IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROSEMARY LOVE, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 00-2502 (RBW/JMF)
TOM VILSACK, Secretary of the United States Department of Agriculture,	)	
Defendant.	)	

USDA'S REPLY TO PLAINTIFFS' RESPONSE TO USDA'S STATUS REPORT

After the Court denied class certification, the Government unilaterally developed a streamlined administrative program to enable Hispanic and female farmers to adjudicate claims of discrimination without the burdens and standards of civil litigation. As a result of this program, 3,210 farmers – including the eight plaintiffs in this case who chose to participate – have recovered substantial monetary awards and debt relief. Notwithstanding their success in that program and the fact that they dismissed all their claims in this case as a condition of participation in the program, plaintiffs have filed a Response to USDA's Status Report and Request for Information, Discovery, and a Hearing (ECF No. 249), in which they again ask this Court to oversee and conduct an extensive review of that program.

There is absolutely no basis for plaintiffs' request. The relief plaintiffs seek is an impermissible attempt to circumvent numerous prior rulings in this case. Despite the denial of class certification, the absence of any class-wide settlement or consent decree, and this Court's specific rejection of plaintiffs' prior request for Court review and supervision of the alternative dispute resolution (ADR) program, plaintiffs now seek – again – to morph this case into a class

action and to embark on class-wide discovery and oversight of the ADR program. The Court should reject plaintiffs' request for the same reasons it denied their prior motions. Moreover, because all plaintiffs have either dismissed or abandoned their claims before this Court, there are no longer live claims pending before the Court and therefore the Court lacks jurisdiction to entertain plaintiffs' discovery request. The Court should reject plaintiffs' request in its entirety.

I. Plaintiffs Lack Standing to Obtain Review and Oversight of the ADR Program Because Class Certification Was Denied and the Individual Plaintiffs Have No Remaining Claims in this Case.

The Court denied plaintiffs' application for class certification in 2004, Love v. Veneman, 224 F.R.D. 240 (D.D.C. 2004), and the D.C. Circuit affirmed that decision in 2006. Love v. Johanns, 439 F.3d 723 (D.C. Cir. 2006). In 2010, as the Government was developing the Framework for the voluntary ADR Program, plaintiffs filed a motion for Review and Supervision of Financial Distribution to Women Farmers and for Appointment of Lead Counsel, which the Court properly rejected. Dec. 3, 2010 Order (ECF No. 119). The ADR program ultimately developed by the Government was an optional administrative program in lieu of litigation, for farmers who alleged discrimination by the United States Department of Agriculture (USDA) in making or servicing farm loans based on being Hispanic or female. The program was not developed or implemented pursuant to a consent decree or class settlement, and it did not provide for oversight of the process by this Court. Participation in the ADR program by any individual was entirely voluntary. See Framework § V(D). Because there is no class, plaintiffs lack standing to assert the claims of any other individuals and to oversee the implementation of this administrative program. See Vietnam Veterans of America v. Shinseki, 599 F.3d 654, 662 (D.C. Cir. 2010) (holding that veterans lack standing to challenge "average delays" in VA

system unconnected to their own benefits claims). The Court should reject plaintiffs' requested relief on this basis alone.[1]

As for plaintiffs' individual claims, because each plaintiff has either dismissed or abandoned her claims before this Court, there are no remaining claims in this case, and therefore no discovery is available. "It is a basic default rule of civil litigation that discovery may only be obtained on matters relating to pending – not dismissed – claims." Act Now to Stop War Coal. v. District of Columbia, 286 F.R.D. 117, 131 n.7 (D.D.C. 2012). Eight plaintiffs elected to participate in the ADR program, and as a condition of participation, expressly stipulated to the dismissal of this action with prejudice. These plaintiffs chose to participate in the ADR program with knowledge and acceptance of the Framework's provisions, including the finality of all decisions by the Administrator and Adjudicator. See Framework § VII(C). The administrative claim of each of these eight individuals has now been approved, and each individual either has received or will soon be receiving a monetary award. However, even if the administrative claims of any plaintiff had been denied, she would be foreclosed from seeking review of that decision by the express terms of the Framework. "There will be no appeals available to claimants or USDA to challenge decisions made by the Administrator or the Adjudicator." Id.

[1] The D.C. Circuit decision in Pigford v. Vilsack, 777 F.3d 509 (D.C. Cir. 2015), cited by plaintiffs, undermines, rather than supports their claim. As the court recognized, "[w]hile it may be a well-established principle that a district court retains jurisdiction under federal law to enforce its consent decrees, it retains this authority only if the parties' agreement or the court order dismissing the action reserves jurisdiction to enforce compliance." Id. at 514 (internal citations omitted). The court emphasized that the parties' agreement in Pigford "explicitly provided for judicial review to enforce compliance with the agreement's terms." Id. at 515. The Framework, by contrast, was an administrative program unilaterally created by the Government; it was not implemented pursuant to a consent decree and did not provide for oversight by the Court.

The other two plaintiffs chose not to participate in the ADR program, but also abandoned their claims in this Court. See Pl. Notice dated May 6, 2013 (ECF No. 187) at 3. As a consequence, there are no remaining claims in this action, and no basis for plaintiffs' request for ongoing discovery. See USDA's Notice Regarding Venue (ECF No. 196) at 2.[2]

II. The Relief Plaintiffs Seek Is Contrary to the Terms of the Framework.

Plaintiffs' suggestion that USDA and its contractors violated the Framework is based on a fundamental misreading of the Framework's terms. First, while the Framework contemplates some oversight by USDA and by USDA's Inspector General, the Department of Justice, and the Government Accountability Office, see Framework § X, it does not provide for any oversight or monitoring by plaintiffs or the Court. On the contrary, it expressly states that there will be no review of decisions made by the Administrator and Adjudicator. Id. § VII(C) ("There will be no appeals available to claimants or USDA to challenge decisions made by the Administrator or the Adjudicator, including without limitation the Administrator's decision whether a claims package is timely and complete, the Adjudicator's decision on a claim, or the Adjudicator's decision as to the amount of debt eligible for debt relief.").

Moreover, contrary to plaintiffs' suggestions, the Framework does not require the Adjudicator to furnish an explanation as to the specific rationale for denying a particular claim, and does not allow an unsuccessful claimant to challenge the Adjudicator's decision rejecting that claim. Rather, it simply provides that, "[o]nce a decision has been issued, the claimant will be informed of the decision in writing within a reasonable time." Id. There is no allegation that plaintiffs were not timely notified of the decisions in their cases. These terms, which plaintiffs

[2] Plaintiffs have filed a motion to reinstate certain claims, which is fully briefed and pending before the Court. See ECF Nos. 230, 231, 238, 240, 242, 243.

acknowledged and agreed to as a condition of participation in the ADR program, foreclose the relief plaintiffs now seek.

Plaintiffs likewise err in suggesting that "$1.3 billion [was] pledged by the government" for payment of cash awards and tax relief under the ADR program, and that the Government violated such a pledge by awarding "only $200 million" to successful claimants. See Pl. Response at 2. The Framework provides that $1.33 billion is the *cap* for payments on successful claims. See Framework, § I(A)(2). Of course, there was no way for the Government to predict, in advance, how many claims might be submitted in the ADR program, and how many of those claims would ultimately be approved by the Adjudicator. As a consequence, the Government did not commit, in advance, to paying a guaranteed dollar amount of cash awards. As plaintiffs appear to acknowledge, the same point applies to debt relief. See Pl. Response at 2 (stating that the Framework provides for "$160 million in *possible* debt relief") (emphasis added). While plaintiffs, despite receiving their own substantial monetary awards through the ADR program, may claim disappointment with the overall payout of the ADR program, this disappointment does not give rise to a valid legal claim or confer standing to challenge the overall operation of the program.

CONCLUSION

Wherefore, USDA requests that the Court deny plaintiffs' requests for class-wide discovery and other relief regarding the ADR program.

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Respectfully submitted,

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