IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ADAM JOYNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 1:21-cv-01089-STA-jay**
	)	
THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture,	)	
	)	
	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS

Plaintiff Adam Joyner is a member of a certified class in ongoing litigation in the Northern District of Texas. *See Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.). The claim pressed on Mr. Joyner's behalf in that action is substantively identical to the claim he presses here: that § 1005 of the American Rescue Plan Act violates equal protection under the Constitution. Defendant has moved to stay these proceedings while Plaintiff's claim is litigated in the class action; Plaintiff opposes and asserts a novel right to have his claims litigated in two district courts simultaneously—and, presumably, to accept whichever of the two judgments he prefers. As explained in Defendant's stay motion, courts in these circumstances routinely stay the individual case in favor of the class action. Plaintiff does not dispute that he is a member of the *Miller* class action or that courts typically stay individual litigation by class members. As courts routinely do, this Court

should stay Plaintiff's individual action while his claim is litigated in the class action to which he belongs.[1]

At the outset, the Court's denial of Defendant's stay motion in *Holman v. Vilsack*, 21-cv-1085, which turned in part on factors inapplicable to this case, should not control resolution of the stay request here. *See id.*, Order, ECF No. 49. In *Holman*, this Court pointed to the fact that the plaintiff raised an additional claim concerning the meaning of "debt forgiveness," which the plaintiff did not bring in *Miller*. *Id.* at 3. Here, however, Mr. Joyner raises only one claim: an equal protection challenge to § 1005. *See* Compl. ¶¶ 21-35. This claim is already being litigated in *Miller* on behalf of classes that include Mr. Joyner. Additionally, although this Court briefly credited the *Holman* plaintiff's suggestion that he may choose to opt out of the *Miller* classes, *Holman* Order at 3, here, Mr. Joyner makes no assertion that he may attempt to opt out. Even if he had expressed an intent to opt out, Defendant respectfully disagrees with the conclusion in *Holman* that the possibility of opting out is a reason to deny a stay.

Mr. Joyner has no right to opt out of the *Miller* class action, which was certified under Rule 23(b)(2). As the Supreme Court has explained, (b)(2) classes are "*mandatory* classes: The Rule *provides no opportunity* for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action." *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 361-62 (2011). Providing an opportunity for individuals to opt out is incompatible with Rule 23(b)(2) classes seeking injunctive relief, as such relief *must perforce* affect the entire class at once." *Wal-Mart Stores*, 564 U.S. at 361-62; *id.* at 360 ("[K]ey to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that

[1] If the Court denies the stay motion, the Government intends to seek consolidation of this action with *Holman v. Vilsack*, 21-cv1085 (W.D. Tenn.). *See* Fed. R. Civ. Pr. 42 ("If actions before the court involve a common question of law or fact, the court may . . . consolidate the action").

it can be enjoined or declared unlawful only as to all of the class members or as to none of them."). Indeed, even before *Wal-Mart*, courts recognized that "[o]pting out of a (b)(2) suit for injunctive relief would have little practical value or effect." *Holmes*, 706 F.2d at 1157 (11th Cir. 1983); *see also Rosado v. Wyman,* 322 F. Supp. 1173, 1193-94 (E.D.N.Y.), *aff'd*, 437 F.2d 619 (2d Cir. 1970) (finding that when the suit challenges the validity of a government program "exclusion is obviously impossible since the [government's] regulations must stand or fall as a whole"); *Messier v. Southbury Training Sch.*, 183 F.R.D. 350, 355-56 (D. Conn. 1998).

Given that Plaintiff is a mandatory member of a certified class action currently litigating the equal protection challenge he brings here, his assertion that staying this case would "deprive [him] of his day in court" is unfounded. *See* Pl.'s Opp. at 1. Notably, Plaintiff does not dispute that he belongs to the *Miller* classes. Rather, he acknowledges that the class definitions "cover[] all farmers and ranchers," including him, who are not automatically afforded debt relief under Section 1005. Pl.'s Opp. at 5. Because Plaintiff is a member of the classes, *his* claim is being litigated simultaneously in this Court and in the Northern District of Texas—and whether a stay is granted here, Mr. Joyner's rights *are and will continue* being asserted in the class action. Thus, staying this case will not prejudice Plaintiff by delaying resolution of his claim, as he contends.[2]

On the other hand, a stay will eliminate the risk of conflicting judgments and duplicative litigation. These are the primary concerns underlying the "routinely" granted stays of cases brought by an individual whose claim is being litigated "by a certified class of which the individual is a member." *Richard K. v. United Behavioral Health*, 2019 WL 3083019, at *7 (S.D.N.Y. June 28,

[2] In fact, his claim is being litigated in *Miller* at a faster rate than in this case. The *Miller* class sought and obtained a preliminary injunction over a month ago, and the parties recently submitted a joint proposed schedule for resolution of the case on the merits on an expedited bases. *See* Jt. Rept., ECF No. 70.

2019), *report and recommendation adopted*, 2019 WL 3080849 (S.D.N.Y. July 15, 2019) (citing cases); *see also* Def.'s Mot. at 9-11. Allowing a class member to proceed with individual litigation would "contravene the general principle that a party has no right to maintain two separate actions involving the same subject matter at the same time against the same defendant" and would "undermine the efficiency goals of class litigation," including "preventing inconsistent adjudications." *Richard K.*, 2019 WL 3083019, at *6 (alterations omitted); *see also Horns v. Whalen*, 922 F.2d 835 (4th Cir. 1991) (allowing an individual suit to proceed separately from the class would "interfere with the 'orderly administration of [a similar] class action and risk inconsistent adjudications.'" (quoting *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988))). And, as the Sixth Circuit put it: "If a class member cannot relitigate issues after final judgment in a class action suit, by analogy a class member should not be able to prosecute a separate equitable action once the member's class has been certified." *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (citing *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982)).

In his Opposition, Plaintiff ignores these cases and their underlying rationale. Instead, Plaintiff asserts he will be prejudiced by a stay of this case while his claim is litigated in the Northern District of Texas. But his arguments either misunderstand what is at issue in *Miller* or conflict with general class certification principles. Plaintiff asserts, for instance, that class representatives are pursuing additional claims and related relief that are "at odds with the gravamen of Plaintiff's Complaint." Pl.'s Opp. at 5-6. Not so. Plaintiff omits that the *Miller* plaintiffs sought and obtained class certification only for the challenge to the validity of § 1005 on equal protection grounds, and not the additional claims raised in their complaint that Plaintiff references in his opposition to a stay. *See Miller*, Reply ISO Class Cert. 1, ECF No. 41 (June 18, 2021); *Miller*, Order 1, 13, ECF No. 60; *Miller*, Jt. Rept., ECF No. 70. Moreover, the claims going beyond their

equal protection challenge to § 1005 are subject to a pending motion to dismiss. *Miller*, ECF No. 50. And the *Miller* Plaintiffs have indicated that if the Government does not appeal the preliminary injunction,[3] they "will likely file a Second Amended Complaint under Rule 15(a) that omits those claims, and instead assert only the claim of the two classes that § 1005 violates the equal protection component of the Fifth Amendment's Due Process Clause." *Miller* Jt. Rpt. 2.

Additionally, Plaintiff argues that he will not be adequately represented by counsel in *Miller* because he may disagree with counsel's approach to litigation. Pl.'s Opp. at 3. But another district court has already determined that class counsel will "will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief," Order 12, ECF 60, and principles of judicial comity counsel against this Court second-guessing or interfering with that determination, *cf. Med. & Chiropractic Clinic, Inc. v. Oppenheim*, 981 F.3d 983, 992 (11th Cir. 2020) (certifying court alone decides Rule 23 questions). And, to the extent Plaintiff disagrees with the approach taken by class counsel, procedural mechanisms such as intervention may be available for him to raise his concerns in the *Miller* litigation. Regardless, any concerns Mr. Joyner has with the litigation approach taken in *Miller* will hold regardless of whether a stay is entered in this case, because his claims *are* being litigated in *Miller*, by class counsel, in the Northern District of Texas. Whatever the merits of Plaintiff's concerns over the way the case is litigated, they do not give reason to permit him to also litigate his claim simultaneously in a separate forum.

The Court should stay these proceedings.

[3] The Government's deadline to appeal the preliminary injunction in *Miller* is August 30, 2021. As stated, Defendant believes that a stay is appropriate at this time because Mr. Joyner is part of certified classes whose challenge is limited to the same equal protection challenge that he raises here. The Court should grant the stay now, subject to a later motion to lift it should circumstances change. Alternatively, the Court could defer ruling on Defendant's stay motion until the time for appeal has run and the *Miller* litigation either is, or is not, narrowed.

Dated: August 6, 2021

Respectfully submitted,

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