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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

GLORIA PALACIOS MORALEZ

Plaintiff,

v.

THOMAS J. VILSACK, Secretary, United  
States Department of Agriculture,

Defendants.

**CASE NO. 1:16-CV-0282-AWI-BAM**

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

**(Doc. 406)**

**I. Introduction**

Plaintiff Gloria Palacios Moralez (“Plaintiff”) alleges, among other things, that she was discriminated against by the USDA on the basis of race and sex in violation of the Equal Credit Opportunity Act (“ECOA”). Plaintiff was required to have brought her complaint within two years of the date of the alleged discrimination or fall within the Congressionally-created extension of limitation period by having (1) submitted an eligible complaint within between January 1, 1981 and December 31, 1996 and (2) filed an action within two years of the enactment of the extension of the limitation period. *See Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*, Section 741(a), (e), PL 105-227 (Oct. 21 1998) (codified at 7 U.S.C. § 2279 Historical and Statutory Notes) (“Section 741”). Plaintiff contended that her claim fell within the Congressionally-created limitations period extension. On December

1 21, 2016, this Court granted Secretary of the United States Department of Agriculture  
2 (“USDA”), Thomas Vilsack’s (the “Secretary”), motion for partial summary judgment, finding  
3 that Plaintiff failed to file an eligible complaint within the period set by Section 741. Plaintiff  
4 now moves for reconsideration, contending that evidence not previously disclosed by the USDA  
5 shows that Plaintiff did submit an eligible complaint.<sup>1</sup>

6 For the following reasons, Plaintiff’s motion will be denied.

## 7 **II. Legal Standard**

8 Federal Rule of Civil Procedure 54(b) allows a district court to revisit any order that  
9 “adjudicates fewer than all of the claims [at issue] ... at any time before the entry” of a final  
10 judgment. Fed. R. Civ. P. 54(b). A district court should not grant a motion for reconsideration  
11 under Rule 59(e) “absent highly unusual circumstances.” *McDowell v. Calderon*, 197 F.3d 1253,  
12 1255 (9th Cir. 1999) (citations omitted). Specifically, Local Rule 230(j) requires Plaintiff  
13 seeking reconsideration of an order to show “what new or different facts or circumstances are  
14 claimed to exist which did not exist or were not shown upon such prior motion, or what other  
15 grounds exist for the motion....” Local Rule 230(j) (E.D. Cal.); see *Marlyn Nutraceuticals, Inc.*  
16 *v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks  
17 and citations omitted) (“A motion for reconsideration should not be granted, absent highly  
18 unusual circumstances, unless the district court is presented with newly discovered evidence,  
19 committed clear error, or if there is an intervening change in the controlling law.”)  
20 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and  
21 conservation of judicial resources.” *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (quoting  
22 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

23 “A party seeking reconsideration must show more than a disagreement with the Court’s  
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25 <sup>1</sup> Plaintiff also relies upon a declaration from Michael M. Reyna, former member and former chairman of the Board  
26 of Farm Credit Administration (FCA) from 1998 to 2004. See Docs. 409 at 7-8, 409-1. Plaintiff submits that  
27 information for the first time in a reply in support of a motion for reconsideration. Counsel fails to explain why that  
28 information was not previously available nor does he afford the United States an opportunity to respond. The Court  
will not consider the new arguments and evidence presented for the first time in Plaintiff’s reply. *Publius v. Boyer-  
Vine*, 2017 WL 772146, \*22 n. 23 (E.D. Cal. Feb. 27, 2017) (citing *Ass’n of Irrigated Residents v. C & R  
Vanderham Dairy*, 435 F. Supp. 2d 1078, 1089 (E.D. Cal. 2006) (“It is inappropriate to consider arguments raised  
for the first time in a reply brief.”))

1 decision, and recapitulation ...” of that which was already considered by the Court in rendering  
2 its decision.” *United States v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal.  
3 2001). To succeed, the new facts or law set forth must be of a strongly convincing nature to  
4 induce the court to reverse its prior decision. *See Kern–Tulare Water Dist. v. City of Bakersfield*,  
5 634 F.Supp. 656, 665 (E.D. Cal. 1986) (affirmed in part and reversed in part on other grounds,  
6 828 F.2d 514 (9th Cir. 1987)).

### 7 **III. Discussion**

8 Plaintiff’s motion for reconsideration is premised upon the Secretary’s response to  
9 Plaintiff’s interrogatory number 18 and request for production number 9. The interrogatory asks  
10 the Secretary to “[d]escribe ... each civil rights/discrimination complaint filed by Gloria Morales  
11 for which USDA’s office of Civil Rights or predecessor agency has or had a record.” The request  
12 for production seeks the production of any such records. *See* Doc. 406-1 at 3-4. The Secretary  
13 responded that there exists a “record notation of one USDA Program Complaint filed by Gloria  
14 Morales-Orduno in 1994.” Doc. 406-1 at 4. As a result of USDA data migration policy, the  
15 complaint was transferred to another system and renumbered “#940907-3499.” The Secretary  
16 indicated that the USDA possessed no additional information or documents regarding that  
17 complaint. The Secretary did not provide the above-summarized responses until October 31,  
18 2016—one week after Plaintiff filed her opposition to the Secretary’s motion for summary  
19 judgment. Doc. 406-1 at 3. In response to Plaintiff’s request, the Secretary later provided a  
20 summary of the “record notation” which provides no additional detail regarding the “civil  
21 rights/discrimination complaint” filed by Plaintiff with the USDA. *See* Doc. 406-2. The Court  
22 assumes, without deciding, that the evidence is appropriately treated as newly discovered  
23 evidence that could not have previously been discovered with exercise of due diligence.

24 Plaintiff argues that the existence of the record notation (for complaint number 940907-  
25 3499) combined with the Secretary’s indication that a USDA Program Complaint was filed  
26 within the period set by Section 741 gives rise to an inference that Plaintiff filed an “eligible  
27 complaint” within the meaning of Section 741. The Secretary contends that the record notation  
28 for complaint number 940907-3499 is a reference to a letter from Plaintiff dated September (09)

1 7 (07), 1994 (94)—thus the complaint number 940907. The letter in question appears to be a  
2 discrimination complaint relating to denial of a crop disaster relief grant application. Doc. 407-3  
3 at 2. On that basis, the Secretary argues that the Court’s conclusion that no “eligible complaint”  
4 was filed remains correct.

5 In brief summary, “an eligible complaint is any complaint filed with the USDA before  
6 July 1, 1997 that alleged ECOA claims of discrimination in administration of farm loan  
7 programs occurring between January 1, 1981 and December 31, 1996.” Doc. 405 at 11 (citing  
8 Section 741(e)); *see* 15 U.S.C. § 1691(a) (making it unlawful for a creditor to discriminate with  
9 respect to any aspect of a credit transaction). It is the Court’s continued understanding—based on  
10 Plaintiff’s operative complaint and recent briefing—that her ECOA claim is based on  
11 discriminatory denials of “loan and loan servicing applications.” Fourth Amended Complaint  
12 (“FAC”), Doc. 391 at ¶¶ 63-66, 68. Indeed, ECOA prohibits discrimination only with regard to  
13 credit transactions. 15 U.S.C. § 1691(a); *see* Section 741(e) (An eligible complaint to alleges  
14 discrimination “in violation of the [ECOA] in administering ... a farm ownership, farm  
15 operating, or emergency loan....”) Plaintiff does not dispute that a disaster grant or “benefit  
16 decision is not a ‘credit transaction’ within the meaning of ECOA.” *See Garcia v. Veneman*,  
17 2002 WL 33004124, \*1 (D.D.C. Mar. 20, 2002).<sup>2</sup> Plaintiff’s September 7, 1994 letter, insofar as  
18 it sought to appeal denial of a “disaster grant” application, does not challenge a decision  
19 regarding a “credit transaction.” *See* Doc. 407-3 at 2. Rather, that decision is appropriately  
20 challenged by way of an Administrative Procedure Act (“APA”) claim, which Plaintiff asserts as  
21 her second cause of action.

22 Plaintiff responds with two arguments: (1) the Court should not accept the Secretary’s  
23 assertion that the record notation for complaint number 940907-3499 relates to the letter  
24 identified rather than some other loan-related complaint, and (2) even assuming it does refer to  
25 the September 7, 1994 letter, that letter should qualify as an eligible complaint.

26 As to Plaintiff’s first argument, she is certainly correct that, at the summary judgment

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27 <sup>2</sup> USDA offered both crop disaster relief benefits/grants, *see Bartlett v. USDA*, 2012 WL 640691, \*9 (N.D. Iowa  
28 Feb. 27, 2012), and crop disaster emergency loans, *Shiplot v. Veneman*, 620 F.Supp.2d 1203, 1211 (D. Mont. 2009)  
(affirmed (383 Fed.Appx. 667 (9th Cir. 2010))).

1 stage, she is entitled to have all reasonable inferences drawn in her favor. *Friedman v. Live*  
2 *Nation Merchandise, Inc.*, 833 F.3d 1180, 1184 (9th Cir. 2016) (citation omitted). Because the  
3 Court assumes that the evidence now under consideration is new evidence that could not have  
4 previously been presented, the Court affords Plaintiff the benefit of having all reasonable  
5 inferences drawn in its favor as the party resisting summary judgment.

6 The Secretary presents the sworn declaration of Archie Crawford, Chief of the Program  
7 Investigation Division in the USDA Office of the Assistant Secretary for Civil Rights. He  
8 testifies that during 1993 and 1994, USDA Office of Civil Rights entered written complaints into  
9 their records system using the date written on the complaint letter. The September 7, 1994 letter  
10 from Plaintiff to Secretary Mike Espy is consistent with the record entry designated “#940907-  
11 3499.” Doc. 407-9 at 2. Plaintiff fails to present any evidence that would tend to indicate that the  
12 record entry designated “#940907-3499” is anything other than the letter in question. Even  
13 considering the new evidence in the light most favorable to Plaintiff, no reasonable inference can  
14 be drawn that a separate, unrelated and now missing discrimination claim was submitted  
15 regarding a credit transaction.

16 Second, Plaintiff argues that “the letter she wrote appealing the 1993 denial of disaster  
17 relief included broad complaints of discrimination when applying for other USDA benefit  
18 programs, including credit-related programs.” Doc. 406-1 at 6 n. 1.<sup>3</sup> That body of that letter reads  
19 in full:

20 My name is Gloria Palacios de Orduno. I am a Hispanic female and a small  
21 family farmer located in western Fresno County. I am writing to you to seek your  
22 advice and assistance in resolving an issue with the USDA Agricultural  
23 Stabilization and Conservation Service that threatens the future existence of my  
24 small farm and has already affected my personal health. This letter will serve as  
25 my official appeal of the California State ASCS Committee decision to uphold the  
26 Fresno County ASCS Committee’s denial of my application for disaster loan  
grant (sic). I believe that the Fresno County ASCS Supervisor and a member of  
the County Committee have purposes committed acts of discrimination against  
me, and have implemented a plan to deny me program benefits available under

27 <sup>3</sup> Plaintiff presented the same argument, albeit regarding a separate letter on the same issue, to the Court in briefing  
28 the issue that she now seeks reconsideration of: “Although the letter ostensibly is to appeal a USDA disaster relief  
benefit decision, Moralez repeatedly complains of wide scale discrimination against minority applicants, generally,  
and herself, specifically.” Doc. 402 at 29; *see* Doc. 402-7 at 7.

1 the U.S. Constitution and the Food, Agriculture, Conservation, and Trade Act of  
2 1990. Due to the fact that I am also a limited resource, small farmer I am unable  
3 to hire the professional consultants to assist me in this preparation....

4 Doc. 407-3 at 2 (interlineation in original). That letter expressly states that it serves to appeal the  
5 denial of the disaster grant application. To read from that letter that Plaintiff also intended to  
6 complain regarding loan transactions is an unwarranted leap. The Court will not depart from its  
7 conclusion that Plaintiff failed to submit an eligible complaint within the period set out by  
8 Section 741.

9 **IV. Order**

10 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for  
11 reconsideration is DENIED.

12 IT IS SO ORDERED.

13 Dated: April 7, 2017

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16 SENIOR DISTRICT JUDGE  
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