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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 DISMISSING FOR LACK OF
STANDING**

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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.egov.usda.gov/AboutSCA.html> (last visited December 5, 2017).

1 On October 17, 2017, Plaintiff was ordered to show cause why her APA claim should not
2 be dismissed for lack of standing. The Court noted that, as an operation of Plaintiff’s bankruptcy
3 proceedings, Plaintiff appears to no longer be the real party in interest. Plaintiff filed a response
4 to the Court’s order to show cause. For the following reasons, Plaintiff’s APA claim will be
5 dismissed for lack of standing.

6 **II. Factual Background**

7 The Court set forth a detailed factual background in its prior order. Doc. 447. In brief
8 summary, Plaintiff filed a Chapter 12 bankruptcy petition on January 24, 1992. Plaintiff suffered
9 a crop loss in 1993. She applied for disaster relief benefits regarding that loss. Those benefits
10 were denied by agents of the Department of Agriculture (“USDA”), explaining that Plaintiff’s
11 loss was not a result of a covered disaster condition. Plaintiff appealed the decision, contending
12 that (1) her loss was a result of a covered disaster condition and (2) the denial of crop benefits
13 was a result of discrimination. Plaintiff’s discrimination allegation was processed separately
14 from her direct appeal of denial of crop disaster benefits. On March 12, 1996, a final agency
15 decision, affirming the denial, was issued regarding Plaintiff’s direct appeal of the denial of crop
16 disaster benefits.

17 Plaintiff never amended her bankruptcy schedules to indicate either her crop loss claim or
18 her discrimination claim against the USDA. Plaintiff made payments on her bankruptcy plan for
19 four years. The bankruptcy court discharged Plaintiff’s remaining debts on January 16, 1997. On
20 February 21, 1997, Plaintiff’s bankruptcy case was closed.

21 On June 11, 1998, Plaintiff received the final decision from the USDA regarding her
22 discrimination claim.

23 **III. Discussion**

24 In the Court’s prior order, it explained that “Plaintiff appears to lack prudential standing
25 to litigate the APA claim” because the bankruptcy trustee retained the rights to all unscheduled
26 estate property after discharge of Plaintiff’s debts and closure of the bankruptcy action. Doc.
27 447. Plaintiff now contends that the Court’s conclusion relied upon a conflation of the rules
28 governing Chapter 12 versus Chapter 7 bankruptcy. Plaintiff explains that “a Chapter 12 debtor

1 retains possession of the property of the estate and cures her indebtedness....” Doc. 448 at 3.
2 However, in a Chapter 7 bankruptcy proceeding “the Trustee takes possession of the debtor’s
3 property.” *Id.* Plaintiff argues, because a Chapter 12 debtor is a “debtor-in-possession,” she
4 retained an interest in the present claim after discharge of debts and closure of her bankruptcy
5 case, despite her failure to schedule that claim. Plaintiff is mistaken.

6 In order for a Chapter 12 or Chapter 13 debtor to maintain an action on behalf of the
7 bankruptcy estate, the asset must be scheduled. In *Cowling v. Rolls Royce Corp.*, 2012 WL
8 4762143 (S.D. Ind. Oct. 5, 2012), the District Court for the Southern District of Indian resolved
9 the exact situation now at bar. It explained:

10 When a debtor has disclosed a pending lawsuit in his bankruptcy
11 proceeding, he can have standing to pursue that lawsuit on behalf of the
12 bankruptcy estate. *See, e.g., Cable v. Ivy Tech State College*, 200 F.3d 467 (7th
13 Cir.1999) (“Under the reorganization chapters, the debtor-in-possession steps into
14 the role of trustee and exercises concurrent authority to sue and be sued on behalf
15 of the estate”); Fed. R. Bankr.P. 6009 (a Chapter 13 debtor-in-possession has
16 concurrent standing with the bankruptcy trustee to pursue claims on behalf of the
17 estate). However, when—as here—the debtor has not disclosed a pending lawsuit
18 in his bankruptcy proceeding, that standing is lacking. Simply put, the debtor
19 cannot be said to be pursuing the claims on behalf of the estate when he has not
20 even disclosed their existence to the estate. *See Tucker v. Closure Sys. Int’l*, 2011
21 U.S. Dist. LEXIS 110786, *5–6, 2011 WL 4479112 (S.D.Ind.2011) (where debtor
22 failed to disclose discrimination claims which existed at time she filed for
23 bankruptcy, court held she was not bringing discrimination claims on behalf of
24 the state and lacked standing to pursue her discrimination lawsuit at the time it
25 was filed); *Calvin v. Potter*, 2009 U.S. Dist. LEXIS 73862, *9, 2009 WL 2588884
26 (N.D.Ill.2009) (“[plaintiff’s] active misrepresentation in her bankruptcy
27 proceedings [by failing to disclose discrimination claims] demonstrates that she is
28 not bringing her discrimination claims on behalf of or for the benefit of her
29 bankruptcy estate”) (emphasis in original); *Becker v. Verizon North, Inc.*, 2007
30 U.S.App. LEXIS 9879, *3–5, 2007 WL 749728 (7th Cir.2007) (debtor lacked
31 standing to pursue lawsuit where she failed to disclose it in her Chapter 13
32 bankruptcy).

33 As discussed above, [the plaintiff] does not dispute the fact that he has not
34 disclosed this lawsuit in his Chapter 13 bankruptcy proceeding. Accordingly, he
35 cannot be bringing this lawsuit on behalf of the bankruptcy estate....

36 *Cowling*, 2012 WL 4762143 at *4-5; accord *O’Connell v. Marshalls, Inc.*, 2017 WL
37 4539288, at *5 (E.D.Pa., 2017). This Court agrees with the reasoning of *Cowling*.

1 Plaintiff failed to schedule her claim despite the ongoing obligation to do so. As a result,
2 Plaintiff cannot litigate that claim on behalf of the estate.

3 Similarly, Plaintiff cannot litigate the claim on her own behalf because she no longer
4 possesses an interest in that claim.² As explained in the Court’s previous order, Plaintiff’s
5 discrimination claim was estate property for purposes of her Chapter 12 bankruptcy proceeding.
6 Doc. 447 at 8 (citing 11 U.S.C. § 1207(a)(1)). At the close of a bankruptcy estate, all
7 unscheduled estate property remains property of the estate to the exclusion of the debtor. *See* 11
8 U.S.C. § 554(d); *Pace v. Battley (In re Pace)*, 146 B.R. 562, 564–66 (9th Cir. BAP 1992), *aff’d*,
9 17 F.3d 395 (9th Cir. 1994) (unless formally scheduled, property is not abandoned at the close of
10 the case, even if the trustee had knowledge of the asset); *In re Harvey*, 356 B.R. 557, 565-566
11 (Bankr. S.D. Ga. 2006). Because Plaintiff did not list the claims in her asset schedules, the
12 trustee neither administered them nor abandoned them at the close of the bankruptcy case, and
13 they remained the property of the bankruptcy estate. 11 U.S.C. § 554(d); *Wilkerson v. World Sav.*
14 *and Loan Ass’n*, 2009 2777770, *3 (E.D. Cal. Aug. 27, 2009).

15 Plaintiff’s claim will be dismissed for lack of prudential standing.

16 **IV. Order**

17 Based on the foregoing, Plaintiff’s APA claim alleging unlawful discrimination is
18 DISMISSED. The Clerk of the Court is respectfully directed to close this case.

19 IT IS SO ORDERED.

20 Dated: December 6, 2017

21 
22 SENIOR DISTRICT JUDGE

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25 _____
26 ² It is unclear whether Plaintiff now argues that she is pursuing her claim on behalf of her now-closed bankruptcy
27 estate. For instance, she quotes a portion of Federal Rule Bankruptcy Procedure 6009 for the proposition that it
28 authorizes her to bring suit. Yet, Plaintiff fails to mention that any action by a debtor with regard to estate property is
brought on behalf of the estate. *See* Fed. R. Bankr. P. 6009 (“With or without court approval, the trustee or debtor in
possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the
debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.”) The Court
assumes that Plaintiff seeks to recover the claim on her own behalf.