Kellan Smith (SBN 318911)
PUBLIC JUSTICE, P.C.
475 14th Street, Suite 610
Oakland, CA 94612
Phone: (510) 622-8214
Email: ksmith@publicjustice.net

Attorney for Plaintiffs

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PUBLIC JUSTICE FOUNDATION; ANIMAL LEGAL DEFENSE FUND; CENTER FOR BIOLOGICAL DIVERSITY; CENTER FOR FOOD SAFETY; FOOD & WATER WATCH,

Plaintiffs,

vs.

FARM SERVICE AGENCY,

Defendant.

Case No. 3:20-cv-1103-WHA

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION CHALLENGING FSA'S WITHHOLDINGS UNDER FOIA

Judge: Honorable William Alsup
Date: April 8, 2021
Time: 8:00am
Location: 450 Golden Gate Ave.
San Francisco, CA, Crt. Rm. 12

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INTRODUCTION

FSA's opposition asks the Court to craft FOIA exemptions that defy the longstanding principle "disclosure, not secrecy is the dominant objective of the Act." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). To do so, FSA misconstrues caselaw and strains statutory text in direct contradiction with FOIA's mandate that the statute's "exclusive" exemptions "must be narrowly construed." *Milner v. Dep't of Navy*, 562 U.S. 562, 566 (2011) (internal quotations omitted).

Regarding its withholdings under Exemption 6, FSA fails to carry its burden to show the disclosure of the information could lead to an invasion of any individual's privacy interests. Even were that not the case, the agency fails to show the balance of interests weighs in favor of withholding. The D.C. Circuit in *Multi Ag Media LLC v. U.S. Department of Agriculture* ordered disclosure where identical interests (and very similar underlying information) were at stake. FSA's efforts to distinguish it are factually and legally incorrect.

Similarly, FSA fails to carry its burden to withhold information under Exemption 4. As it concedes, it is required to demonstrate the entities submitting the information customarily and actually keep the information at issue private or confidential. Yet, the agency relies on pure conjecture. Instead, the agency focuses on whether it provided an assurance that the information will be kept confidential. Yet, as the agency admits, this is a separate and distinct requirement to satisfy Exemption 4 that does not negate its obligation to show the information was actually kept private by the entity submitting it. Further still, FSA's evidence of an implied assurance of confidentiality—statements that the agency will disclose information in accordance with the Privacy Act—does not demonstrate it assured confidentiality, but actually establishes it stated it *would* disclose the information under FOIA. Express warnings of disclosure like FSA's are another independent reason the information's release is mandated here.

Finally, FSA agrees that it cannot withhold information under Exemption 3 pursuant to 7 U.S.C. § 8791 ("Section 8791") if it is "payment information (including payment information and the names and addresses of recipients of payments)." 7 U.S.C. § 8791(b)(4)(A). FSA's

rationale for its sweeping applications of Exemption 3 requires the agency to ignore the language in the exception and argue the phrase "payment information" somehow does not mean "information concerning payments." Indeed, the agency seeks to withhold even the names, addresses, and payment amounts of their farm loans, thereby asking the Court to adopt an understanding of the exception that renders it meaningless. FSA cannot ignore the withholding statute's limitations and conjure an exemption to disclosure where none exists.

All told, none of these FOIA exemptions can carry the weight of keeping the challenged information from the public.

ARGUMENT

I. FSA Unlawfully Withheld Documents Under FOIA Exemption 6

The parties agree that to withhold information under Exemption 6, it is the agency's burden to demonstrate a cognizable privacy interest threatened by disclosure. Dkt. No. 47, Def.'s Opp. Br., at 6. Despite this, FSA has provided no explanation for how any individual's privacy interests will be implicated by disclosure here. Even if the agency had met their burden, however, the parties agree that the agency cannot lawfully withhold documents if the public's interest in disclosure outweighs the privacy interests. *Id*. at 6 (citing 5 U.S.C. § 552(b)(6)). In situations such as this, the substantial public interest in disclosure must prevail. *Multi Ag Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224, 1232-33 (D.C. Cir. 2008).

A. FSA has not demonstrated the existence of a cognizable privacy interest threatened by disclosure

FSA's burden to show that disclosure of information withheld under Exemption 6 would invade an individual's privacy interest is not heavy, but the agency cannot simply ask the Court to "take its word for it," as "FOIA requires more." *Kowack v. U.S. Forest Serv.*, 766 F.3d 1130, 1134 (9th Cir. 2014). FSA has not explained how an invasion of a non-trivial privacy interest could result from disclosure of the withheld information. FSA bases its entire argument that "the financial interests of these closely held businesses are traceable to individuals" on its "experience handling the documents at issue." Dkt. No. 47-1, Morris Decl., at ¶ 21. This does not appear to

be a determination at all, but rather a self-serving assumption, as the agency provides no explanation for how the withheld documents indicate whether their disclosure could lead to any inferences being drawn about the financial circumstances of any individual. Ostensibly, FSA could have asked the loan applicants at issue whether their businesses are individually owned or closely held and whether disclosure of their business information could be traced to them individually. Alternatively, in other instances FSA has demonstrated that for 98% of the entities whose information was subject to disclosure "the financial makeup of the businesses mirror[ed] the financial situation of the individual family members." *Multi Ag Media LLC*, 515 F.3d at 1229. Here, the agency has attempted nothing resembling this showing, and this alone resolves the Exemption 6 inquiry. *See Torres Consulting and Law Group, LLC v. Nat'l Aeronautics and Space Admin.*, 666 Fed. Appx. 643, 645 (9th Cir. 2016) ("[I]f the agency does not establish that disclosing the information would invade a non-trivial privacy interest, then 'FOIA demands disclosure, without regard to any showing of public interest.'") (quoting *Yonemoto v. U.S. Dep't of Veterans Aff.*, 686 F.3d 681, 694 (9th Cir. 2012); *Prudential Locations LLC v. U.S. Dep't of Hous. & Urban Dev.*, 739 F.3d 424, 430 (9th Cir. 2013)).

B. Any privacy interests at stake are substantially outweighed by the public's interest in disclosure of the withheld information Plaintiffs challenge

Even taking FSA's conclusory assertions that disclosure of the withheld information could lead to the invasion of a non-trivial privacy interest, such interests can still be "overcome [by] the public interest in disclosure," thereby rendering Exemption 6 inapplicable. *Multi Ag Media LLC*, 515 F.3d at 1230; *see* Def.'s Opp. Br., at 6 (acknowledging the Court must then "balance the public interest in disclosure against the [privacy] interest"). In this balancing of interests, "the presumption in favor of disclosure is as strong as can be found anywhere in the Act." *Multi Ag Media LLC*, 515 F.3d at 1228.

FSA admits that the information withheld is the information the agency had before it when making its determination whether to fund a farming operation under its farm loan programs. *See* Def.'s Opp. Br., at 11 (noting the public interest at stake is the disclosure of

information "that sheds light on loan determinations"), 10 (noting that the information at issue is the information the agency has before it when making a determination whether to provide the funding), 7 (same); *see also* Morris Decl., at ¶ 7 (acknowledging that for direct loan applications FSA takes the information from the applications, such as the ones at issue here, and "approves or denies the loan application—and the approved amount may be different from the amount requested—then directly makes the loan to the producer"). As Plaintiffs explained in their Opening Brief, Dkt. No. 46, at 12-13, in *Multi Ag Media LLC* the D.C. Circuit found a strong public interest warranting disclosure when the withheld information was before the agency as part of its funding decision. 515 F.3d at 1231. This is because disclosure of the documents would reveal how the agency determined "a particular farm is eligible to participate in [a] benefit program[] in the first place and thus 'sheds light on the agency's performance of its statutory duties.'" *Id*. (citing *U.S. Dep't of Justice v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). Because the agency used the withheld information in making its benefit determination, the court found "the public has a significant interest in being able to look at the information the agency had before it when making these determinations so that the public can monitor whether the agency is correctly doing its job." *Id*. The outcome in *Multi Ag Media LLC* is even more appropriate here because it not only informs the public about the information the agency had in making its determinations (the public's stake in the withholdings in *Multi Ag Media LLC*), but it also tells the public what the actual determination was, thereby informing the public of the type of operations FSA is choosing to fund through its farm loan programs. Thus, the Court should find here, as the D.C. Circuit did in *Multi Ag Media LLC*, that the "special need" for public scrutiny of a program such as this—a program that distributes public funds to benefit agricultural operations—substantially outweighs the possibility that disclosure could allow the public to draw inferences about the farmers' financial circumstances. 515 F.3d at 1232. Particularly where, as discussed above, FSA has offered "no reason to believe" that any privacy invasion is likely to occur, the Court should "assign[] relatively little weight to that potential

harm." *Sierra Club v. U.S. Env't Prot. Agency*, 2020 WL 7240211, at *5 (N.D. Cal. Dec. 8, 2020).

To prevent this outcome, FSA argues the Court should focus on whether "the withheld records had a direct connection to the FOIA request itself" rather than the public interest advanced by the documents' release, Def.'s Opp. Br., at 11, which is contrary to controlling authority. The Ninth Circuit has held the relevant inquiry is not how the requestor might use the information or whether the information was responsive to the original request (something that can no longer be in dispute here as FSA has identified the withheld information as responsive to the FOIA request), "but on the additional usefulness of the specific information withheld." *Tuffly v. U.S. Dep't of Homeland Sec.*, 870 F.3d 1086, 1094 (9th Cir. 2017) (internal quotations omitted). That is, FSA's decision to now argue that these records are not responsive to Plaintiffs' request, after it produced the documents to Plaintiffs, is an irrelevant aside. The balancing inquiry focuses on the general public interest, not a requestor's particular interest. *Multi Ag Media LLC*, 515 F.3d at 1231 ("[T]he relevant public interest under FOIA is the extent to which disclosure … serve[s] the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government.") (internal quotations and alterations omitted).[1] Here, the broader public interest is substantial. Without disclosure of this information the public has no other way of learning the type of operations that the agency funds through its farm loan programs and disclosure of the information sought here would provide the public with a much clearer picture of what the agency relies on in disbursing the loans. Pls.' Op. Br., at 13 (citing cases discussing how withheld information would similarly shed additional light on an agency's benefit program).

[1] This is only logical. Prior to submitting a FOIA request such as Plaintiffs', a requestor has little to no idea what information may be revealed in response. Thus, the original FOIA request cannot predict how the information disclosed might shed light on the agency's administration of its statutory duties.

Moreover, contrary to FSA's claims, the district court decision in *Telematch, Inc. v. U.S. Department of Agriculture* does nothing to alter the applicability of *Multi Ag Media LLC*.[2] Unlike the information here and the information in *Multi Ag Media LLC*, the district court in *Telematch* found that the information there did not "say[] anything about how USDA determines 'whether a particular farm is eligible to participate in the benefit programs in the first place,' … [n]or d[id] [the requestor] argue that disclosing the [information] w[ould] reveal how USDA uses [it]." 2020 WL 7014206, at *9 (D.D.C. Nov. 27, 2020) (quoting *Multi Ag Media LLC*, 515 F.3d at 1231). Thus, the information at issue in *Telematch*—and by extension the public interest discussed in *Telematch*—bears no resemblance to what is at issue here. Indeed, to the extent *Telematch* addressed some of the information at issue here—information that could speak to an agency's decision-making process (e.g., names, addresses, and other payment information)—the agency actually released that information to the requestor prior to litigation. *Id*. at *2. Ultimately, to interpret *Telematch* as FSA suggests would conflict with the D.C. Circuit's holding in *Multi Ag Media LLC*.

Thus, the substantial public interest in disclosure must prevail. *Multi Ag Media LLC*, 515 F.3d at 1233.

II. FSA Unlawfully Withheld Documents Under FOIA Exemption 4

FSA has not met its burden to justify withholding information under Exemption 4 because it fails to show the withheld information "has been kept confidential *by the entity submitting it*." Def.'s Opp. Br, at 12 (emphasis added) (citing *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019)). While this alone mandates disclosure, FSA also fails to show the information at issue was "provided to the government under an assurance of privacy." *Id*. (citing *Food Mktg. Inst.*, 139 S. Ct. at 2366). Indeed, because FSA's statements regarding how this information will be treated by the government after it is received warn of the potential

[2] *Telematch*, the only authority FSA cites to distinguish *Multi Ag Media LLC*, is currently being appealed.

for disclosure, any claim of confidentiality that may have existed has been lost. *See Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, 470 F. Supp. 3d 1096, 1114 (N.D. Cal. 2020).

FSA's opposition and the agency declaration devote no time to demonstrating that the challenged information is customarily and actually kept private or confidential by the entities submitting it. In the agency's brief they provide one clause asserting the information is "both customarily and actually treated as private." Def.'s Opp. Br., at 13. The Morris Declaration summarily states in paragraph 17 that "[u]pon review of the documents at issue in this case, it was determined that some documents contain information subject to Exemption 4." In sum, FSA's entire showing is the agency's self-serving statement it reviewed the documents themselves and this somehow led to the conclusion that the information contained within is customarily and actually treated as private by the entities submitting it. FSA fails to provide a single example of how these entities treat this information one way or another. Again, the government is asking the Court to take its word for it.

While *Food Marketing Institute* removed the requirement that the agency show disclosure would result in "competitive harm," 139 S. Ct. at 2360, the decision did not alter that it is the agency's burden to show the information subject to disclosure is customarily and actually kept confidential by the entity submitting it. Indeed, in this Court's decision in *American Small Business League v. U.S. Department of Defense*, the companies whose information was withheld and subject to a challenge of disclosure submitted declarations detailing the various methods they used to protect the information and also provided evidence that these measures had proven effective in preventing the information from being disclosed. 411 F. Supp. 3d 824, 831 (N.D. Cal. 2019). Moreover, the companies declared that they were "'not aware' of the public availability of any of the information at issue," *id*., and the plaintiffs were unable to point to any facts "demonstrating that the specific information … was not customarily and actually kept

private by the companies."[3] *Id*. at 832. While this Court noted that *Food Marketing Institute* "appear[ed]" to only require "that defendants need to merely invoke the magic words," the Court's discussion of the declarations submitted by the companies are a better indication of the standard that it applied. *Id*. The Court was willing to accept assertions made by the *entities* submitting the information to the government. These are the "defendants" to whom the Court appears to be referring, as one of the companies intervened in *American Small Business League* to protect its information. Any lesser burden—such as allowing the government to assert without evidence that it believes the companies treat the information as private and confidential, which is what it attempts to do here—would be inconsistent with Exemption 4. All parties agree that Exemption 4 only applies if the information is *actuall*y kept confidential by the companies. Def.'s Opp. Br, at 12. Moreover, since the Court's decision in *American Small Business League*, the Ninth Circuit has reiterated that when an agency "rel[ies] on affidavits" to show the information at issue is confidential within the meaning of Exemption 4, the agency "must sufficiently *explain why*" it qualifies for the exemption. *Goldwater Inst. v. U.S. Dep't of Health & Human Servs.*, 804 Fed. Appx. 661, 664 (9th Cir. 2020) (unpublished) (emphasis added). The *government's* mere "assertion" that the business supplying the information keeps it confidential without "specific explanations" or "justification[s]"to substantiate that assertion "is insufficient under FOIA." *Id*.

In addition, Plaintiffs have pointed out that some of the information at issue has been previously disclosed by the agency. For example, FSA has historically disclosed some of this information about the loans it provides agricultural operations on usaspending.gov. Pls.' Op. Br.,

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[3] Here, Plaintiffs have pointed out—and the agency has not addressed—that it is only logical that farming operations would typically make much of this information public. Pls.' Op. Br., at 15 (discussing the agency's withholdings of basic information about the entities such as their name, address, and the type of operation and noting "[i]t is highly doubtful that any farming operation keeps any of this basic business information confidential. After all, how can any business hope to market or sell its product if it refuses to publicly disclose what that product is or where it came from?"). The agency has no answer to this.

at 16. FSA responds that the agency stopped disclosing this information in 2017. Morris Decl., at ¶ 20. Yet, the agency has made no showing that the documents at issue post-date 2017. And looking at the redacted version of the documents reveals the opposite: these documents and the information at issue come from a time period prior to 2017 where the agency was making these disclosures on usaspending.gov. Dkt. No. 46-1, Smith Decl., Exhibits Q-S (the redacted version of these documents reveal they were all executed in 2016 or 2015). FSA's disclosures of this type of information on usaspending.gov from this time period remain there to this day. Pls.' Op. Br., at 16 n.4. Therefore, the names and addresses of recipients of loans, the amounts of those loans, and the types of loans should be disclosed because the agency made this information public on usaspending.gov prior to 2017. *See, e.g.*, *id*. (citing examples where this information is disclosed on the website).

Plaintiffs also pointed out that some of the information at issue stems from the agency itself. Pls.' Op. Br., at 14; *see also* Smith Decl., Exhibit A, Entry #s 16 & 19). For this information, disclosure is also required because it is "information generated by the government" and therefore cannot fall within Exemption 4. *Am. Small Bus. League*, 411 F. Supp. 3d at 830. FSA contends that government evaluations that rely on third-party information are not government information, Def.'s Opp. Br., at 13-14, but FSA's "employee plan approval[s]" are no different than the government's assessment of information reported to the agency from contractors that was at issue in *American Small Business League*, as both rely on information submitted to the agency by third-parties. Even if the government's assessments contain information from the applicants, the assessments themselves are still generated by the government. Thus, at minimum, the information created by the agency, discussed in Plaintiffs' Opening Brief, at 14-15, must be disclosed.

Turning to the additional requirement that the agency provide an implicit or explicit assurance to the entity that the government will maintain the information's confidentiality, *Food Mktg. Inst.*, 139 S. Ct. at 2366, FSA's arguments gut the notion that any actual assurance is required. First, the agency, relying on an Exemption 7 decision, argues it may look to how the

information at issue is treated in other situations where the entities disclose it to show an implicit assurance exists. Def.'s Opp. Br., at 14-15. Even if the Court were to take this giant leap of faith and embrace such a tenuous government assurance, FSA has not actually pointed to "how the information is customarily treated outside the government" other than to say that "the redacted information would not customarily be made public by the agricultural applicant from whom it was obtained." *Id*. As discussed above, however, the agency has made no showing the entities that submit this information customarily and actually keep it private. Regardless, this cannot be a fair interpretation of the assurance requirement because it would render it redundant with the requirement that the agency show how the business treats the information.

The agency next argues that there is an implicit assurance in the Privacy Act statements on the documents at issue. Morris Decl., at ¶ 19. But these statements inform the requestor that the "information collected on this form may be disclosed" in accordance with the terms of the Privacy Act. *E.g.*, Morris Decl., Exhibit B. The Privacy Act provides for the disclosure of "information which must be disclosed under the FOIA." *Fed. Labor Relations Auth. v. U.S. Dep't of Navy*, 941 F.2d 49, 55 (1st Cir. 1991) (citing 5 U.S.C. § 552a(b)(2)). Thus, these statements are actually a warning to the applicant that their information *will* be disclosed in response to a FOIA request absent some applicable FOIA Exemption. It certainly does not provide an assurance of privacy. Indeed, reading these statements as an explicit warning that the information will be disclosed in response to FOIA requests mandates disclosure here. *See Ctr. for Investigative Reporting*, 470 F. Supp. 3d at 1114 ("[W]hile it is uncertain whether an assurance of privacy is required, where, as here [the agency] indicated the opposite—that it would disclose the Form []—[the company] los[es] any claim of confidentiality it may have had.").

In sum, all of the information should be released because FSA has not met its burden to show the entities at issue customarily and actually keep it private or confidential. Also, there are smaller sets of information that should be released for additional reasons: (1) information which was publicly disclosed on usaspending.gov for the applicable time period, (2) information which

originates from the agency itself, and (3) information from documents that contain an explicit warning the information will be disclosed in accordance with the Privacy Act.

III. FSA Unlawfully Withheld Documents Under FOIA Exemption 3

The parties agree the agency cannot withhold the information at issue under Exemption 3 if it falls within Section 8791's "payment information" exception. Def.'s Opp. Br., at 18. To ward off disclosure, FSA presents a definition of "payment information" that is inconsistent with the plain text of the withholding statute.

FSA contends that Plaintiffs' construction of the phrase "payment information" to mean "information that 'concerns payments'" is too broad, *id*. (emphasis removed), despite this being the plain text of the statute. FSA argues that the dictionary definition of the *word* "payment" provides the meaning of the *phrase* "payment information." *Id*. at 19. FSA concludes "payment information" means "the action or process of someone making a payment or being paid—or actual payments." *Id*. It is not clear what FSA contends would fall within this definition as they object to disclosing actual payment amounts. Even if FSA was arguing only the payment amount could be disclosed, this cannot be a correct interpretation of the exception because Section 8791(b)(4) expressly lists names and addresses of recipients of payments as examples of what is meant by the phrase "payment information." This means not just a solitary figure, but information concerning who is getting paid and where are they located. To this list Plaintiffs merely seek to add other information concerning the payment, including the amount of the payment, what the payments are being used for, and the terms of the payments (e.g., the interest rates for repayment). In other words, virtually everything Plaintiffs seek is information that appears on a check; if the information on a check is not "payment information," than what is it? Ultimately, FSA's definition would render the exception meaningless.

Moreover, even assuming the plaint text of the statute is not clear, it is illogical to define the term "payment information" based solely on the definition of the word "payment" as FSA

attempts.[4] The Oxford English Dictionary defines "information" as "[k]nowledge communicated concerning some particular fact, subject or event." "Information, n.," OED Online, https://www.oed.com/viewdictionaryentry/Entry/95568 (last updated 2009). Thus, "payment information" is not limited to the fact of payment, but all knowledge communicated concerning the payment, such as the recipient, the payments terms, and the reason for the payment.

Plaintiffs' presentation is the only one that makes sense given the context in which Section 8791 was passed. As FSA acknowledges, Section 8791 was "[e]nacted in the wake of the *Multi Ag Media LLC v. Dep't of Agric.* decision," and its "legislative history … suggests that Congress intended to protect a broad swath of information about individual program participants." Morris Decl., at ¶ 10. Yet, Congress created a "payment information" exception mirroring the reasoning of the district court in that case and the dissent on appeal. Judge Sentelle agreed with the lower court that the withheld information sat "lightly upon the scales of balance" because it did not "include payment information connecting its data to specific subsidies." *Multi Ag Media LLC*, 515 F.3d at 1234 (Sentelle, J., dissenting). Thus, it is only logical that information is exempt from the statute and disclosable "payment information" if it is the "data" of the payment or information that "connects" that data to "specific subsidies," such as information revealing the beneficiaries and the reasons for the subsidy.

FSA also argues that "loans themselves are not payments" because they must be paid back over time. Def.'s Opp. Br., at 19. However, FSA does not explain what word they would use to describe this transfer of money to the agricultural operations besides "payment." Even if it

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[4] FSA's brief relies on the third editions of the New Oxford American Dictionary and the Oxford English Dictionary, which were both published in 2010. Def.'s Opp. Br., at 19. Unfortunately, Plaintiffs' counsel was unable to locate the physical editions of either or any online edition of the New Oxford American Dictionary. Nevertheless, Plaintiffs were able to locate the online edition of the Oxford English Dictionary. This version indicates when the last revision to the definition was made. For all the definitions Plaintiffs quote from this dictionary here, Plaintiffs note in a parenthetical when the definition was last revised. Regardless, Plaintiffs' arguments do not appear to be materially altered when relying on the present-day definitions in the online dictionary Merriam-Webster, https://www.merriam-webster.com/, or any other dictionary Plaintiffs could locate. FSA has presented no evidence that the meaning of these words has altered in any material way since the passage of Section 8791 in 2008.

were called a "disbursement," that term is defined as "money paid out." "Disbursement, n.," OED Online, https://www-oed-com.ezproxy.sfpl.org/view/Entry/53638 (last updated 1989). Indeed, the fact that the agricultural producer must "repay" the loan—defined as "[t]o pay back (money, or its equivalent)," "Repay, v.," OED Online, https://www-oed-com.ezproxy.sfpl.org/view/Entry/162696 (last updated 2009)—also indicates the loan is a payment.

The agency tries to justify its claim that loans are distinct from other types of payments, Def.'s Opp. Br., at 19 & n.9; Morris Decl., at ¶¶ 11-12, by contrasting them with subsidies—defined as "[h]elp, aid, assistance." "Subsidy, n.," OED Online, https://www-oed-com.ezproxy.sfpl.org/view/Entry/193014 (last updated 2012, but identical to the 1989 update in this respect). But this distinction is fragile at best, as the agency elsewhere explains that the farm loan programs, just like the subsidies they mention, are "designed to help" and "assist[] farmers." Morris Decl., at ¶ 6.

The agency's argument that the guaranteed loans are also not payments fares no better. A guaranteed loan is a commitment to make a future payment backed-up with public funds. *See* Morris Decl., at ¶ 6 (when issued a guaranteed loan, "FSA guarantees it against loss up to a maximum of 90 percent in most cases"). Thus, the reasoning of the dissent in *Multi Ag Media LLC* still applies to the loan guarantees as the information is connected to the financial benefit received by these agricultural operations—the guarantee, presumably without which the applicant would not be able to obtain the loan. The parties do not dispute that FSA's loan guarantees are a benefit to recipients. *See* Morris Decl., at ¶ 6 ("the Guaranteed Loan Program assists farmers who may not meet loan qualifications from a commercial lender").[5]

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[5] Finally, in response to Plaintiffs' argument that loan narrative and analysis documents, in addition to being payment information, fall outside of the scope of Section 8791 altogether because they are created by the agency and not the loan applicants, FSA contends that because these analyses are themselves derived from information provided by the loan applicants they do not originate from the agency. Def.'s Opp. Br., at 20 n.10. This would lead to absurd results. For example, it would mean any government study that relies on third-party information could be withheld as a third-party document because the knowledge that underlies the study stems from a

In short, the agency appears to be grasping at straws and has no authority for its decision to treat the information at issue as falling under the scope of Section 8791. For whatever reason, FSA is against releasing information that sheds light on its administration of its farm loan programs. Unfortunately for FSA, FOIA grants the public the right to know what their government is up to. *Am. Small Bus. League*, 411 F. Supp. 3d at 829.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court find Defendant FSA unlawfully withheld information under FOIA Exemptions 3, 4, and 6 that is responsive to the Plaintiffs' April 17, 2019 FOIA request and order Defendant FSA to produce the documents unlawfully withheld within fourteen days of this motion being heard.

Date: March 25, 2021

Respectfully submitted,

/s/ Kellan Smith
Kellan Smith (SBN 318911)
PUBLIC JUSTICE, P.C.
475 14th Street, Suite 610
Oakland, CA 94612
Phone: (510) 622-8214
Email: ksmith@publicjustice.net

Attorney for Plaintiffs

Cristina R. Stella (SBN 305475)
ANIMAL LEGAL DEFENSE FUND
525 E Cotati Avenue
Cotati, CA 94931
Phone: (707) 795-2533
Email: cstella@aldf.org

Attorney for Plaintiff Animal Legal Defense Fund

Victoria Yundt (SBN 326186)
CENTER FOR FOOD SAFETY
303 Sacramento Street, Floor 2
San Francisco, CA 94111
Phone: (415) 826-2770

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source outside the government. FSA has no authority for the proposition that authorship must be assigned to the original source of knowledge in this way.

Email: tyundt@centerforfoodsafety.org

Attorney for Plaintiff Center for Food Safety

Tyler Lobdell (SBN 321128)
FOOD & WATER WATCH
1616 P Street NW, Suite 300
Washington, DC 20036
Phone: (208) 209-3569
Email: tlobdell@fwwatch.org

Attorney for Plaintiff Food & Water Watch