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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	Docket No. **16-0167**
Ferrell Oden	)	
	)	
Petitioner	)	**Dismissal** (With Prejudice)

Appearances:

Mr. Corey Lea, representative for Petitioner Ferrell Oden, 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.

1. Petitioner Ferrell Oden filed this Petition (**16-0167**) on August 25, 2016. The doctrine of *res judicata* would preclude consideration of this Petition, as is shown by the next three paragraphs (paragraphs 2, 3, and 4), taken together.

2. Petitioner Ferrell Oden's Final Agency Decision was issued on November 19, 2010, by the USDA Assistant Secretary for Civil Rights Joe Leonard, Jr., Ph.D. Mr. Alarcon's filing on September 28, 2016 includes a copy of that Final Agency Decision, which is designated as Complaint No. "09-2094". I conclude that the correct number is 09-2094, and that references to 08-2094 are mistaken. [1]

3. A copy of Petitioner Ferrell Oden's Second Amended Complaint filed April 5, 2011, in the U.S. District Court for the Southern District of Alabama, Southern Division, Civil Action No. 10-00212-CB-M (1:10-cv-00212-KD-M), was included in Mr. Alarcon's filing

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1. In Docket No. 11-0179 regarding Ferrell C. Oden, Chief Administrative Law Judge Davenport's Memorandum Opinion and Order of Dismissal issued May 3, 2011, refers to 08-2094, identifying the Final Agency Decision that is actually 09-2094. Chief Judge Davenport's May 3, 2011 dismissal can be found on the USDA Office of Administrative Law Judges website, at http://www.oaljdecisions.dm.usda.gov/ [locate dismissals and choose the year 2011].

on September 28, 2016. Paragraph 21 of that Second Amended Complaint shows that the subject is the same as that addressed in the Final Agency Decision issued on November 19, 2010, by the USDA Assistant Secretary for Civil Rights Joe Leonard, Jr., Ph.D.

4. The final action in Ferrell Oden's case was dismissal with prejudice by joint request of the parties, in the U.S. Court of Appeals for the Eleventh Circuit, No. 13-14129-EE, July 21, 2015, a copy of which dismissal with prejudice was included in Mr. Alarcon's filing on September 28, 2016. [The Eleventh Circuit dismissal was in the case on Appeal from the U.S. District Court for the Southern District of Alabama, Southern Division, Civil Action No. 10-00212-CB-M (1:10-cv-00212-KD-M).]

5. I have carefully reviewed Ferrell Oden's Petition herein; the Agency Response filed September 15, 2016, a copy of which is attached; Petitioner's filing on September 20, 2016; and all the September 28, 2016 filings in this case, including Petitioner Ferrell Oden's Response. I conclude that Administrative Law Judges have no authority to grant the relief requested, as stated in the Agency Response.

6. This case regarding Petitioner Ferrell Oden is DISMISSED (With Prejudice).

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 30th 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
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Agency Response

On or around August 25, 2016, Petitioner Ferrell Oden ("Petitioner") filed a "Petition for Review and a Formal Hearing" with the U.S. Department of Agriculture, Office of the Administrative Law Judges ("OALJ"). 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") and part 15d. *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.

First, Petitioner's citation to 7 C.F.R. 15d refers to discrimination complaints before the Assistant Secretary for Civil Rights ("ASCR"), not the OALJ. Second, 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, the action Petitioner requests related to Final Agency Decision no. 09-2094 was already the subject of litigation before the 11th Circuit Court of Appeals and dismissed with prejudice pursuant to a settlement agreement. *See Ferrell Oden v. Tom Vilsack* No. 13-14129 (11th Cir. 2015). Thus, even if there were jurisdiction to hear the petition, the doctrine of *res judicata* would preclude it.

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.
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U.S. Department of Agriculture
Office of the General Counsel
Civil Rights, Labor and Employment Law
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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
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Date: September 15, 2016

Respectfully submitted,

[redacted]

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