UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROSEMARY LOVE, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 00-2502 (RBW)
SONNY PERDUE, Secretary, United States Department of Agriculture,[1]	)	
Defendant.	)	

ORDER

The plaintiffs in this civil action are eight female farmers[2] who alleged, inter alia, that the United States Department of Agriculture ("USDA") engaged in credit-related discrimination against them on the basis of their gender. See Fourth Amended and Supplemental Complaint ("4th Am. Compl.") at 3, ECF No. 160. On November 14, 2016, the Court denied the plaintiffs' motion to reinstate Counts III through VI of the fourth Amended Complaint and granted their request to dismiss the first two counts of the fourth Amended Complaint. See Order at 12 (Nov. 14, 2016), ECF No. 269. Currently pending before the Court is the Plaintiffs' Motion for an Award of Fees, Costs, and Expenses ("Pls.' Mot."), ECF No. 198. Upon careful consideration of

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Sonny Perdue has been automatically substituted as the defendant in this matter.

[2] Ten plaintiffs are listed on the Fourth Amended Complaint. See Fourth Amended and Supplemental Complaint at 1–2, ECF No. 160. Eight of these plaintiffs chose to resolve their claims through the United States Department of Agriculture's administrative claims process described infra, one elected to not file an administrative claim nor to continue to pursue her claims in this suit, and one could not be reached by counsel. See Order at 6 n.4 (Nov. 14, 2016), ECF No. 269.

the parties' submissions,[3] the Court concludes for the following reasons that it must deny the plaintiffs' motion.

I. BACKGROUND

The Court discussed the factual background pertinent to this case in its prior Order, see Order at 2–6 (Nov. 14, 2016), ECF No. 269, and will not reiterate the lengthy procedural history of this case again here. Relevant to this motion, the Court notes that the plaintiffs' motion for class certification was denied in both this case and in Garcia v. Veneman, see id. at 4 (first citing Love v. Veneman, 224 F.R.D. 240 (D.D.C. 2004), aff'd in part, remanded in part sub nom. Love v. Johanns, 439 F.3d 723 (D.C. Cir. 2006); then citing Garcia v. Veneman, 224 F.R.D. 8 (D.D.C. 2004), aff'd and remanded sub nom. Garcia v. Johanns, 444 F.3d 625 (D.C. Cir. 2006)), a case involving a putative class of Hispanic farmers asserting similar discrimination claims, see id. at 2. Although "the USDA [did] not offer[] to settle these cases on a class basis pursuant to Rule 23, . . . [t]he USDA did, however, develop a[n] [ ] administrative claims process for female and Hispanic farmers." Id. at 4 (internal citation omitted). After "all of the plaintiffs' claims [we]re dismissed with prejudice" as a result of the Court's November 14, 2016 Order, id. at 12, the Court afforded both parties an opportunity to provide supplemental briefing on the plaintiffs' pending motion for attorneys' fees, costs, and expenses (collectively, "fees"), see Min. Order (Nov. 30, 2016) (setting supplemental briefing schedule).

[3] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for an Award of Fees, Costs, and Expenses ("Pls.' Mem."); (2) the Defendant's Opposition to Plaintiffs' Motion for an Award of Fees, Costs, and Expenses ("Def.'s Opp'n"); (3) the Plaintiffs' Reply in Support of Their Motion for an Award of Fees, Costs, and Expenses ("Pls.' Reply"); (4) the Plaintiffs' Amendment and Supplement to Motion for an Award of Fees, Costs, and Expenses ("Pls.' Supp. Mem."); (5) the Defendant's Supplemental Response to Plaintiffs' Motion for Attorney[s'] Fees, Costs, and Expenses ("Def.'s Supp. Resp."); (6) the Plaintiffs' Reply in Support of (continued) . . .

II. STANDARD OF REVIEW

"Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). Thus, under Article III's case or controversy requirement, federal courts may only decide "real and substantial controvers[ies]." North Carolina v. Rice, 404 U.S. 244, 246 (1971) (per curiam) (quoting Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 241 (1937)). Compliant with this limitation, federal courts have no jurisdiction over cases that have become moot, see Worth v. Jackson, 451 F.3d 854, 857 (D.C. Cir. 2006), nor over claims against the United States for which the government has not waived its sovereign immunity, see Tri-State Hosp. Supply Corp. v. United States, 341 F.3d 571, 575 (D.C. Cir. 2003) (stating that "sovereign immunity is jurisdictional in nature"). "The Court has 'an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority,'" Lindell v. Landis Corp. 401(k) Plan, 640 F. Supp. 2d 11, 14 (D.D.C. 2009) (quoting Abu Ali v. Gonzales, 387 F. Supp. 2d 16, 17 (D.D.C. 2005)), and "[c]laims that have been resolved by earlier settlement agreements, and therefore present no ongoing controversy, are moot," Pigford v. Vilsack, 75 F. Supp. 3d 462, 466 (D.D.C. 2014).

III. ANALYSIS

A. The USDA's Sovereign Immunity

The USDA argues that, "[a]s a threshold matter, this Court lacks jurisdiction to award attorney[s'] fees and expenses to [the] plaintiffs from the government absent an express waiver of sovereign immunity." Def.'s Supp. Resp. at 14 (citing Consol. Edison Co. v. Bodman, 445 F.3d 438, 446 (D.C. Cir. 2006)). The Court disagrees.

(continued . . .)
Motion for an Award of Fees, Costs, and Expenses, as Amended and Supplemented ("Pls.' Supp. Reply"); (7) the Framework for Hispanic or Female Farmers' Claims Process, ECF No. 155-1 ("Framework"); and (8) the USDA Hispanic and Women Farms and Ranchers Settlement Agreement, ECF No. 275-1 ("Settlement Agreement").

The plaintiffs seek a fees award under the common fund doctrine[4] or, in the alternative, under the Equal Credit Opportunity Act and the Equal Access to Justice Act, see Pls.' Mot. at 1; see also Pls.' Supp. Mem. at 9, arguing that the United States has waived its sovereign immunity for awards under all three options, see Pls.' Supp. Reply at 2–3. For several reasons the Court accepts the plaintiffs' waiver position.

First, the District of Columbia Circuit made clear in Commonwealth of Puerto Rico v. Heckler that the Equal Access to Justice Act "waived the federal government's sovereign immunity for attorney[s'] fee awards encompassed under common law exceptions to the American rule, including the 'common fund' exception." 745 F.2d 709, 711 (D.C. Cir. 1984), abrogated on other grounds as recognized in Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1267 n.3 (D.C. Cir. 1993). Second, the Equal Credit Opportunity Act expressly provides for attorneys' fees and costs, see 15 U.S.C. § 1691e(d) ("In the case of any successful action under [this statute], the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under [this statute]."), and the Equal Access to Justice Act states that "[t]he United States shall be liable for such fees and expenses to the same extent that any other party would be liable . . . under the terms of any statute which specifically provides for such an award," 28 U.S.C. § 2412(b), thereby incorporating the Equal Credit Opportunity Act's fees and costs provision and waiving the government's sovereign immunity. Moreover, the USDA's sovereign immunity argument is

[4] The common fund doctrine "allows a party who creates, preserves, or increases the value of a fund in which others have an ownership interest to be reimbursed from that fund for litigation expenses incurred, including counsel fees." Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1265 (D.C. Cir. 1993). "The common-fund doctrine reflects the traditional practice in courts of equity, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney[s'] fees." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (internal citation omitted) (first citing Trustees v. Greenough, 105 U.S. 527, 532–37 (1882); then citing Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 257–58 (1975)).

belied by the fact that the awards granted by the USDA's administrative claims process are funded through the Judgment Fund, see Framework § I(E) ("Cash awards and tax relief will be paid from the Judgment Fund."), which "is only accessible when the United States has waived its sovereign immunity," Vivian S. Chu & Brian T. Yeh, Cong. Research Serv., R42835, The Judgment Fund: History, Administration, and Common Usage 1 (2013); see also Trout v. Garrett, 891 F.2d 332, 335 (D.C. Cir. 1989) (characterizing the Judgment Fund as "'a mechanism for facilitating payment of judgments' rendered on claims authorized by another statute" (quoting Rosenfeld v. United States, 859 F.2d 717, 727 (9th Cir. 1988))). Accordingly, the Court concludes that because the Equal Access to Justice Act waived the government's sovereign immunity with regard to the fees requested in this action, either under the common fund doctrine or as provided by the Equal Credit Opportunity Act, the Court has jurisdiction over the plaintiffs' motion.

B. The Framework and Settlement Agreement

The USDA next argues that the Framework establishing the USDA's administrative claims process and the Settlement Agreement signed by each claimant as a part of that process bar any fees award. See Def.'s Supp. Resp. at 5 (stating that the plaintiffs "waived their right to seek any fees from the government as a condition of participation" in the claims process). The plaintiffs disagree, arguing that "[t]he form [S]ettlement [A]greement stated that individuals would not seek attorneys' fees beyond those allowed under the Framework describing the administrative claims process, but the Framework only limited the amount of attorneys' fees in connection with individuals' filing of administrative claims (in most cases, the limit was $1,500)." Pls.' Supp. Reply at 7. According to the plaintiffs, "[i]t would be unreasonable to construe the [S]ettlement [A]greement and Framework to limit, not only fees recoverable for

work specifically performed in connection with the filing of claims in that process, but for nearly 20,000 hours of work performed in connection with this lawsuit over the course of [seventeen] years." Id.

Courts "interpret a settlement agreement under contract law." Keepseagle v. Perdue, 856 F.3d 1039, 1047 (D.C. Cir. 2017) (quoting Gonzalez v. Dep't of Labor, 609 F.3d 451, 457 (D.C. Cir. 2010)). First, the Court must "determine whether the disputed language is unambiguous." Id. (quoting Armenian Assembly of Am., Inc. v. Cafesjian, 758 F.3d 265, 278 (D.C. Cir. 2014)). If so, "a court will assume that the meaning ordinarily ascribed to those words reflects the intention of the parties." Pigford, 75 F. Supp. 3d at 467 (quoting Pigford v. Schafer, 536 F. Supp. 2d 1, 10 (D.D.C. 2008)); see also Halldorson v. Sandi Grp., 934 F. Supp. 2d 147, 152–53 (D.D.C. 2013) ("Where a contract is clear and unambiguous on its face, its plain language controls in determining the parties' intentions."). If the contract's language is ambiguous, the Court must determine "what a reasonable person in the position of the parties would have thought the disputed language meant." Keepseagle, 856 F.3d at 1047 (quoting Cafesjian, 758 F.3d at 278).

In Pigford, a law firm filed a petition for fees related to its representation of a class member's Track B arbitration claim. See 75 F. Supp. 3d at 464–65. "The Pigford case arose from decades of racial discrimination by the [USDA] and local county commissioners in administering farm loans and benefits to African American farmers." Id. at 465. The USDA filed a motion to dismiss the law firm's fee petition on the grounds that it was barred by a settlement agreement between the USDA and the law firm. See id. The Court agreed with the USDA, concluding that "the unambiguous language of the [a]greement provide[d] for the 'full and final settlement' of 'any and all claims' for attorney[s'] fees, costs, and expenses related to

the Pigford class action, specifically including any claim for fees, costs, and expenses related to Track B arbitrations." Id. at 467. The Court also noted that "the [a]greement's settlement of 'any and all' fee claims 'related in any way to any aspect' of these actions for work performed through March 20, 2003, squarely encompasse[d] [the law firm's] work." Id. at 467–68. Consequently, the Court granted the USDA's motion to dismiss and denied the fee petition as moot. See id. at 469; see also Stewart v. Rubin, 948 F. Supp. 1077, 1106 (D.D.C. 1996) (denying an attorney's request for a fee award in a class action because, among other reasons, "the Settlement Agreement fixes the amount of attorneys' fees that [the] defendant is obligated to pay").

With the guidance provided by Pigford, the Court turns to the Framework and Settlement Agreement in this case. Section XI of the Framework, entitled "Attorneys' Fees," provides in its entirely that:

> Any attorneys' fees must be paid directly by the claimant. Such fees paid out of the cash award for Tier 2 or Tier 1(a) shall not exceed $1,500 per claimant. For Tier 1(b), such fees paid out of the cash award shall not exceed 8% of the Tier 1(b) cash award.
>
> No attorneys' fees will be paid to claimants or their counsel by [the] USDA or the Department of Justice, or any other agency or department of the United States. The amount of cash awards will not be increased for those claimants who are represented by an attorney. No claimant is required to retain an attorney, and neither [the] USDA, the [claims] Administrator, nor the Adjudicator [of the claim] will recommend that a claimant retain counsel or retain a specific attorney or law firm, or discourage a claimant from obtaining counsel or using a specific attorney or law firm. However, if claimants have legal questions, they are advised to consult with counsel or another legal service provider.

Framework § XI. Based solely upon consideration of the Framework, the plaintiffs' argument that the Framework's language regarding attorneys' fees is limited to fees incurred pursuant to the filing of administrative claims, see Pls.' Supp. Reply at 7, could conceivably have merit because the Framework's discussion of fees appears limited to the administrative claims process,

with no mention of this suit or other litigation arising out of credit-related discrimination, see Framework § XI. However, upon consideration of the Settlement Agreement signed by each administrative claimant, the Court cannot come to that conclusion.

The Settlement Agreement defines a "claimant" as "a farmer who alleges credit-related discrimination due to being female or Hispanic by [the] USDA during [certain] time periods," and provides that "[i]t is in the [p]arties' mutual interests to resolve such allegations and claims through the Claims Process." Settlement Agreement at 1. It also provides that "[i]f any claims of credit-related discrimination by [the c]laimant against [the] USDA are pending in any court or administrative proceeding, this Claim Package must [ ] include a signed Stipulation or Notice of Dismissal with Prejudice, whichever is appropriate, for such claims." Id. ¶ 1.

The Settlement Agreement further provides the following relevant language regarding attorneys' fees, expenses, and costs:

> 3. Release. In exchange for the consideration described in the foregoing Paragraphs, [the c]laimant . . . hereby release[s] and forever discharge[s] the United States[and the] USDA . . . from any credit-related discrimination claims, whether known or unknown, suspected or unsuspected, for compensation or damages, attorneys' fees, expenses or costs incurred. If a Claim Package is rejected by the [claims] Administrator as untimely, or is determined by the Administrator to be timely but incomplete, and [the c]laimant does not submit a complete Claim Package within the time allowed under the Framework, such claims against [the] USDA will not be released.
>
> 4. Merger. The Terms of this Agreement constitute the entire agreement of the Parties with respect to compensation or damages, attorneys' fees, expenses and costs; and no statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced.

Id. ¶¶ 3–4 (emphases added). The Court concludes that the unambiguous intent of the Settlement Agreement was to resolve claims of credit-related discrimination through the Claims Process in lieu of litigation, see id. at 1, and notes the broad language of the Settlement Agreement, which, first, "constitute[s] the entire agreement . . . with respect to . . . attorneys' fees," id. ¶ 4 (emphasis

added), and second, releases the USDA "from any credit-related discrimination claims, . . . for compensation or damages, attorneys' fees, expenses or costs incurred," id. ¶ 3 (emphasis added). Accordingly, the Court concludes that the plaintiffs' motion for fees is mooted by the Settlement Agreement that each plaintiff signed as part of the claims process. See Pigford, 75 F. Supp. 3d at 469 (concluding that the law firm's fee petition was mooted by its settlement agreement with the USDA); see also Hershon v. Gibraltar Bldg. & Loan Ass'n, Inc., 864 F.2d 848, 852 (D.C. Cir. 1989) (concluding that a settlement agreement releasing and discharging "any and all [c]laims" was unambiguous).[5]

IV. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the Plaintiffs' Motion for an Award of Fees, Costs, and Expenses, ECF No. 198, is **DENIED**.

SO ORDERED this 7th day of May, 2018.

REGGIE B. WALTON
United States District Judge

[5] Because the Court concludes that the plaintiffs' motion is mooted by the Settlement Agreement, it need not consider the parties' arguments regarding whether the plaintiffs are entitled to fees under the common fund doctrine or, in the alternative, under the Equal Credit Opportunity Act and the Equal Access to Justice Act. See Nat'l Fed'n of Blind v. U.S. Dep't of Transp., 827 F.3d 51, 54 (D.C. Cir. 2016) (declining to consider the parties' arguments on the merits after concluding that the district court lacked jurisdiction).