to contest the agency's actions. **Exhibit AB** Plaintiff(s) learned in early September of their right to Judicial review and have been unable to find any information on how long plaintiff(s) have to make such a request.

22. On July 25, 2013 having received absolutely no communication from any other agency than the Consumer financial protection bureau, Plaintiff(s) began efforts to find out if the Office of Inspector General and the office of civil rights had our complaints. Repeated phone calls were made to both of the offices and the complaints were not found. The office of civil rights repeatedly replied they would get back to us and never did. The Office of Inspector General asked us to resubmit our complaint. Finally, only after filing complaints electronically through the Internet with confirmation did either of these offices respond. Based on the response from the "USDA et al" Office of Adjudication plaintiff(s) believe they' re not in a class, which can be considered for discrimination, based on "USDA et al" program rules.

This was however used to tell us not to make charges of prejudice during our hearing. If prejudicial treatment cannot be discrimination then it must be allowed in the presentation of Plaintiff(s) case It is inappropriate to dismiss prejudicial treatment completely. "USDA office of inspector general has assigned our case, case #PS-5099-0454.

23. Based on the facts presented above as well as responses to FOIA request and research done through multiple "USDA et al" program handbooks Plaintiff(s) assert the following allegations. **A.** In violation of "USDA et al" documented procedures "USDA et al" did not obtain a credit report in the process of their loan review. **B.** "USDA et al" charged an upfront fee for the procurement of a credit report, which was not acquired. Together items **A** and **B** constitute fraud in collecting payment for a service, which was not provided. **C.** "USDA et al" on February 8 2013 made a hard pull of Plaintiff(s) credit report after being requested to produce a copy of the report used in denying the loan application and presented it as said report. This was a violation of the Fair Credit Reporting Act, an act of fraud, and caused irreparable damage to Plaintiff(s) credit profile. **D.** Upon FOIA request "USDA et al" was unable to provide any audit reports from the loan origination system on the Plaintiff(s) loan application and therefore, any verification as to whether "USDA et al" had forced the system to bypass a credit report check was not possible. **E.** "USDA et al" sent by certified mail a declination letter that contained multiple fraudulent representations of the Code of Federal Regulations, "USDA et al" program handbook rules, and multiple material misrepresent-

ations of fact. The presentation of the Federal Regulations and program rules had obviously been altered with intent to deceive the applicant and conceal pertinent facts. **F.** "USDA et al" presented Plaintiff(s) with a declination letter directing them to request mediation services from the Virginia State Mediation Program; however, "USDA et al" had previously revoked the programs certification. Based on program rules in "USDA et al" program handbooks this was not the appropriate channel for a mediation request to be made at the time. "USDA et al" was negligent in the administration of the mediation program certification and handling of mediation program participant request. "USDA et al" upon FOIA request did not provide any additional written procedures other than those contained in the handbook for handling mediation request or changes to the Program certification. There are no procedures in place when a certification is revoked by "USDA et al" which is negligent and that there is no process in place for tracking mediation participant request is also negligent given the sensitivity of these matters. No one at "USDA et al" ever made any effort to discern what was transpiring with our mediation request. A serious breakdown in communication occurred with regards to the mediation programs certification and this is evidenced by the lack of the Virginia Loan Chiefs lack of knowledge, the end of January, 2013 that the program had lost certification. **G.** "USDA et al" Virginia state personnel did in fact provide in writing to Plaintiff(s) a material misrepresentation of fact which was fraudulent in nature. **H."**USDA et al" did on numerous occasions in the filing of briefs redefine our

request for labor, calling it living expenses and attempt to claim that plaintiff(s) had requested living expenses. To the extent these allegations were made to a hearing officer of government capacity Plaintiff(s) consider these and other allegations to be attempts at obstruction of justice. In the Hearing under penalty of perjury two distinct times "USDA et al" personnel testified they had conversations with Plaintiff(s) where Plaintiff(s) requested the payment of living expenses. Plaintiff(s) allege this was factually perjury. Plaintiff(s) would further assert that "USDA et al" personnel had not been given appropriate training to discern the difference between labor cost and living expenses and had not been properly trained for the positions they held and could not appropriately evaluate the loan request submitted. **I.** On the declination letter in paragraph 2 reason 1 for declination "USDA et al" personnel justified their reason for denial with a regulation specific to a Farm purchase request. Plaintiff(s) had not requested funds to purchase a farm or dwelling only to make capital improvements to a farm and dwelling already owned by the Plaintiff(s). "USDA et al' in paragraph 4 declination reason 3 stated applicants had requested Loan funds for the purpose of refinancing real estate debt. Plaintiff(s) had no real estate debt or liens on the property or the dwelling at the time of application and this was evidenced on the subsequent credit report pulled and the schedule of liabilities provided with the application. These items show that "USDA et al" personnel did not have an understanding of the program rules, their application, nor an understanding of the applicants loan request or they

were intentionally seeking to deceive the applicant. "USDA et al" produced this declination letter in 8 working days after marking the application complete during the Thanksgiving holidays and never once asked a single question of the Plaintiff(s). Plaintiff(s) allege that the application was given wanton, prejudicial, negligent, consideration and that the declination letter was produced wantonly, prejudicially, negligently and fraudulently. Plaintiff(s) further allege the use of certified mail to deliver this declination letter constituted mail fraud. Plaintiff(s) made a FOIA request for any documentation "USDA et al" had on the preparation of a declination letter. From the FOIA request none was provided however, plaintiff(s) found such documentation in "USDA et al" program handbooks and discovered the handbooks do not instruct personnel to avoid altering rules and regulations when presented. For an agency of the federal government which has been sued so many times for discrimination not to require personnel to cite the Federal Regulations and program rules as written in their complete form is again negligent. Not requiring them to present the code of the federal regulations as written is the equivalent of allowing them to write their own laws and regulations**. J.** Plaintiff(s) allege the "USDA et al" runs an administrative hearing process designed to shield "USDA et al" and it's personnel behind sovereign immunity and avoid responsibility or accountability for negligent program administration. Plaintiff(s) allege the process is designed to be burdensome and lengthy inflicting excessive unnecessary hardship on appellants furthermore; the processes and appellant rights are

vague and not well defined. Plaintiff(s) allege the hearings are run and constructed to deny appellants constitutional civil rights. Plaintiff(s) allege that the hearing officers run the hearings using intimidation and a bias toward finding anyway possible to justify the reasoning of "USDA et al" personnel. Plaintiff(s) allege that "USDA et al" administrative process is not interested in whether the program has been properly administered but rather as a way of mitigating legal risk for "USDA et al". **K.** Plaintiff(s) allege that "USDA et al" stated as fact that testimony in the hearing was under penalty of perjury however, when Plaintiff(s) requested "USDA et al" personnel be held accountable for perjury Plaintiff(s) were instructed to take that up with their attorney. **L.** Plaintiff(s) allege the one rule "USDA et al" has used to sustain denial of Plaintiff(s) Farm Loan application is not and was not written to be relevant or applicable to the loan as requested by Plaintiff(s). Plaintiff(s) further state that the rule was factually changed after the act occurred that gave rise to the adverse decision. Plaintiff(s) assert that they objected to the altered form of the rule being applied. Plaintiff(s) assert that "USDA et al" was informed at the time of the decision the rule as altered contained a material error making the rule incomprehensible based on the English language. Plaintiff(s) allege that the rule applied is materially different from the code of federal regulations. Plaintiff(s) allege these rules provide subject matter guidance to personnel in the application of federal law and are reviewed and signed off on at multiple levels before making publication. Therefore Plaintiff(s) further allege that "USDA et al"

administration was negligent in the publishing of this rule change and in failing to find and correct this grammatical error, which most current word processing programs with grammar check can identify. Furthermore, Plaintiff(s) allege that the rule has other vague and confusing language. **M.** Plaintiff(s) allege that "USDA et al" unlawfully denied the Plaintiff(s) application for a federal farm ownership loan. N. Plaintiffs(s) allege "USDA et al" has willfully ignored Plaintiff(s) challenges to avoid monetizing the torts committed in this case.

24. Plaintiff(s) allege a conspiracy by "USDA et al" to deny Plaintiff(s) rights in a Federal Farm Credit program. Pursuant to Title 18, Chapter 96, and sections 1961, 1962, 1964, and 1968. Plaintiff(s) allege "USDA et al" meets the definition of an enterprise and has established a pattern with violations in this case under U.S.C. 1028, Fraud, U.S.C. 1341, Mail Fraud, and U.S.C. 1503 Obstruction of Justice. Plaintiff(s) contend that "USDA et al" can be sued under Title 28 U.S.C. Chapter 171 section 2674 for torts alleged by Plaintiff(s). Plaintiff(s) contend the provisions of Title 18, Chapter 96 sections 1961,1962,1964,1968 were defined by congress to be intentionally broad to reach racketeering activity wherever it may reside which should include a government enterprise such as "USDA et al" therefore the prerequisite of 28 U.S.C.2675 should be waived in violation of Plaintiff(s) fifth and fourteenth amendment right to due process. Requiring Plaintiff(s) to obtain permission from a corrupt enterprise, permission to sue an enterprise plaintiff(s) have alleged to be a corrupt would violate plaintiff(s) right to due process.

Plaintiff(s) allege that the actions of "USDA et al" conspired to deny Plaintiff(s) rights to Federal Farm programs and allege in this complaint violations of 42 U.S.C 1983, 1984, and 1986. Plaintiff(s) allege the circumstances of this filling arose from a filling with the "USDA et al" for a farm loan program and Plaintiff(s) have followed all administrative review procedures exhausting administrative remedies of an adverse decision by "USDA et al" Plaintiff(s) seek judicial review of the administrative record under Title 5 chapter 7 for NAD case number 2013E000382 in the Matter of Christopher B. Julian and Farm Service Agency. Plaintiff(s) contend most all of the allegations in this filing are made and evidenced by documentation in the administrative record and in the Audio recordings of the Pre hearing and Hearing. Plaintiff(s) are in possession of other audio recordings as described in brief filings of the administrative record and will be submitted for evidence based on decisions of the court. Plaintiff(s) request that the court allow us to review the administrative record for accuracy and completeness. This request is made pursuant to the facts as stated in paragraph 21. Plaintiff(s) allege "USDA et al" has abused it's Government powers as a Racketeer Influenced Corrupt Organization to steal the constitutional rights of Plaintiff(s) The right to Life, Liberty, and Property and the right to equal protection and due process under the fifth and fourteenth amendments and have done so hiding behind sovereign immunity with the intent to deny Plaintiff(s) lawful access to the Farm Loan Program. Plaintiff(s) allege "USDA et al" has conspired to deny plaintiff(s) constitutional rights in an effort to make

plaintiff(s) suffer significant financial and emotional hardships over an extended period of time to avoid accountability and responsibility for the "Wanton", "Reckless", "Negligent", "Fraudulent", and "Criminal" acts of the Organization. Plaintiff(s) contend this is the epitome of tyranny and oppression by a Government Agency established to serve the people but instead serves it's own self-interest.

Request for Relief

Plaintiff(s) request that a jury be allowed to decide if "USDA et al" followed their rules in determining plaintiff(s) eligibility as part of this overall complaint.

Plaintiff(s) have experienced significant, damage to their credit profiles, Financial hardship, Loss of large long term life insurance policies total loss of their 2013 crop the most viable crop of our farming history. Plaintiff(s) farming operation has suffered significant degradation and loss of benefits which had accrued from tending the land the last 6 years. Loss of our first year of crop insurance, loss of planned business opportunities, competitive edge in the rising demand for vineyard products. Plaintiff(s) have been relegated to homelessness with a 7 year old daughter in school and are now receiving SNAP benefits. Plaintiff(s) dwelling that resulted in the denial of benefits has sat open to weather exposure and deterioration since the date of declination. Plaintiff(s) have suffered significant emotional and financial distress attempting over a very long period to defend against countless false and malicious allegations of the defendants attempting to obstruct justice while attempting to find work and provide

shelter and scrambling to reduce living expenses. Plaintiffs' further lost significant tax advantages which would have accrued had the farm loan been funded. Furthermore plaintiff(s) have lost significant life and liberty. Worst of all is the theft of my daughter's parental attention, love and affection resulting from the long term terrorist tactics of this enterprise.

Multiple other individuals have been significantly harmed by the denial of this loan and should therefore be compensated as well for their financial losses and suffering. These individuals and their circumstances are as follows:

- John Sailor: a migrant worker his whole life unable to obtain a birth certificate and consequently a drivers license even though he has significant social security records and a previous drivers license was released to unemployment 3 weeks prior to Christmas. John was to be one of the part time associates to receive wages under the proposed use of loan funds and farming income. I personally had picked John up and provided him work for the last 3 years.
- Cody Dalton: a young man suffering with diabetes which restricts his employment opportunities also with no driver's license and whom I personally drove home after providing him work the last 3 years. Cody to was released to unemployment 3 weeks prior to Christmas and was to be provided with employment from the loan funds as well as farming income.

- Dayl Dawson: a three-time cancer survivor with stage four cancers. Dayl assumed ownership of a family home to avoid foreclosure more than ten years ago and listed this no bedroom home for sale. Plaintiff(s) had rented said home for the last seven years but as a result of the loan denial and other factors had to leave Dayl without renters. This left Dayl with mortgage payments on two residents and the loss of her rental income as well as someone to take care of the property and maintain it.
- Jane A. Julian: Christopher Julian's 88 year old mother who was intended to live with us in the house. Mrs Julian lives on a 1,200.00 dollar a month social security check and lives in a very modest home in a neighborhood ruined by the governments development during the housing boom with low income subsidized housing. Which destroyed the value of the only real asset she had Mrs. Julian lives frightened by the increased violence of her neighborhood. Mrs. Julian has struggled and worried about her son and daughter in law and the only grandchild she has ever lived close to. Additionally, Mrs. Julian has taken the shirt off her back to help provided food clothing and shelter to the plaintiff(s) as well as loaning plaintiff(s) what little spare funds she had. Furthermore Mrs Julian has been alienated from her family as a result.
- Retha Graham: Renee G. Julian's 79 year old mother a former tobacco farmer in Loris South

> Carolina also living on a modest social security check in a very modest neighborhood and whom plaintiff(s) hoped would one day also stay in the home with them. Ms Graham has like wise suffered great worry and anxiety over the circumstances of her daughter, granddaughter, and son in law. Ms. Graham has additionally provided food clothing and significant financial assistance in the form of loans to help Plaintiff(s) during the long administrative process. Furthermore Mrs Graham has been alienated from her family as a result.

Plaintiff(s) request 1 Million dollars in damages for each month since January 1, 2013 and each consecutive month until settlement.

Plaintiff(s) contend each of the above individuals has suffered hardship and loss of life as a result of the reckless actions the USDA made in denying Plaintiff(s) farm loan. Plaintiff(s) request each of these individuals be compensated with 1 million dollars for the damages to their lives.

Plaintiff(s) request that all settlement amounts be net of taxes and that any tax consequences on any receipent from this settlement be paid and in full by "USDA et al" and verified rendered by the IRS.

Plaintiff(s) request that the courts require "USDA et al" to create and provide a complete and comprehensive guide for appellant rights.

Plaintiff(s) Request that "USDA et al" be required to update every set of "USDA et al" regulations to forbid the citation of any rule or regulations in any

communication without it's being quoted in it's complete and precise form.

Plaintiff(s) request that the court require "USDA et al" to prosecute to the fullest extent of the law Ronald A. Kraszewski for perjury.

Plaintiff(s) request that the court require "USDA et al" refund the 20.25 paid for a credit report with interest at 24.99%.

Plaintiff(s) request "USDA et al" refund the monies paid for Mediation services by Plaintiff(s) in the amount of 350.00 with interest at 24.99%.

Plaintiff(s) request attorney fees for self-representation.

DEMAND FOR JURY TRIAL YES

Signature of Plaintiff No. 1

/s/ Christopher B Julian

Dated September 16, 2013

Signature of Plaintiff No. 2

/s/ Renee G. Julian

Dated September 16, 2013

FARM LOAN HANDBOOK, RELEVANT EXCERPT

Section 1 FO's

131 Uses

A. General

[7 CFR 764.151] FO loan funds may only be used to:

See subparagraphs B through F for FO uses.

B. Farm Purchases

FO funds may only be used to:

[7 CFR 764.151(a)] Acquire or enlarge a farm or make a down payment on a farm.

Example include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO programs. Downpayments are authorized as a loan purpose subject to the following.

- A deed is obtained and the transaction is properly documented by debt and security instruments.
- Any prior liens meet the FO security requirements for FSA's junior lien position.
- For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control, and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust

by a bonded agent until transferred to the buyer. Upon a buyer's default, the seller must give FSA written notice of the default and a reasonable opportunity to cure the default. The applicant must repay any sums advanced by FSA.

The authorized agency official should advise the applicant to have an to have an understanding with the seller on such items as:

- land description and number of acres
- buildings and fixtures included in the transaction

Note: The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts.

- minerals and the effect any mineral reservation has on the land value and operating it as a farm
- access to the land or any part of it
- the party responsible for taxes and insurance
- the party who will receive the income from the land during the crop year of the transaction.

C. Capital Improvements

FO funds may only be used to:

[7 CFR 764.151(b)] Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements

essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

FO funds can be used to purchase, improve, or build any type of structure, including a *—dwelling that either adequately meets family needs and is modest in size, cost, and design, provided the structure is related to the farming enterprise. The dwelling shall be located on the farm when FO funds are used to purchase the dwelling. However, if the applicant—* already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.

An applicant must be the owner of the property, or hold a lease interest for the property, which has a term at least equal to the term of the proposed loan on the property, which the improvement is to be made. In the case of Indian tribal lands, trust properties, and Hawaiian homelands, the applicant's leasehold must show an ownership interest as specified by a State supplement.