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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0153**
Carl Parker	)	
(Individual and Administrator for	)	
the Estate of Gary L. Parker)	)	
	)	**Dismissal** (With Prejudice)
Petitioner	)	

Appearances:

Mr. Corey Lea, representative for Petitioner Mr. Carl Parker (as an individual and administrator for the Estate of Gary L. Parker), and

Mr. Juan Carlos Alarcon, Esq. with the Office of the General Counsel, Civil Rights Litigation Division, United States Department of Agriculture, Washington D.C.

Neither Exhibit A for Carl Parker, nor Exhibit B for Gary L. Parker, was included with the "Request for an Expedited Formal Hearing Before the Administrative Law Judge, Temporary Restraining Order and Preliminary Injunction", filed August 24, 2016 ("the Request"). *See* the last sentence of the Request.

Further, the Notice of Appearance included with the Request is that of a different Petitioner (Ferrell Clay Oden), NOT Carl Parker.

The case of Carl Parker, Petitioner, is DISMISSED (With Prejudice), because Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response filed September 15, 2016, a copy of which is attached.

Copies of this Dismissal (With Prejudice) order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 21st day of September 2016

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

CARL PARKER
Petitioner

Docket No. 16-0153

Agency Response

On or around August 24, 2016, Petitioner Carl Parker ("Petitioner") filed a Request for an Expedited Formal Hearing with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ")[1]. On August 26, 2016, OALJ issued a notice to the Assistant Secretary for Civil Rights ("Agency") requesting a response within 20 days. The Agency timely files this response.

Petitioner requests a hearing to be held at a federal courthouse pursuant to 7 C.F.R. part 15f ("Section 741"). *See* Petitioner's Request.

Petitioner failed to identify valid legal authority and jurisdiction for this action

Under 7 C.F.R. § 1.131, there are nearly fifty statutes which expressly afford an individual a hearing before an Administrative Law Judge. None of them apply to Petitioner's request. *See* 7 C.F.R. § 1.131. As no action may be brought unless authorized, jurisdiction cannot be assumed absent express statutory or regulatory grant. *See Reid v. United States*, 211 U.S. 529, 538 (1909); *Munro v. Unites States*, 303 U.S. 36, 41 (1938); *United States v. Sherwood*, 312 U.S. 584, 290 (1941); *United States v. Testan*, 424 U.S. 392, 399 (1976); and *Hercules, Inc. v. United States*, 516 U.S. 417, 422 (1996). Petitioner has not identified a statutory jurisdictional basis which would entitle her to a hearing before the OALJ.

[1] It appears Petitioner Carl Parker may have also considered his petition as incorporating a petition on behalf of the Estate of Gary Parker as well. Regardless, there would be no jurisdiction for any Section 741 hearing request for the Estate of Gary Parker for the same reasons provided here.

Petitioner's citations of "Section 741" and the Equal Credit Opportunity Act ("ECOA") do not establish a statutory jurisdictional basis for this request. *See* 7 C.F.R. § 15(f) ("Section 741"). 7 C.F.R. Part 15f applies to complaints of discrimination filed with USDA prior to July 1, 1997, alleging discriminatory acts from 1981 to 1997. The period for filing a Section 741 complaint request under the authorized waiver of the ECOA Statute of Limitations expired on October 21, 2000. 7 C.F.R Part 15f ("you have until October 21, 2000 to file your Section 741 complaint"). USDA no longer has authority under the terms of the statutory waiver to accept Section 741 complaint requests, unless such a complaint has already been docketed under part 15f by USDA or a request was filed with USDA prior to October 21, 2000. 7 C.F.R § 15f.5 is clear that Section 741 complaint requests filed under part 15f are no longer accepted by USDA. *See generally* 68 Fed. Reg. 7411 (February 14, 2003).

Furthermore, Petitioner admits that he "was a Track A claimant under the *Pigford* class action settlement." *See* Petition at p. 3. Thus, all claims of discrimination Petitioner alleges from 1981 to 1997 have already been the subject of a *Pigford* decision that is final and not reviewable.

As Petitioner fails to assert cognizable jurisdiction for OALJ to hear this action, the request should be dismissed with prejudice.

Date: September 15, 2016

Respectfully submitted,

[redacted]

J. CARLOS ALARCON, Esq.
Agency Representative
U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

CARL PARKER
Petitioner

Docket No. 16-0153

AGENCY'S NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Juan Carlos Alarcon, United States Department of Agriculture, Office of the General Counsel, Civil Rights Employment and Labor Litigation Division, hereby enters his appearance as counsel of record for the Agency in the above-captioned matter. The Clerk and all parties are requested to address all papers served on the Agency as follows:

Juan Carlos Alarcon
United States Department of Agriculture
Office of General Counsel, Civil Rights Employment and Labor Litigation Division
Room 3312-S
Washington, DC 20250
202-690-2163
Juan.alarcon@ogc.usda.gov

Date: September 15, 2016

Respectfully submitted,

[redacted]

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