

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TIMOTHY PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 97-1978 (PLF)
)	
DAN GLICKMAN, Secretary,)	
United States Department of Agriculture,)	
)	
Defendant.)	

CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98-1693 (PLF)
)	
DAN GLICKMAN, Secretary,)	
United States Department of Agriculture,)	
)	
Defendant.)	

OPINION AND ORDER

The Court has before it Class Counsel and Of Counsel’s May 8, 2000, motion for an interim award of attorneys’ fees and costs.¹ Counsel request an award of \$30,915,611 in attorneys’ fees, costs, and expert fees and costs generated from the inception of this case

¹ Class Counsel includes Alexander J. Pires, Jr., of Conlon, Frantz, Phelan & Pires; Phillip L. Fraas of Tuttle, Taylor & Heron; and J.L. Chestnut, Jr. of Chestnut, Sanders, Sanders & Pettaway. Of Counsel includes the law firms of Cross, Kearney & McKissic; Speiser Krause; Law Office of Crosthwait Terney; Butler, Snow, O’Mara, Stevens & Cannada, PLLC; and William J. Smith. Class Counsel and Of Counsel are collectively referred to as “Counsel” throughout this Opinion.

through December 31, 1999. The Court heard oral argument on the motion and permitted the parties to file post-hearing supplemental memoranda. Upon consideration of the pre- and post-hearing memoranda and the arguments of counsel at the hearing, the Court will grant the motion in part and deny it in part.

I. BACKGROUND

On April 14, 1999, the Court gave final approval to the Consent Decree that settled this case, finding that it represented a fair, reasonable and adequate resolution of the class members' claims. See Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000). The Consent Decree establishes a process for adjudicating the claims of individual African American farmers who alleged that the United States Department of Agriculture had discriminated against them on the basis of their race when, among other things, it denied their applications for credit and/or benefit programs.

With respect to attorneys' fees, the parties agreed that:

Class Counsel (for themselves and all Of-Counsel) shall be entitled to reasonable attorney's fees and costs under ECOA, 15 U.S.C. § 1691e(d), and to reasonable attorney's fees, costs, and expenses under the APA, 28 U.S.C. § 2412(d) (as appropriate), that are generated in connection with the filing of this action and the implementation of this Consent Decree. Defendant reserves the right to challenge any and all aspects of class counsel's application for fees, costs, and/or expenses.

Consent Decree ¶ 14(a) (April 14, 1999). In recognition of fees, costs and/or expenses already incurred as of the signing of the Consent Decree, the agreement also provided for a \$1,000,000 one-time payment to Counsel as a credit toward future applications for attorneys' fees, costs and/or expenses. Id. ¶ 14(b).

II. DISCUSSION

Counsel have requested an interim award of attorneys' fees, costs and expenses that would reimburse Counsel for work performed from the initiation of this case through December 31, 1999. Counsel requested \$14,582,703 in attorneys' fees, \$962,164 in expenses, and \$788,040 in expert fees and expenses, for a total award of \$16,332,907.² Counsel in this case, like any lawyers seeking attorneys' fees, have the burden of demonstrating both their entitlement to a fee award and the reasonableness of the requested fees. See Hensley v. Eckerhart, 461 U.S. 424, 433, 437 (1983); American Petroleum Inst. v. USEPA, 72 F.3d 907, 915 (D.C. Cir. 1996).

The government does not oppose the award of attorneys' fees, but instead argues that Counsel are not entitled to the full amount requested because certain hours are not reimbursable either under the terms of the Consent Decree or under the relevant statutes and because others are billed at unreasonably high rates. The government provides six reasons why it believes Counsel's fee request is improper or unreasonable: (1) the request improperly seeks fees simultaneously under both the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691e(d) and the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d); (2) the request improperly fails to distinguish between work performed after the case was settled on

² Counsel initially sought twice the amount of attorneys' fees (\$29,165,407 rather than \$14,582,703) on the theory that a 100% enhancement was warranted in this case to reflect the extraordinary results achieved by Counsel and to further the public interest arising from the successful resolution of the case. Such an enhancement would double the total award to \$30,915,611. Counsel now is seeking a lesser, unenhanced total award of \$16,332,907, with the understanding that they be permitted to raise the issue of enhancement at a later date, possibly after this case comes to a close. See Transcript of Hearing of July 31, 2000, at 3.

successful individual claims for relief and on unsuccessful individual claims; (3) the hours expended by Counsel are not adequately documented and are excessive; (4) the hourly rates requested by Counsel are excessive or otherwise improper; (5) the expert fees requested are excessive and unreasonable; and (6) Counsel's expenses are similarly excessive and unreasonable.

A. Award Under Both ECOA and EAJA

Counsel seek reimbursement under ECOA for attorneys' fees and separately under EAJA for expert fees and expenses. The government suggests that ECOA and EAJA are mutually exclusive and that the EAJA fee-shifting provision may apply only when the ECOA fee-shifting provision does not. See 28 U.S.C. § 2412(d)(1)(A) (authorizing an award of fees pursuant to the EAJA "[e]xcept as otherwise specifically provided by statute"); see also EEOC v. Consolidated Service Systems, 30 F.3d 58, 59 (7th Cir. 1994) (EAJA does not apply "to cases in which a statute regulating awards of attorney's fees against the government [is] already in place"). In short, the government argues that Counsel must seek fees exclusively under ECOA (under which they arguably may not obtain expert fees and costs) or exclusively under EAJA (under which expert fees and costs may be reimbursed, but which caps hourly rates for attorneys' fees at \$125), or must file a new motion for attorneys' fees and costs that specifically identifies which fees and costs are requested under ECOA and which are requested under EAJA.

Neither the Consent Decree nor the case law forces Counsel to make such a choice. The Consent Decree states that Counsel are “entitled to reasonable attorney’s fees and costs under ECOA, 15 U.S.C. § 1691e(d), *and* to reasonable attorney’s fees, costs, and expenses under the APA, 28 U.S.C. § 2412(d) (as appropriate), that are generated in connection with the filing of this action and the implementation of this Consent Decree.” Consent Decree ¶ 14(a) (emphasis added). The parties’ reference in the Consent Decree to Counsel’s entitlement to reimbursement under both ECOA *and* EAJA indicates an intention to allow Counsel to recover under both fee-shifting provisions so long as the award is “appropriate.” As discussed below, Counsel’s use of EAJA to supplement an award under ECOA is appropriate.

As even the government admits, certain courts “have held that EAJA § 2412(d) can sometimes supplement another statute’s attorney’s fee provision.” Govt’s Response at 6 n.6. Indeed, both the Fifth Circuit and the Federal Circuit have held that EAJA can supplement an existing attorneys’ fee statute provided that it does not supersede the provisions of the other statute. See United States v. 329.73 Acres of Land, 704 F.2d 800, 806-07 (5th Cir. 1983) (finding that EAJA may supplement condemnation statute’s attorneys’ fees provision); Beck by Beck v. Secretary of the Dep’t of Health and Human Servs., 924 F.2d 1029, 1037-38 (Fed. Cir. 1991) (acknowledging that EAJA sometimes may *supplement* another statute’s attorneys’ fees provision, but prohibiting use of EAJA to *supersede* Vaccine Act’s attorneys’ fees provision in an attempt to circumvent Vaccine Act’s cap on attorneys’ fees); Gavette v. Office of Personnel Mgmt., 808 F.2d 1456, 1463-65 (Fed. Cir. 1986) (finding that EAJA permissibly supplements Back Pay Act’s attorneys’ fees provision); cf.

EEOC v. Consolidated Service Systems, 30 F.3d at 59 (finding that EAJA may not supersede Title VII's attorneys' fees provision).

Here, Counsel requested reimbursement for attorneys' fees and costs under ECOA because, as the parties have agreed and the Court has acknowledged, this case is essentially one brought under ECOA. See Pigford v. Glickman, 185 F.R.D. at 86 & n.1; Transcript of Hearing of March 2, 1999, at 19. Reading Paragraph 14(a) of the Consent Decree to permit recovery under ECOA and EAJA simultaneously, Counsel seek attorneys' fees under ECOA and expert fees and expenses under EAJA, which permits such recovery where ECOA arguably does not. As in 329.73 Acres of Land and Gavette, Counsel here seek to use EAJA to supplement another statute's attorneys' fees provision, not to supersede it as was the case in Beck by Beck and Consolidated Service Systems. Such a request for expert fees and costs is an appropriate use of EAJA, is consistent with the case law and comports with the terms of the Consent Decree.

B. Attempt to Recover on Unsuccessful Individual Claims

Counsel's fee petition seeks reimbursement for fees generated during all phases of this action, including the filing, litigation and settlement of the class action case and the post-settlement implementation of the Consent Decree, including their work on individual claims. Counsel's fee request for work completed beyond the settlement of the case is specifically permitted by Paragraph 14(a) of the Consent Decree, which states that Counsel "shall be entitled to reasonable attorney's fees and costs under ECOA and to reasonable attorney's fees, costs, and expenses under the APA (as appropriate), that are generated in

connection with the filing of this action *and* the implementation of this Consent Decree.”
Consent Decree ¶ 14(a) (citations omitted) (emphasis added).

The government does not dispute Counsel’s entitlement to the recovery of attorneys’ fees for work done in the first phase of the case — the filing of the class action, litigation of the case and settlement. The government takes issue, however, with Counsel’s assertion that they are entitled to be reimbursed for *all* work completed during the second phase of the case, the implementation phase. The government suggests that Counsel should be permitted to recover for work done generally to implement the Decree — including meetings with class members designed to inform farmers of the settlement and their opportunity to seek relief through the claims process, implementation meetings and monthly roundtable meetings with the Monitor and other relevant persons, any litigation involving assertions that the Consent Decree is not being implemented, and other class-wide implementation activities — but that they should not recover fees generated in connection with individual Track A or Track B claims unless those claims ultimately were successful. The Court agrees with the government.

Under the terms of the Consent Decree, Counsel are entitled to reasonable attorneys’ fees and costs under ECOA “that are generated in connection with the filing of this action and the implementation of this Consent Decree.” Consent Decree ¶ 14(a). ECOA, however, permits an award of attorneys’ fees only in the case of a “successful action.” 15 U.S.C. § 1691e(d) (“In the case of any *successful action* under subsection (a), (b), or (c) of this section, 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 subsection.”) (emphasis added). Counsel are correct to point out that the settlement of this case constitutes a

successful action on a class-wide basis, but the class-wide success is limited by the fact that the settlement's main accomplishment was the establishment of a process to adjudicate individual claims. The claims themselves, however, were not all successfully resolved as a part of the settlement. The Consent Decree did not find the government liable on or resolve any individual claim or find that any individual claimant *ipso facto* had a meritorious claim. Nor did it guarantee that any individual class member would prevail on his or her claim.

The entitlement to attorneys' fees conferred by Paragraph 14(a) of the Consent Decree is by its terms limited by the main requirement of ECOA: success. Paragraph 14's benefits therefore may extend only to those aspects of this case in which Counsel unquestionably achieved a successful result for their clients on a class-wide basis: the filing, litigation and settlement of the class action, and all portions of the implementation phase that do not involve the filing and litigation of an individual claim. The benefit cannot extend to those portions of the implementation phase in which time was spent and fees were generated

in assisting an individual farmer whose claim ultimately failed, but only to those where the claims succeeded.³

In their reply brief and in their supplemental memorandum in support of their motion for attorneys' fees, Counsel make the additional argument that the success of the individual claimants is irrelevant because Counsel was required under the terms of the Consent Decree to represent any and all claimants in Track A and Track B proceedings, and that such an obligation implies that fees generated in assisting both successful and unsuccessful claimants are inherently connected with the "implementation of the Consent Decree." The language of the Consent Decree, however, simply does not support such a theory. Despite the repeated assertions of Counsel, the Court is unable to find any provision of the Consent Decree that explicitly or implicitly requires that Counsel must represent all individuals who wish to file a Track A or Track B claim, regardless of the capacity of Counsel

³ Counsel rely on two cases, United States v. Jones, 125 F.3d 1418, 1427 (11th Cir. 1997), and Howard v. Globe Life Ins. Co., 973 F. Supp. 1412, 1420 (N.D. Fla. 1996), for the proposition that when a class prevails as a whole, class counsel should be awarded fees for all work performed on the case even if certain individual class members' claims might have been without merit. While it is true that all class members succeeded in this case by obtaining a process for the adjudication of individual claims, and that Counsel may be awarded all fees generated in accomplishing and implementing that success, the settlement purposefully removed the issue of whether individual class members were "prevailing parties" with respect to their individual claims by (1) creating the post-settlement adjudication process, and (2) including a specific limitation in Paragraph 14(a) of the Consent Decree that attorneys' fees would be limited by the requirements of ECOA and/or EAJA. The class simply did not prevail on their individual claims on a class-wide basis. Howard and Jones, neither of which involved a settlement that provided for the post-settlement adjudication of individual class members' claims, therefore do not support Counsel's assertion that reimbursement for all portions of all phases of this case is appropriate regardless of the merit of the individual class members' claims.

to adequately represent such individuals and regardless of the facial merit to each individual's claim.

Counsel cite Paragraphs 9 and 10 of the Consent Decree and a portion of a quotation from the Court's Opinion approving the Consent Decree, see Pigford v. Glickman, 185 F.R.D. at 97, but the two paragraphs of the Consent Decree make no mention whatsoever of representation for claimants and the portion of the Court's Opinion cited by Counsel states only that claimants can be represented by either Counsel or counsel of their choice in Track B arbitrations. Nowhere is it stated that Counsel are "obligated under the Consent Decree to represent every class member seeking representation and fully present their claims," Counsel's Reply Memorandum at 10, or that "the Consent Decree intended to provide counsel to all claimants requesting representation." Counsel's Supplemental Memorandum at 9. Counsel simply have failed to carry their burden of demonstrating an entitlement to a fee award for work done assisting claimants who ultimately were unsuccessful. See Hensley v. Eckerhart, 461 U.S. at 433, 437; American Petroleum Inst. v. USEPA, 72 F.3d at 915.

C. Reasonableness of Hours Expended, Hourly Rates, Costs, and Expert Fees and Costs

In determining a "reasonable" attorneys' fees award, the Court begins by calculating the lodestar fee, which is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." See Hensley v. Eckerhart, 461 U.S. at 433. After calculating the lodestar figure, the Court in its discretion may adjust the fee upward or downward based on other considerations, especially the degree of success that plaintiffs had in prevailing on their claims. See Farrar v. Hobby, 506 U.S. 103, 111-12, 114-15 (1992).

The government first argues that Counsel have failed to submit an application for a “reasonable” attorneys’ fee award because they have not met their burden of showing that the number of hours expended was reasonable. In particular, the government suggests that counsel’s hours are inadequately documented — hours often are billed in large, day-long blocks of time and frequently are documented with vague and generalized descriptions — and that the number of hours reported far exceed those that reasonably should have been expended. According to the government, evidence of Counsel’s excessive billing includes, *inter alia*, the fact that Counsel (1) claim hours for time spent at the office instead of reasonable hours for specific tasks; (2) fail to account for duplication of effort; (3) unreasonably double bill certain hours and bill for hours spent on matters other than this case; (4) unreasonably request compensation for hours properly treated as overhead; and (5) unreasonably request compensation for time spent on media contacts.

The government also argues that the Court is unable to accurately calculate the proper lodestar fee because the hourly rates requested by Counsel are excessive or otherwise improper. The government specifically asserts that Counsel improperly (1) request current rates, rather than historic ones, for all work performed in this case; (2) request fees that are occasionally above both historic and current Laffey rates; (3) request District of Columbia rates for counsel who are not based in the District; and (4) request compensation for travel time at the full hourly rate, rather than at a reduced one. Finally, the government suggests that expert fees requested by Counsel are excessive and unreasonable and that Counsel’s expenses are similarly unreasonable.

In their reply brief, Counsel suggest that if the Court were to rule on the “legal issues” — specifically the issues of compensation for time spent on media contacts, current

vs. historic rates, billed rates vs. Laffey rates, and District of Columbia rates vs. out-of-town rates — “factual issues” including the reasonableness of hours expended and costs incurred (presumably including expert fees and expenses) could be resolved by agreement of the parties. See Counsel’s Reply at 1-2, 23-24.⁴ The Court concurs with Counsel’s suggestion and will resolve only those issues necessary to ensure that Counsel’s fee request is placed in a posture to be resolved by agreement of the parties.

1. Media Contacts

Counsel are entitled to seek compensation for time spent on media contacts. While as a general rule time spent contacting the media is not reimbursable, see Martini v. Federal Nat’l Mortgage Assoc., 977 F. Supp. 482, 487 (D.D.C. 1997) (Kessler, J.), this case constitutes a clear exception to the general rule. Here, Counsel did not contact the media as a means of self-promotion or with the goal of swaying the public’s opinion of their clients; instead, Counsel used the media to alert potential class member of the settlement — something that was directly and intimately related to the successful representation of the class.

⁴ Counsel also protest the government’s claim that Counsel would have had to bill all of the time spent on this case in six minute increments to be reimbursable. The government, however, does not make such an argument. The government merely asserts that it is unable to assess the reasonableness of time expended on specific tasks or undertakings when much of Counsel’s billing is done in day-long blocks of time. The government’s point is well taken. “Attorneys who anticipate making a fee application must maintain contemporaneous, complete and standardized time records which accurately reflect the work done by each attorney.” National Assoc. of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1327 (D.C. Cir. 1982). Part of Counsel’s burden of demonstrating entitlement to a fee award and the reasonableness of the requested fees includes an obligation to present opposing counsel and the Court with an adequate means of assessing the reasonableness of hours expended. The billing records Counsel submitted do not meet this test. If Counsel file another application for attorneys’ fees because the parties are unable to agree on a reasonable settlement to this fee dispute, the Court will require billing in one-hour blocks, at minimum.

See Gilbrook v. City of Westminster, 177 F.3d 839, 877 (9th Cir. 1999) (“Prevailing civil rights counsel are entitled to fees for press conferences and performance of other lobbying and public relations work when those efforts are directly and intimately related to the successful representation of the client.”) (internal quotations and citation omitted).

2. *Current vs. Historic Hourly Rates*

Plaintiffs’ counsel are entitled to historic rates, rather than current ones, for all work performed in this case. Attorneys’ fees awarded against the United States traditionally are based on rates in effect at the time the service is performed, not the prevailing rate at the time the motion for fees is filed. See Save Our Cumberland Mountains, Inc. v. Hodel, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc) (citing Library of Congress v. Shaw, 478 U.S. 310 (1986)); Northwest Coalition for Alternatives to Pesticides v. Browner, 965 F. Supp. 59, 66 (D.D.C. 1997) (Robertson, J.). Absent a specific provision to the contrary in the relevant fee shifting statute, the United States enjoys sovereign immunity from any requirement to pay compensation for a delay in payment of attorneys’ fees. See Library of Congress v. Shaw, 478 U.S. at 314-23; Masonry Masters, Inc. v. Nelson, 105 F.3d 708, 711-13 (D.C. Cir. 1997). Here, no such waiver exists.⁵ Counsel are entitled to be compensated at historic hourly rates.

3. *Hourly Rates and the Laffey Index*

⁵ Counsel’s reliance on Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air (Delaware Valley II), 483 U.S. 711, 716 (1987), and Covington v. District of Columbia, 839 F. Supp. 894, 902 (D.D.C. 1993) (Lamberth, J.), *aff’d*, 57 F.3d 1101 (D.C. Cir.1995), *cert. denied*, 516 U.S. 1115 (1996), is misplaced, since both cases address compensation from a state or private entity for a delay in payment of attorneys’ fees, not from the federal government.

Reasonable hourly rates are to be calculated to the prevailing market rates in the relevant community for similar work by attorneys with comparable experience. “[A] fee applicant’s burden in establishing a reasonable hourly rate entails a showing of at least three elements: the attorneys’ billing practices; the attorneys’ skill, experience and reputation; and the prevailing market rates in the relevant community.” Covington v. District of Columbia, 57 F.3d 1101, 1107 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996); *see* Blackman v. District of Columbia, 59 F. Supp. 2d 37, 42-43 (D.D.C. 1999) (Friedman, J.).

To determine the third element that plaintiffs’ counsel must establish, the prevailing market rates in the relevant community, this Court traditionally uses as a point of reference the updated Laffey fee index prepared by the United States Attorney's Office. *See* Covington v. District of Columbia, 57 F.3d at 1109. With respect to the first two elements, Counsel make significant strides toward substantially satisfying the elements, *see* Exhibits to Counsel’s Motion, but Counsel fail to explain why certain individual attorneys should be compensated at rates higher than what the Laffey index suggests while others seek compensation at or below the index. The Laffey index for the year in which each attorney’s fees were generated therefore will be used to determine the *maximum* allowable fee for attorneys in this case. If a lawyer or paralegal billed at rates at or below the maximum rate listed in the Laffey index for a person of his or her experience, the rate billed is reasonable and shall be used to calculate the lodestar fee in this case. If a lawyer or paralegal billed at rates above the maximum rate listed in the Laffey index, the Laffey maximum is reasonable and shall be used to calculate the lodestar fee. The Court will not approve rates greater than those listed in the Laffey index for the year in which each attorney’s fees were generated.

4. District of Columbia Hourly Rates vs. Local Hourly Rates

District of Columbia rates will apply to all Counsel requesting reimbursement under Paragraph 14(a) of the Consent Decree, even if such Counsel are not based in the District of Columbia. As the government acknowledges, the location of the court deciding the case is normally the relevant market for determining appropriate rates. See *Donnell v. United States*, 682 F.2d 240, 251 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1204 (1983). As such, “some attorneys may receive fees based on rates higher than they normally command if those higher rates are the norm for the jurisdiction in which the suit was litigated. Id. at 251-52.

Here, the government suggests that the Court should look past the general rule announced in *Donnell* with respect to three out-of-town law firms that are part of Counsel. The government argues that when lawyers or firms are brought into a case primarily because of special knowledge of local conditions, when the bulk of their work on the matter is done outside the jurisdiction of the forum court, and when there is a very significant difference in compensation favoring the use of the District’s rates, out-of-town rates should apply. See *Davis County Solid Waste Mgmt. & Energy Recovery Special Serv. Dist. v. USEPA*, 169 F.3d 755, 758-60 (D.C. Cir. 1999) (creating limited exception to *Donnell* rule regarding out-of-town rates).

It seems to the Court, however, that out-of-town counsel were brought into this case more because of the desperate need for more attorneys with class action or civil rights experience, and less because of the firms’ special knowledge of local conditions. It also appears that a significant portion of the work done by out-of-town counsel on this matter was done in the District of Columbia. Finally, the Court’s ruling that the lower of billed rates or maximum *Laffey* index rates shall apply to all attorneys’ fee requests in this case, see *supra* at

13-14, ensures that there is little if any difference between the compensation in this District compared to the foreign districts. For these reasons, District of Columbia rates will apply to all work that Counsel has performed in this case, regardless of whether the specific firm is based in the District or elsewhere.

5. Hourly Rates for Travel Time

Requests for compensation for travel time shall be no more than half the normal hourly rate. As the D.C. Circuit recognized in Cooper v. United States R.R. Ret. Bd., 24 F.3d 1414, 1417 (D.C. Cir. 1994), travel time is not necessarily compensable at an attorneys' full hourly rate. Instead, the Court in Cooper found it appropriate to compensate travel time at one-half the appropriate hourly rate. Id. Considering the size of the class and its geographic reach, compensation for fees generated by the need to travel is certainly appropriate in this case, but a request to reimburse those fees at an hourly rate equal to that awarded for the performance of actual legal work is not reasonable. Travel time shall be compensated at no more than half the appropriate hourly rate for each attorney unless, of course, an attorney was performing substantive work while traveling such as drafting or reviewing documents related to this case.

III. CONCLUSION

Counsel have submitted a motion for interim attorneys' fees that, at bottom, is meritorious. Certain fees requested by Counsel, however, are not permitted under the Consent Decree and ECOA, are not adequately documented, or are requested at unreasonable hourly rates. At the hearing on this motion, Counsel suggested that if the Court were to rule on the several legal issues addressed in this Opinion, the parties likely would be able to come

to an agreement on the remaining disputes surrounding Counsel's fee request. The ball, therefore, is now back in the parties' court. Upon consideration of the foregoing, it is hereby

ORDERED that Class Counsel's and Of Counsel's motion for an interim award of attorneys' fees, costs, expert fees and expenses [283-1] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that Counsel's motion is GRANTED in that plaintiffs' counsel are entitled to attorneys' fees and costs under ECOA and expert fees and costs under EAJA. Counsel are entitled to attorneys' fees in connection with the filing, litigation and settlement phase of this case, and the portion of the implementation phase not having to do with individual claims. With respect to the individual claims portion of the implementation phase, Counsel may request reimbursement of attorneys' fees and costs only for work done in assisting successful claimants. Counsel's motion is also GRANTED in that Counsel may request reimbursement for fees related to media contacts and may request that all fees be reimbursed at District of Columbia rates; it is

FURTHER ORDERED that Counsel's motion is DENIED in that Counsel may not recover fees incurred in connection with the representation of unsuccessful claimants, may not seek fees at a rate higher than the Laffey index rate (fees must be the lesser of the billed rate or the maximum rate listed in the Laffey index for the year in which each attorney's fees were generated), and may not seek the reimbursement of travel fees at the full hourly rate (Counsel may only seek half the hourly rate); and it is

FURTHER ORDERED that if the parties are unable to resolve this fee dispute without further involvement of the Court, Counsel shall file a new motion for interim attorneys' fees consistent with this Opinion.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE:

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