IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SEQUOIA PACIFIC SOLAR I, LLC, and EIGER LEASE CO, LLC,	)	
Plaintiffs,	)	No. 13-139 C
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

COMPLAINT

I. INTRODUCTION.

1. For over fifty years, the United States has used the investment tax credit ("ITC") to promote capital investment in specific industries and activities. An investment tax credit provides a dollar for dollar reduction in income taxes otherwise owed by a taxpayer and thus constitutes a powerful financial incentive for taxpayers to make capital investments in those industries and activities.

2. One of the activities that Congress has decided to promote through the ITC is the development of solar energy, using tax credits to encourage the significant capital investments required for the upfront purchase and installation of solar energy facilities. More recently, following the financial crisis of 2008,

Congress enacted Section 1603 of the American Recovery and Reinvestment Act of 2009. That legislation established a cash grant program for solar energy facilities and other renewable energy projects that Congress intended to "mimic" the established rules for ITCs. Through Section 1603, Congress intended to preserve and create jobs, boost investments needed to increase economic efficiency, provide long-term economic benefits, and limit the environmental consequences, including climate change, of greenhouse gas emissions.

3. The Office of the Fiscal Assistant Secretary to the U.S. Department of Treasury ("Treasury") was charged with making cash grant payments to applicants under Section 1603. This Complaint arises out of Treasury's failure to comply with Congress's express instructions for calculating and making those payments.

4. In Section 1603, Congress did not create a new administrative program. Congress did not set forth new criteria for the receipt of payments. Congress did not authorize rulemaking. Instead, Congress mandated that Treasury make payments — promptly — based on well-known tax concepts that applied to ITCs under Internal Revenue Code Section 48. Treasury did not apply those rules. Treasury instead established its own, different rules (called "Guidance") for determining the amount the United States Government would pay for Section 1603 cash grants. Treasury had no authority to promulgate or to enforce those rules, which in any event were contrary to the plain language of Section 1603.

5. In particular, and as set out in greater detail below, despite Congress's express statutory mandate that the Secretary of the Treasury shall make payment of cash grants within 60 days of the application or the date the facility is placed in service, Treasury delayed payments on applications for months. When Treasury did approve payments to applicants, it did not follow the applicable tax precedent for ITCs. Instead, Treasury used its "Guidance" to impose unjustified benchmark values on solar energy facilities, disregarding both the evidence of fair market value established by actual, arms-length transactions between sophisticated parties and independent appraisals by experienced, third-party appraisers. Moreover, even when applicants capitulated to Treasury's improper and invalid benchmark valuations, Treasury then retroactively revised its own benchmarks downward — by more than 25% in some instances.

6. As a result, the Treasury has failed to pay Plaintiffs cash grants in the amounts that they are entitled to, thereby materially frustrating congressional intent. Plaintiffs, over a period of many months, engaged in discussions and correspondence with Treasury in an unsuccessful effort to correct the deficiencies in its administration of the Section 1603 program. As Treasury insists that its decisions on cash grants are final and non-appealable, the only means of redress that Plaintiffs now have is to bring this lawsuit.

II. JURISDICTION.

7. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. § 1491, because Section 1603 is a money-mandating statute that requires reimbursements be made to "each person who places in service specified energy property." This Court has previously held that Section 1603 is a money-mandating statute giving rise to jurisdiction in this Court. *ARRA Energy Co. I v. United States*, 97 Fed. Cl. 12, 21 (2011).

III. PARTIES.

8. Non-party SolarCity Corporation is a national leader in solar energy services, designing, installing, maintaining, monitoring, and financing solar energy systems, serving thousands of customers in fourteen states with thirty-one operation centers. SolarCity is the only vertically integrated company in the United States (if not the world) that operates and manages every stage of solar deployment, maintaining a workforce of more than 2,500 employees.

9. Each Plaintiff owns or leases solar energy facilities constructed by SolarCity and applied for a cash grant pursuant to Section 1603.

10. Plaintiff Sequoia Pacific Solar I, LLC ("Sequoia Pacific") is a Delaware limited liability company with its principal place of business in California. Sequoia Pacific was created by private investors, including SolarCity, to finance, develop, and own residential and commercial solar energy projects

across the United States, including projects in Arizona, California, Colorado, Connecticut, the District of Columbia, Hawaii, Massachusetts, Maryland, New Jersey, New York, Oregon, Pennsylvania, and Texas.

11. Plaintiff Eiger Lease Co, LLC ("Eiger") is a Delaware limited liability company with its principal place of business in California. Eiger was created by private investors, including SolarCity, to finance, develop, and lease residential and commercial solar energy projects across the United States, including projects in Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, Maryland, New Jersey, New York, Oregon, and Texas.

12. Defendant is the United States of America, acting by and through its agency, the Department of Treasury ("Treasury"). Treasury is an Executive Agency of the United States government, charged with administering the Section 1603 cash grant program. Responsibility for that administration was delegated to the Office of the Fiscal Assistant Secretary.

IV. CONGRESS'S EFFORTS TO FOSTER THE DEVELOPMENT OF AND INVESTMENT IN SOLAR ENERGY

A. Congress's Authorization of Investment Tax Credits for Solar Projects.

13. Since 1962, the United States has used the ITC to promote capital investment in targeted industries and activities. An investment tax credit provides a dollar for dollar reduction in income taxes otherwise owed by a taxpayer. The

ITC thus constitutes a powerful financial incentive for taxpayers to make capital investments in those targeted industries and activities.

14. Congress has made ITCs available to encourage investment in a wide variety of areas, including ethanol, biodiesel, research and development, enhanced oil recovery, low-income housing, the renovation of historic buildings, cogeneration facilities, nuclear power plants, projects using advanced coal technologies, projects in low-income areas, new hires, small employer pension plan startups, employer-provided child care, orphan drugs for rare diseases, and railroad track maintenance. Targeted industries have included aviation and public transportation, as well as energy.

15. An ITC is typically calculated as a specified percentage of the investment property's "cost basis." Over the years, a substantial body of rules and law has developed concerning the ITC, including how to determine the "cost basis" of the investment.

16. Congress has included solar energy among the activities and industries it promotes through ITC benefits. Those benefits are an important motivating force behind the development of the industry.

17. Congress first extended ITC treatment to solar energy facilities in the Energy Tax Act of 1978, Pub. L. No. 95-618, §§ 101, 301, 92 Stat. 3174, 3175-80,

3104-201. Congress's stated purpose for this and other undertakings in that Act was "to provide tax incentives for the production and conservation of energy." *Id.*

18. Congress over time adjusted the applicability and amount of the ITC for solar energy facilities. In the Energy Tax Incentives Act of 2005, Pub. L. No. 109-58 Tit. XIII, 119 Stat. 986, Congress set the ITC for solar energy facilities at 30% of cost basis, meaning that, for example, a solar energy facility with a $1 million cost basis, placed in service during a given taxable year, would generate a $300,000 credit against taxes otherwise owed in that taxable year, in addition to other federal tax benefits such as depreciation, and the financial benefits derived from the electricity generated. This ITC currently appears in Section 48 of the Internal Revenue Code, 26 U.S.C. § 48.

19. An ITC, by definition, is of economic value only insofar as it can be applied against income taxes otherwise owed by the taxpayer. A given solar energy developer may not have sufficient net income itself to make use of the ITCs. In addition, the cost of buying and installing solar systems is substantial, and solar energy developers routinely need to raise capital to support projects.

20. Thus, solar energy developers typically seek the involvement of well-funded third parties that have the necessary capital and can take advantage of the ITC and other available tax benefits. Consistent with longstanding practice and precedent, along with express rulings, bulletins, and other authority from the

Internal Revenue Service, solar developers partner with such third parties through various arrangements for this purpose. This is a common practice for many capital-intensive industries. For example, the sale-leaseback has been used for decades by airlines, railroads, ship and trucking companies, oil and gas companies, utilities, mining, and telephone companies to finance equipment.

21. Applying relevant principles and precedent, the taxpayer claiming the ITC determines the cost basis upon which the 30% ITC should be calculated, and claims a credit based on this amount in its tax return. The Internal Revenue Service can subsequently determine whether to audit the return, and if so, challenge the claimed cost basis and resulting credit.

B. The Section 1603 Cash Grant Program.

22. The demand for ITCs largely collapsed in 2008. With the sharp economic downturn in the economy as a whole, investors that faced losses, or significantly reduced profits, had relatively little need for ITCs to reduce income taxes. Under those conditions, investor participation in ITC projects, including solar energy projects, was in jeopardy.

23. Congress responded in February 2009, by enacting the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115. ("Recovery Act"). The stated purposes of the Recovery Act included the preservation and creation of jobs to promote economic recovery, assistance to

those most impacted by the recession, and the provision and promotion of investment in transportation, environmental protection and other infrastructure to increase economic efficiency and provide long-term economic benefits.

24. Section 1603 of the Recovery Act, titled "Grants For Specified Energy Property In Lieu of Tax Credits," addressed the lack of demand for such ITCs by creating a temporary program[1] under which those qualifying for an ITC under IRC Section 48 could instead elect to receive the same economic benefit, but as an immediate cash grant, rather than as a tax credit.

25. Section 1603 provides in relevant part:

> (a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). . . .
>
> (b) GRANT AMOUNT.—
>
> (1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property . . . [for solar projects, 30% of the basis]

[1] As originally enacted, Section 1603(j) required that all grant applications be filed before October 1, 2011, a date subsequently extended to October 1, 2012 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, H.R. 4853, 111th Cong. § 707(b) (2010).

> (c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—(1) the date of the application for such grant, or (2) the date the specified energy property for which the grant is being made is placed in service.
>
> (d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term ''specified energy property'' means any of the following:
>
> [...]
>
> (3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.
>
> [...]
>
> (h) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48.
>
> [...]

26. Both solar energy developers and financial investors in good faith undertook massive, multi-million dollar investments predicated upon the availability of the Section 1603 cash grants and the explicit promise that the grants would be paid no later than 60 days after a given solar energy facility was placed into service.

27. Section 1603's references to Internal Revenue Code Section 48 clearly indicate that Congress intended that the Section 1603 cash grant program

be administered in essentially the same way as the ITC program. For example, Section 1603(h) directs that terms used in both Section 1603 and Internal Revenue Code Section 48 shall have the same meaning; the language of Section 1603(d) defines "Solar Property" as "[a]ny property described in clause (i) or (ii) of [Internal Revenue Code] section 48(a)(3)(A)." If there were any doubt that Congress wanted the 1603 cash grant program to operate in the same way as the ITC, the Conference Report accompanying Section 1603 put it to rest, stating that "[i]t is intended that the grant provision *mimic* the operation of the credit under section 48 [of the IRC]." Joint Committee On Taxation, General Explanation Of Tax Legislation Enacted In The 111th Congress at 109-110, JCS-2-11 NO 6 (I.R.S.), 2011 WL 940372 at *11 ("General Explanation") (emphasis added).

28. Congress's approach makes perfect sense, given that the ultimate financial effect of the ITC program and the cash grant, to both the Government and the solar entity, should be the same (assuming that the solar entity or those participating in it would have had income against which to make use of the ITC). In each case, the solar entity promptly receives a financial benefit equal to 30% of the cost basis of the solar energy facility.

29. The legislative history of Section 1603 further confirms that Congress intended that the Section 1603 program address and stimulate the development of solar projects in the same manner as did the ITC program, while overcoming the

impediments to the use of ITCs created by the (hopefully temporary) economic downturn:

> The Congress understands that some investors in renewable energy projects have suffered economic losses that prevent them from benefitting from the renewable electricity production credit and the energy credit. The Congress further believes that this situation, combined with current economic conditions, has the potential to jeopardize investment in renewable energy facilities. The Congress therefore believes that, in the short term, allowing renewable energy developers to elect to receive direct grants in lieu of the renewable electricity production credit and the energy credit is necessary for the continued growth in this important industry.

General Explanation at * 11.

30. Certainty regarding the method of determining cost basis was critical. Under the terms of Section 1603, Congress directed that Treasury pay the cash grant only after all financial arrangements with investors had been put into place, all expenditures on the facilities had been made, and the solar energy facility had been placed into service. Accordingly, investors needed to know, before committing to finance hundreds or even thousands of solar energy facilities, exactly what the cash grant for those facilities would be.

31. Section 1603(c) also required that the Treasury's payments be expeditious, requiring that the Government "shall make payment" of a grant "during the 60-day period beginning on the later of (1) the date of the application for such grant, or (2) the date the specified energy property for which the grant is

being made is placed in service." This expedited payment mechanism is critical to the Congressional intent of encouraging economic recovery, and was necessary to "mimic" ITC rules, which allow a taxpayer to claim the ITC against its quarterly estimated tax payments to the Internal Revenue Service. The Internal Revenue Service would still have the authority to audit the award (as it does for the ITC) and insist that grant recipients report any excess grant as taxable income in the year the grant accrued. *See* AM 2011-004 (September 27, 2011).

32. In Section 1603, Congress did not create a new administrative program. Congress did not set forth new criteria for the receipt of payments. Congress did not authorize rulemaking. Instead, Congress mandated that the Government provide payments — promptly — based on well-known tax concepts that had been used for years by the very investors it hoped to incentivize.

33. In short, companies in good faith entered into contracts and took the risks of building the industry in reliance upon clear congressional statements that the Section 1603 program would be administered under certain, well-established rules, the same as had governed ITCs. Without such certainty, the risks would simply have been too great, especially during the economic downturn that began in 2008.

V. THE DETERMINATION OF "COST BASIS."

34. As described above, Section 1603(a) entitles an owner of a solar energy project to a reimbursement payment equal to 30% of the owner's cost basis for federal income tax purposes in the portion of the facility that qualifies as "specified energy property." Basis for federal income tax purposes is defined in the tax code as "cost" or "cost basis." *See* 26 U.S.C. § 1012. In the context of the Internal Revenue Code, these terms do not mean either the actual "cost" of building a property, or the amount it would "cost" to buy the materials and replace the property; rather, under well settled precedents and principles, that "cost" or "cost basis" is equal to the property's purchase price.

35. Where both the buyer and seller are willing and well-informed participants in a sale transaction, the purchase price is determinative and establishes fair market value. Only in the rare case where the elements are not met would a further investigation into purchase price be warranted, and in such a rare case, there are well-established protocols for determining fair market value.

VI. TREASURY'S IMPROPER ADMINISTRATION OF THE SECTION 1603 PROGRAM.

36. Consistent with Section 1603 and established practice, solar energy developers such as SolarCity and sophisticated investors, assisted by skilled advisors, engaged in carefully negotiated transactions, resulting in agreements for the sale of specific solar energy assets as to which Section 1603 applications were

submitted. Where applicable, those applications recited the purchase price that the parties had negotiated, and were further supported by an independent appraisal, prepared by an expert, certified appraiser, which applied various valuation techniques for assessing the fair market value of the solar energy facility.

37. Instead of administering the Section 1603 program as Congress intended, Treasury improperly changed the rules, reduced grant payments, and undermined the economic assumptions under which industry participants obtained financing and installed renewable energy facilities.

38. Administration of the Section 1603 program was delegated to Treasury's Office of the Fiscal Assistant Secretary. That Office has no expertise or experience in making proper cost basis determinations, and upon information and belief, had not previously been made responsible for administering any program comparable to the Section 1603 cash grant program. Rather, according to its website description, that Office "helps formulate policy systems for the collection, disbursement, management and security of public monies in the United States and abroad, and related government-wide accounting and reporting for those funds." *See* http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Fiscal-Service.aspx.

39. Section 1603 did not grant Treasury authority to promulgate rules or regulations related to the administration of the cash grant program, and certainly

not rules or regulations for determining "cost basis," because Congress dictated that ITC definitions would govern. Treasury nonetheless did issue such rules and regulations, most problematically in the form of so-called "guidance" for the determination of cost basis: "Evaluating Cost Basis for Solar Photovoltaic Property" ("Cost Basis Evaluation Process Guidance") *available at* http://www.treasury.gov/initiatives/recovery/Documents/N%20Evaluating_Cost_Basis_for_Solar_PV_Properties%20final.pdf.

40. Treasury's "Cost Basis Evaluation Process Guidance" is not consistent with the ITC program that it is supposed to mimic. Among other defects, all of which resulted in lower cash grants than those to which applicants were entitled, and which undermined the legitimate expectations upon which financing for solar energy facilities had been obtained:

41. First, the "Cost Basis Evaluation Process Guidance" fails to rely upon the actual purchase price of the solar energy facilities that are subject to the application in determining the cost basis of those facilities.

42. Second, the "Cost Basis Evaluation Process Guidance" purports to establish "benchmark" values for residential and commercial solar energy facilities. On information and belief, since its inception, the solar energy ITC

program has never included benchmark values against which a would-be ITC recipient's cost basis is examined.

43. Third, while the "Cost Basis Evaluation Process Guidance" purports to subject claimed cost bases "materially higher than benchmarks" to "closer scrutiny," as a practical matter, Treasury rejected any claimed costs bases above its own benchmarks and refused to provide any cash grant in excess of that supported by those benchmarks. Thus, Treasury's creation of a "benchmark"-based evaluation process is both unauthorized by the language of Section 1603 and inconsistent with Congress's intent that the program incorporate the tax and evaluation concepts of the ITC program.

44. Fourth, to the extent the "Cost Basis Evaluation Process Guidance" could properly rely on benchmarks, the benchmarks that Treasury adopted were unrepresentative of the actual value because they excluded residential and commercial solar energy facilities that should have been included. Moreover, as explained below, Treasury's practice of delaying, and then rejecting, claims in excess of benchmarks coerces applicants to undervalue their solar facilities simply to get paid part value of their project. As a result, Treasury's tactics have skewed the data on which Treasury purportedly relies to set its benchmarks.

45. Fifth, the "Cost Basis Evaluation Process Guidance" is made even more problematic because, as stated in the Guidance, its benchmark rates are

"constantly updated (as warranted) drawing on relevant publicly available information and analyses by various experts, data from existing 1603 applications and other confidential sources, and the 1603 review team's experience with solar PV properties." By comparing an applicant's cost basis to a fluctuating benchmark, premised in part upon "confidential sources," the "Cost Basis Evaluation Process Guidance" introduces great uncertainty into the Section 1603 program, contrary to Congress's desire that the program simply mimic the ITC. This uncertainty surrounding the cash grant program made it less likely that entities would be willing to invest in solar energy projects, the direct opposite of what Congress intended.

46. Indeed, Treasury's mishandling of the Section 1603 program has been so severe that, instead of providing certainty and liquidity, solar developers have been required to stand in as sureties for the United States Government, promising to pay investors if and when the United States Government fails to comply with the explicit mandates of Section 1603.

47. Sixth, the "Cost Basis Evaluation Process Guidance" states that determining the fair market value of energy properties under the Section 1603 program may be evaluated using one of three methods: the "Cost Approach," the "Market Approach," or the "Income Approach," but then declares that the income approach is "the least reliable method of valuation." This instruction cannot be

reconciled with either the Internal Revenue Service's guidelines governing valuation, or decisions of this and other courts that have recognized the Income Approach as a legitimate means of valuation, without pre-emptively declaring it "less reliable." Treasury's pre-emptive denigration of the income method, and the approach it has actually taken to that valuation method in reviewing cash grant applications, is inconsistent with the dictates of Section 1603.

48. Seventh, the "Cost Basis Evaluation Process Guidance" made it all but impossible for a cash grant applicant to be paid within 60 days of the later of the submission of the application or the facility's in service date, in violation of Section 1603(c), unless the applicant simply capitulated to the improper and invalid benchmark valuation. Even where there is no question that the applicant is entitled to at least the benchmark valuation, Treasury does not pay the undisputed amount while reviewing the evidence offered for a higher basis. To the extent that Plaintiffs did receive some grant monies, those payments occurred well beyond the 60-day deadline. Thus, Congress's intent that the Section 1603 program inject immediate liquidity into the solar energy market was not fulfilled.

49. The effect of such later payments can be severe for any company, and were particularly severe for SolarCity. Indeed, over time, limited liability companies in which SolarCity was an investor were forced to apply for smaller

grants than they were entitled, because the negative impact of delayed payments was simply too great to bear.

50. In addition to the deficiencies in the "Cost Basis Evaluation Process Guidance" itself, on December 5, 2012, Treasury stated in an email that it was revising downward its "Guidance" for California and Arizona residential systems, that the revision was retroactive, and that it would apply to pending applications. The reduction was substantial, reducing benchmark values for California from $7 per watt of generating capacity to $6 per watt and reducing benchmark values for Arizona from $7 per watt to $5 per watt — resulting in drastic decreases in the size of cash grants for pending applications that had been made in reliance on the purported Guidance. Treasury gave no explanation for the change at the time, and has given none since. It made this change without even revising the Guidance. The effect of this change, if applied to all pending applications, will run into the millions of dollars.

51. Plaintiffs over a period of many months engaged in discussions and correspondence with Treasury, in an ultimately unsuccessful effort to correct the deficiencies in its administration of the Section 1603 program.

VII. TREASURY'S IMPROPER FAILURE TO PROVIDE PLAINTIFFS CASH GRANTS IN THE AMOUNTS FOR WHICH THEY HAD APPLIED.

52. As a result of the foregoing and other misapplications of the Section 1603 program, Plaintiffs have not been paid the cash grants to which they are entitled.

53. Sequoia Pacific submitted a valid Section 1603 grant application with respect to 115 residential and 31 commercial solar energy projects. The aggregate cost basis for those projects was supported by the purchase price and confirmed by appraisals prepared by Mesirow Financial Consulting, an independent, third party appraisal company. Treasury, however, improperly reduced the award for Sequoia Pacific's projects, and instead paid a cash grant that was $6,079,167 less than Sequoia Pacific was entitled to.

54. Eiger submitted a valid Section 1603 grant application with respect to 2,036 residential solar energy projects. The aggregate cost basis for those projects was confirmed by appraisals prepared by Mesirow Financial Consulting, an independent, third party appraisal company. Treasury, however, improperly reduced the basis of Eiger's projects, and instead paid a cash grant that was $1,995,241 less than Eiger was entitled to.

55. Treasury has notified each Plaintiff that its decisions on their Section 1603 grant applications constitute final agency action.

56. Both Sequoia Pacific and Eiger have still more applications that are pending before Treasury. If Treasury reduces the bases for Plaintiffs' remaining projects in the same way that it has past projects, Sequoia Pacific and Eiger will suffer millions of dollars in additional damages.

CLAIM FOR RELIEF

COUNT ONE
(Violations of Section 1603, Statutory Mandates and Statutory Authority)

57. Plaintiffs re-allege and incorporate ¶¶ 1-56 of the Complaint as if set forth fully herein.

58. Section 1603 of the Recovery Act requires the Government to make payments based on the statute's plain language and the statute's mandates, and to make those payments pursuant to the statute's direction that Treasury follow applicable U.S. tax code, rules and principles.

59. Section 1603(h) appropriates "such sums as may be necessary to carry out this section."

60. Section 1603 further requires that the payments must be determined according to specific criteria set forth in the statute, the Internal Revenue Code and tax rules and principles.

61. No authority permits Treasury to contradict the language or mandate of Section 1603 or devise or create alternative "economic" rules or valuations outside the strictures of Section 1603's clear language.

62. No authority permits the Government to promulgate "Guidance" that contradicts the language or mandate of Section 1603.

63. Plaintiffs are qualified applicants under Section 1603.

64. Plaintiffs have submitted applications to the Government in conformity with the terms of Section 1603.

65. The Government failed to provide timely and complete cash grants to Plaintiffs, in violation of Section 1603.

66. The Government's violations directly caused substantial damage to Plaintiffs.

PRAYER FOR RELIEF

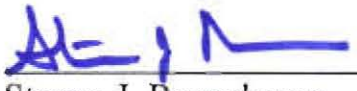
WHEREFORE, Plaintiffs respectfully ask this Court to enter judgment in their favor and against Defendant and to:

A. Award Plaintiffs monetary relief equal to the difference between the amounts they have received pursuant to their Section 1603 applications and the amounts they should have received;

B. Award Plaintiffs such additional monetary relief as is available under applicable law; and

C. Award Plaintiffs such other and further relief as this Court may deem necessary and proper.

Respectfully submitted,



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February 22, 2013

FORM 2
COVER SHEET

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In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)
See attached.

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

13-139 C

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Is the attorney of record admitted to the Court of Federal Claims Bar? ☒ Yes ☐ No
Does the attorney of record have a Court of Federal Claims ECF account? ☒ Yes ☐ No
If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6402 for admission papers and/or enrollment instructions.

Nature of Suit Code: 5 1 6

Select only one (three digit) nature-of-suit code from the attached sheet.
If number 213 is used, please identify partnership or partnership group. If numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

Agency Identification Code: T R E

See attached sheet for three-digit codes.

Amount Claimed: $ 8,074,408
Use estimate if specific amount is not pleaded.

Disclosure Statement:
Is a RCFC 7.1 Disclosure Statement required? ☒ Yes ☐ No
If yes, please note that two copies are necessary.

Bid Protest:
Indicate approximate dollar amount of procurement at issue: $ N/A
Is plaintiff a small business? ☐ Yes ☐ No

Vaccine Case:
Date of Vaccination: N/A

Related Cases:
Is this case directly related to any pending or previous case? ☐ Yes ☒ No
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.