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

GLORIA PALACIOS MORALEZ,

 Plaintiffs,

 v.

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

 Defendants.

CASE NO. 1:16-cv-00282-AWI-BAM

**ORDER REGARDING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT
AND PLAINTIFFS’ MOTION TO
SUPPLEMENT THE
ADMINISTRATIVE RECORD**

**ORDER TO SHOW CAUSE WHY THIS
ACTION SHOULD NOT BE DISMISSED
FOR LACK OF STANDING**

I. Introduction

Plaintiff Gloria Palacios Moralez (“Plaintiff”) brings the instant action alleging violations of the Equal Credit Opportunity Act (“ECOA”) and Administrative Procedures Act (“APA”) by the Department of Agriculture. Fourth Amended Complaint, Doc. 391 (“FAC.”) at ¶ 1. This Court dismissed Plaintiff’s ECOA claim as time barred on December 20, 2016. *See* Doc. 405 at 18, 23. Plaintiff’s APA claim alleges that the Department of Agriculture’s Farmers Home Administration (“FmHA”)¹ discriminated against her on the basis of race (Hispanic) and sex (female) in denying her claim for disaster relief benefits.

¹ During the 1994 reorganization of the USDA, the FmHA was reorganized into the Farm Service Agency (“FSA”). *See* 7 U.S.C. 6932(a-b) (authorizing the Secretary to establish the FSA and consolidate the farm loan programs previously assigned to the FmHA to the FSA); USDA, *Service Center Agencies: Farm Service Agency*, <https://www.sc.gov.usda.gov/AboutSCA.html> (last visited September 25, 2016).

1 Defendant now moves for summary judgment regarding Plaintiff’s APA claim,
2 contending that Plaintiff is estopped from litigating her APA claim as a result of her failure to
3 disclose the claim in her bankruptcy proceedings and contending that her claim fails on the
4 merits. That matter is fully briefed. Plaintiff moves to supplement the administrative record,
5 contending that such supplementation is necessary to demonstrate discrimination on the part of
6 the FmHA.

7 Before the Court addresses the parties’ motions, Plaintiff will be ordered to show cause
8 why her APA claim should not be dismissed for lack of standing. As an operation of Plaintiff’s
9 bankruptcy proceedings, Plaintiff appears to no longer be the real party in interest.

10 **II. Factual Background**

11 A. The Underlying Loss

12 Plaintiff is a Hispanic female. FAC at ¶ 17. Beginning in 1980, Plaintiff farmed land that
13 she owned near Fresno, California. *Id.* at ¶ 18. In 1993, Plaintiff lost 57 percent of her raisin
14 crop. Administrative Record, Docs. 431-2, 431-3 (“AR”) at 19, 52.²

15 B. Disaster Benefit Applications and Appeals

16 Following the 1993 loss, Plaintiff submitted applications for disaster relief benefits with
17 the Fresno division of the Agricultural Stabilization Conservation Service (“ASCS”).³ AR at 51,
18 54. The Administrative Record contains three benefit applications regarding the 1993 loss:
19 September 28, 1993 – attributing the loss to “drastic change in the weather”, AR at 51;
20 December 8, 1993 –attributing the loss to “weather fluctuat[ion] [between] high [and] low
21 temp[erature]s,” AR at 54; March 2, 1994 – attributing the loss to “Pierce’s Disease – wind
22 brought in bacteria from pastures [and] alfalfa. Phomopsis – fungal disease caused from rains
23 last March,” AR at 66.

24 The Fresno County ACS Committee (“COC”) never responded to the first application.
25 *See* AR at 19.

26 ² For the sake of consistency, the page number cited refers to the number in the page footer following the “CA-
27 ASC” prefix. The page number does not refer to the CM/ECF generated electronic document page number in the
page header.

28 ³ The ASCS has since been reorganized into the FSA. *See* Declaration of Navdeep Dhillon, Doc. 431-1 (“Dhillon
Decl.”) at ¶ 2; *see*, Note 1, *supra*.

1 The second application was denied on December 16, 1993. AR at 57.⁴ The letter from the
2 County Executive Director of the ASCS, memorializing the denial of Plaintiff’s application for
3 benefits by the COC, explained that it found “no period of fluctuating weather temperatures
4 during the 1993 crop year which would have occurred at a time that would be expected to have
5 significantly reduced [Plaintiff’s] yield.” AR at 57. Plaintiff was informed of her right to appeal
6 the denial to the COC and present “factual information and reasons why” she believed the
7 COC’s determination was wrong. AR at 57.⁵ Plaintiff appealed the denial of the second disaster
8 benefit application to the COC on January 3, 1994. AR at 58-59. On February 8, 1994, Plaintiff
9 appeared before the committee. Plaintiff reiterated her belief that a freeze caused her vines to
10 produce a lower yield. AR at 61. The COC concluded that Plaintiff had not substantiated her
11 claim of frost damage and denied her appeal. AR at 61.

12 The third application was denied on March 8, 1994. AR at 72; *see* AR at 67-68. The letter
13 from the County Executive Director, memorializing the denial of Plaintiff’s third application by
14 the COC, explained that—after consulting with experts—it had concluded that “a 1993
15 infection” with phomopsis and Pierce’s Disease “would not materially affect the 1993 yield.” AR
16 at 72, *see* AR at 68. The letter further explained that phomopsis “is a fungus which attacks the
17 vine, but does not harm the bunches of grapes, and cannot be expected to significantly reduce the
18 expected 1993 raisin yield. Phomopsis can also be controlled with adequate cultural practices.”
19 AR at 72. “Pierce[’]s Disease is carried in the mouths of leafhoppers, and is not an air-born[e]
20 bacteria.... [A]ccording to the viticulturalist, Pierce[’]s Disease will cause the vines to die off in
21 a few years, but it will not affect the crop during the year of infection.” AR at 72. The COC
22 indicated that it was denying Plaintiff’s application for those reasons; Plaintiff’s lower yield was
23 not a result of a covered disaster condition. AR at 72, *see* AR at 68. The County Executive
24 Director also informed Plaintiff of her right to appeal the COC determination to the California
25 State ASCS Committee (“STC”).

26 Plaintiff attempted to appeal the denial of her third application to the STC; however, she

27 ⁴ The denial letter clearly makes reference to the application regarding “high-low weather temperatures.” AR at 57.

28 ⁵ The procedure allowed appears to have essentially provided a rehearing before the same committee on Plaintiff’s claims and an additional opportunity for Plaintiff to substantiate her claims.

1 was directed by the State ASCS office to file an appeal at the COC level first. *See* AR at 73.
2 Plaintiff requested a rehearing or appeal before the COC. AR at 73. A rehearing before the COC
3 was held on April 26, 1994. AR at 74-77. The COC considered Plaintiffs claims regarding
4 Phomopsis, Pierce’s Disease exacerbated by excessive wind, rain while her grapes were drying,
5 and mold. AR at 76-77; *see* AR at 100-102. The COC noted that records of weather conditions
6 did not support Plaintiff’s position; that, as the viticulturalists consulted confirmed, the diseases
7 identified would not have caused the extent of loss that Plaintiff identified; and that Plaintiff
8 refused to present information regarding her cultural and management practices. AR at 76-77;
9 *see* AR at 100-102. The COC concluded that any yield reduction was attributable not to any
10 condition that would render her eligible for disaster benefits; the lower yield was likely a result
11 of controllable conditions that could have been prevented through appropriate use of fungicide or
12 pesticide. AR at 76-77, 107.

13 Plaintiff appealed the denial of all three of her disaster benefit applications to the STC on
14 June 25, 1994. AR at 27-48. The STC set a hearing for August 17, 1994. AR at 25. Part of the
15 basis for Plaintiff’s appeal was that she believed that Hispanic farmers were “systemically ... left
16 ... out” by the COC. AR at 27. At approximately 8:40 a.m. on the date of the hearing, Plaintiff
17 faxed a letter to the STC, indicating that she could not be present at the hearing and explaining
18 what she would have presented to the STC. AR at 117-126. The STC reviewed the written
19 record, including Plaintiff’s August 17, 1994 letter, and “[ou]nd no basis to reverse the
20 determination of the [COC].” AR at 25. It found that Plaintiff “was not able to provide
21 documentation to substantiate the loss was due to an eligible condition. [The viticulturalist’s]
22 letter only indicated that Phomopsis would result in 10-20% losses, the chemical receipt did not
23 document the actual usage (amount and dates of application), the Agricultural Commissioner’s
24 Pesticide Use Permit indicated no report of use, and Pierce’s Disease is not exacerbated by an
25 eligible condition.” AR at 25. The STC decision did not resolve the claim of discrimination. AR
26 at 23. Instead, it noted that the “case ha[d] been forwarded to the Director of Equal Employment
27 Opportunity and Civil Rights Staff for review.” AR at 23.

28 Plaintiff appealed the STC decision to the National Appeals Division (“NAD”) of the

1 ASCS. AR at 18. A hearing was scheduled for October 25, 1994, and rescheduled for November
2 1, 1994. AR at 15, 18. Plaintiff appeared telephonically on November 1, 1994. AR at 15.
3 Plaintiff presented largely the same argument presented to the COC and STC. *See* AR at 12-13.
4 The NAD Hearing Officer considered the record below and the argument presented at the
5 hearing to conclude—for largely the same reasons below—that Plaintiff had not substantiated
6 her contention that an eligible disaster condition caused the damage to her yield. AR at 15-17. He
7 accordingly denied her appeal on March 29, 1995. AR at 17. The NAD Hearing Officer informed
8 Plaintiff of her right to seek review by the director of the NAD. AR at 17.

9 Plaintiff made a written request for director level review on June 30, 1995. AR at 1. The
10 Director of the NAD issued a decision on March 12, 1996. AR at 1-2. He first outlined the
11 summary of the case and the evidence considered. AR at 1-2. He concluded that there was
12 substantial evidence to support the NAD Hearing Officer’s determination that the lower yield
13 “was not caused by an eligible disaster-related condition or by a plant disease that was
14 accelerated or exacerbated naturally as a result of damaging weather.” AR at 2. On that basis, he
15 upheld the Hearing Officer’s determination. AR at 2.

16 C. Plaintiff’s Bankruptcy Filings

17 Plaintiff filed a Chapter 12 bankruptcy petition on January 24, 1992. Declaration of
18 Joseph B. Frueh, Doc. 434-4 (“Frueh Decl.”) at ¶¶ 2-3; Frueh Decl., Exh. 2, Doc. 434-6 at 2-3.
19 On March 6, 1992, she filed schedules, detailing income, property holdings, and claims by
20 creditors. *See* Frueh Decl., Exh. 3, Doc. 434-7 at 2-20. One of the categories listed on Schedule
21 B, regarding personal property, requires the debtor to list “contingent and unliquidated claims of
22 every nature” and any “other personal property of any kind not already listed.” Doc. 434-7 at 5-
23 6.⁶ Plaintiff listed a different litigation in both sections. Doc. 434-7 at 5-6. In the March 6, 1992
24 schedule—filed before the denial of disaster benefits—Plaintiff listed no potential claims against
25 the USDA. The USDA submitted a Proof of Claim for \$396,842.25, based on several unpaid
26 loans and accrued interest from 1980 to 1992. Frueh Decl., Exh. 4, Doc. 434-8 at 2-5.

27 The bankruptcy court confirmed plaintiff’s Chapter 12 bankruptcy plan on January 19,

28 ⁶ As the Secretary correctly points out, and Plaintiff does not dispute, legal claims are personal property.

1 1993. Frueh Decl., Exh. 4, Doc 434-9 at 2-6.

2 Plaintiff made payments on her bankruptcy plan for four years. Frueh Decl., Exh. 6, Doc.
3 434-10 at 2. At no time during that period did Plaintiff amend her bankruptcy schedules to
4 identify claims against the USDA. On January 16, 1997, the bankruptcy court discharged all
5 debts provided for by the bankruptcy plan. Doc. 434-10 at 2. At that time, Plaintiff had paid
6 \$97,856.75 toward satisfying her debt to the USDA. Doc. 434-10 at 4, 7. On February 21, 1997,
7 Plaintiff's Chapter 12 bankruptcy case was closed. Dc. 434-10 at 6.

8 While in bankruptcy, Plaintiff agreed to sell her farm to Ermel Ray Moles and Debra Lee
9 Moles for \$550,000.00. Frueh Decl., Exh. 18, Doc. 434-22 at 9. After the bankruptcy discharge,
10 Plaintiff breached the purchase agreement. Doc. 434-22 at 10. The purchasers filed an action for
11 breach of contract, seeking specific performance. Doc. 434-22 at 10. Plaintiff twice filed Chapter
12 12 bankruptcy petitions during the pendency of the action for breach of contract—on December
13 31, 1997 and on May 21, 1998. Frueh Decl., Exh. 7, Doc. 434-11 at 3; Frueh Decl., Exh. 12,
14 Doc. 434-16 at 3. In both instances, an automatic stay resulted, *see* 11 U.S.C. § 362(a), but that
15 stay was modified to allow the breach of contract action to continue forward. Frueh Decl., Exh.
16 10, Doc. 434-14 at 2-3; Frueh Decl., Exh. 15, Doc. 434-19 at 2-3. Plaintiff's 1997 and 1998
17 bankruptcy petition filings both resulted in dismissal. Frueh Decl., Exh. 11, Doc. 434-15 at 2-3;
18 Frueh Decl., Exh. 16, Doc. 434-20 at 2-3.

19 Ultimately, the purchasers obtained a judgment for specific performance, requiring
20 Plaintiff to sell the farm as agreed. Doc. 434-22 at 10. Plaintiff sold the farm as required on
21 December 30, 1998. Frueh Decl., Exh. 17, Doc. 434-21 at 2. From the proceeds of the sale,
22 \$233,336.80 was paid to the FSA. Doc. 434-21 at 2. The remaining debt to the USDA was
23 \$176,019.36. Declaration of John Oosterman, Exh. 1, Doc. 434-22 at 2. The USDA cancelled her
24 debt on June 7, 1999. Doc. 434-22 at 5.

25 D. Plaintiff's Proposed Supplementation Material

26 After the COC denied Plaintiff's disaster benefit applications, Plaintiff sent a letter to the
27 Secretary of the USDA indicating that she believed that the denial was a result of discrimination
28 and filed an administrative complaint with the USDA on the same basis. Doc. 407-3, 407-4; *see*

1 Doc. 439-5 at 2. On August 4, 1994, Plaintiff was informed that her claim of discrimination
2 regarding her disaster benefit claim was being reviewed separately by the USDA’s Civil Rights
3 Office (“CRO”). *See* Plaintiff’s Statement of Disputed Facts, Doc. 439-1 at 8-11 (“PSDF”) at ¶¶
4 13-15; Doc. 402-7 at 11, Doc. 439-4 at 11; *see* AR at 23 (explaining that the STC appeal
5 contained a discrimination claim that was sent to the Civil Rights Office). .

6 On June 11, 1998, Plaintiff received the “final decision” from the USDA regarding her
7 discrimination claim. Doc. 439-5 at 2. The CRO determined that Plaintiff “was not discriminated
8 against on the basis of national origin.” Doc. 439-5 at 4. It explained that “[t]hirty-nine raisin
9 producers applied for 1993 [disaster] benefits, and initially all were disapproved by the COC.
10 Twenty-six [w]hite producers applied, four were approved. Six Hispanic producers applied, none
11 were approved. Six Asians / Pacific Islander producers applied, one was approved. One Black
12 producer applied, and was not approved.... Even though [Plaintiff’s] application was denied for
13 1993, she had received [disaster] benefits for 1991 due to excessive heat.” Doc. 439-5 at 7.
14 Despite the “inference of discrimination,” the CRO determined that the determination by the
15 COC—that Plaintiff did not qualify for benefits because the evidence submitted failed to
16 substantiate her claims—was a credible, non-pretextual basis for denial of benefits. Doc. 439-5 at
17 7.

18 Plaintiff contends that the record is further incomplete because it fails to include the
19 record before the CRO when it made its discrimination determination. Doc. 440-1 at 6. She
20 “presumes that additional information was generated during those two years” between the
21 NAD’s final disaster benefits resolution and the CRO’s discrimination determination regarding
22 the disaster benefits determinations. Doc. 440-1 at 6.

23 **III. Discussion**

24 Defendant moves for summary judgment on two bases: (1) that Plaintiff’s claim is barred
25 by judicial estoppel—an affirmative defense external to the administrative record and the
26 USDA’s consideration of the merits of her disaster relief claim; and (2) that Plaintiff’s APA
27 claim fails on its merits because the agency’s determination was reasonable. Because Plaintiff
28 appears to lack prudential standing to litigate the APA claim, the Court will issue an order to

1 show cause why the APA claim should not be dismissed.

2 **A. Prudential Standing**

3 When a debtor files a voluntary petition for bankruptcy for bankruptcy a bankruptcy
4 estate is created. 11 U.S.C. § 541(a); *see* 11 U.S.C. § 301. For all voluntary bankruptcy actions,
5 the estate includes all legal or equitable interests⁷ of the debtor in property as of the
6 commencement of the case by filing a bankruptcy petition. 11 U.S.C. § 541(a)(1). “[T]he
7 legislative history indicates that § 541(a) would ‘bring anything of value that the debtors have
8 into the estate.’” *Gladstone v. U.S. Bancorp*, 811 F.3d 1133, 1139 (9th Cir. 2016) (citation
9 omitted) (“[P]roperty falls within the reach of § 541(a), unless excluded by § 541(b) or properly
10 exempted under § 522.”); *accord Segal v. Rochelle*, 382 U.S. 375, 379 (1966) (A generous
11 definition of the term “property” has been adopted with a view of “secur[ing] for creditors
12 everything of value” belonging to the bankrupt. “An interest is not outside its reach because it is
13 novel or contingent or because enjoyment must be postponed.”) Such property includes legal and
14 administrative claims. *Caviness v. England*, 2007 WL 1302522, *12 (E.D. Cal. May 3, 2007);
15 *see Dumore v. United States*, 358 F.3d 1107, 1112 n.2 (9th Cir. 2004) (suggesting that a trustee
16 is responsible for administratively exhausting a claim that is an estate asset). When bankruptcy is
17 filed pursuant to Chapter 12, as Plaintiff did in 1992, the bankruptcy estate also includes the
18 debtor’s legal and equitable interests in property acquired *after* filing of the bankruptcy petition
19 but *before* the case was closed or dismissed. *See* 11 U.S.C. § 1207(a)(1).

20 Plaintiff filed a Chapter 12 bankruptcy in 1992. Certainly when she filed for bankruptcy
21 she could not have known about the existence of a crop loss claim when her crop loss did not
22 occur until the 1993 season. On September 28, 1993, and again on December 8, 2013, Plaintiff
23 applied for crop disaster benefits from the Department of Agriculture. Plaintiff’s disaster relief
24 application was denied on December 16, 1993. AR at 57. She filed an appeal, alleging
25 discrimination (among other things), on June 25, 1994. AR at 27-48. The alleged discrimination
26 giving rise to the claim now before the Court—that the COC discriminated against Plaintiff on
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28 ⁷ Some exceptions exist but they are not applicable here. *See* 11 U.S.C. § 541(b) (interest as a lessee in certain leased property), (c)(2) (a restricted beneficial interest in favor of the debtor held in trust).

1 the basis of race and sex—was known and articulated by Plaintiff by June 25, 1994, at the latest.
2 Those claims were part of the bankruptcy estate. If Plaintiff had recovered crop disaster benefits
3 to compensate for the 1993 crop loss, the recovery certainly would have been an estate asset. *See*
4 *In re White*, 174 B.R. 779 (S.D. Ill. Aug. 8, 1994) (holding that proceeds from crop sales were
5 estate property); *See* 11 U.S.C. § 1207. Plaintiff now seeks to recover for the same injuries.

6 Because Plaintiff did not list the claims in her asset schedules, the trustee neither
7 administered them nor abandoned them at the close of the bankruptcy case, and they remained
8 the property of the bankruptcy estate. 11 U.S.C. § 554(d). As a result, Plaintiff appears to lack
9 prudential standing to pursue those claims. *See Dunmore*, 358 F.3d at 1112; *Turner v. Cook*, 362
10 F.3d 1219, 1226 (9th Cir. 2004); *Runaj v. Wells Fargo Bank*, 667 F.Supp.2d 1199, 1206
11 (S.D.Cal.2009) (A “debtor may not prosecute a cause of action belonging to the bankruptcy
12 estate absent a showing her claims were exempt from the bankruptcy estate or abandoned by the
13 bankruptcy trustee.”); *see also* Fed.R.Civ.P. 17(a)(1) (“An action must be prosecuted in the name
14 of the real party in interest.”)

15 **IV. Order**

16 Based on the foregoing, Plaintiff is ordered to show cause by October 30, 2017, why her
17 claim should not be dismissed for lack of standing.

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19 IT IS SO ORDERED.

20 Dated: October 17, 2017


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SENIOR DISTRICT JUDGE