IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Ryan KENT, *et al.*, Plaintiffs, v. Thomas J. VILSACK, in his official capacity as Secretary of Agriculture, *et al.* Defendants.	Case No. 3:21-cv-00540-NJR

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF RELATED CLASS ACTION[*]

[*] This reply brief is warranted given the significance of this litigation, intervening authority since Defendants filed their motion, and also because Plaintiffs' response brief leaves an incorrect impression regarding the *Miller* litigation, Plaintiffs' role in that litigation, and the nature of Rule 23(b)(2) class actions more broadly.

Plaintiffs are members of certified classes in ongoing litigation in the Northern District of Texas. The claims pressed on Plaintiffs' behalf in that action are substantively identical to those they assert here: that § 1005 of the American Rescue Plan Act violates equal protection under the Constitution. Defendants have moved to stay these proceedings while Plaintiffs' claims are litigated in the class action; Plaintiffs oppose and assert a right to have their claims litigated in two district courts simultaneously—and, presumably, to accept whichever of the two judgments they prefer. As courts routinely do, this Court too should stay this individual action while the class action is litigated.

As Defendants set out, courts routinely stay an individual case in favor of a class action. Just this week, two courts granted Defendants' motion to stay similar litigation. *See* Order, *Carpenter v. Vilsack*, No. 21-cv-103, ECF No. 33 (D. Wyo. Aug. 16, 2021) (attached as Ex. 1); Order, *Joyner v. Vilsack*, No. 21-cv-1089 (W.D. Tenn. Aug. 19, 2021). Rather than contest the reasoning of these many cases, Plaintiffs protest that they are not from this Circuit. Pls.' Opp. 16. But Defendants cited two cases granting stays in favor of earlier filed class actions from *this Court*. *See* Mot. 5 (citing *Guill v. All. Res. Partners*, 2017 WL 1132613 at *2 (S.D. Ill. Mar. 27, 2017); *Bouas v. Harley-Davidson Motor Co.*, 2020 WL 2334336 (S.D. Ill. May 11, 2020)). Defendants also cited cases from courts in the First, Second, Eighth, Ninth, Tenth, and Eleventh Circuits[1]—illustrating just how widely accepted this practice is. It is the common Seventh Circuit practice as well, as illustrated even by the case on which Plaintiffs rely. *See Blair v. Equifax Check Servs.*, 181 F.3d 832, 839 (7th Cir. 1999) ("When overlapping suits are filed in separate courts, stays (or, rarely, transfers) are the best means of coordination."); *see also Cent. States Pension Fund v. Paramount Liquor Co.*, 203 F.3d 442, 444 (7th Cir. 2000); *Wallis v. Fifth Third Bank*, 443 F. App'x 202, 205 (7th Cir. 2011); *Wagner v. Speedway LLC*, 2021 WL 1192691 (N.D. Ill. Mar. 30, 2021); *Emerson v. Sentry Life Ins. Co.*, 2018 WL 4380988 (W.D. Wis. Sept. 14, 2018).

[1] *Taunton Gardens Co. v. Hills*, 557 F.2d 877 (1st Cir. 1977); *Mackey v. Bd. of Educ.*, 112 F. App'x 89 (2d Cir. 2004); *Richard K. v. United Behavioral Health*, 2019 WL 3083019 (S.D.N.Y. June 28, 2019), *R&R adopted*, 2019 WL 3080849 (July 15, 2019); *Jiaming Hu v. DHS*, 2018 WL 1251911 (E.D. Mo. Mar. 12, 2018); *Bargas v. Rite Aid Corp.*, 2014 WL 12538151 (C.D. Cal. Oct. 21, 2014); *Gonzales v. Berryhill*, 18-cv-603, ECF No. 28 (D.N.M. Mar. 5, 2019); *Aleman ex rel. Ryder Sys., Inc. v. Sancez*, 2021 WL 917969 (S.D. Fla. Mar. 10, 2021); *Sanchez-Cobarrubias v. Bland*, 2011 WL 841082 (S.D. Ga. Mar. 7, 2011).

Plaintiffs fail to meaningfully distinguish the many cases cited in Defendants motion. Defendants referred to *Taunton Gardens*, 557 F.2d 877 (1st Cir. 1977), as a comparable stay given the significance of the government program at issue there and the many lawsuits challenging that program across the country. *See* Mot. 10-11. Plaintiffs retort that *Taunton Gardens* was stayed only after the related class action (*Underwood v. Hills*, 414 F. Supp. 526 (D.D.C. 1976)) was resolved on the merits. But that was because the *Underwood* court issued one order that simultaneously certified the class, consolidated preliminary proceedings with trial on the merits, and granted summary judgment to the class. *Id.* at 532. That *Taunton Gardens* immediately followed this three-fold order does not undermine its relevance here. Indeed, *Taunton Gardens* underscores that a stay may be warranted even where the individual plaintiff is *not* a member of the certified class. 557 F.2d at 878 (observing that *Taunton Gardens* plaintiffs were not part of the class certified in *Underwood*); *see also, e.g.*, *Bouas*, 2020 WL 2334336.

As for *Mackey*, Plaintiffs deride it because its reasoning was sparse. Of course, that very sparseness—"The parents' allegations against the State duplicated claims that had been included in separate class actions against the State, and the parents were members of those classes," 112 F. App'x at 91—merely underscores the ordinariness of the relief Defendants seek. Plaintiffs do not explain why it matters that the *Mackey* litigation duplicated claims in two class actions instead of one. Plaintiffs attempt to distinguish *Jiaming Hu* by pointing to a three-month gap between the two actions without explaining why that is materially different from the month-and-a-half month gap here. Plaintiffs also try to distinguish that case by disputing that their claims are "common" to those of the named plaintiffs in *Miller*—but the *Miller* court has already rejected that contention. Plaintiffs reject *Aleman* as "not addressing a stay motion" without noting that the court described its earlier stay in that opinion; Plaintiffs do not rebut either that the court did in fact enter a stay or that the stay was comparable to the one Defendants seek here. And Plaintiffs dismiss *Richard K.* only on the ground that much more time had passed between the first and later suits. What Plaintiffs fail to do is confront the *reasons* warranting a stay in those cases, or to explain why they do not pertain here.

That is because those reasons do warrant a stay here. *See, e.g.*, *Carpenter* Or. "[A] party has no right to maintain two separate actions involving the same subject matter at the same time [and] against

the same defendant." *Richard K.*, 2019 WL 3083019, *5-6; *see Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986). Allowing the later-filed, and less comprehensive, suit to proceed would "undermine the efficiency goals of class litigation," including "preventing inconsistent adjudications." *Richard K.*, 2019 WL 3083019, *5-6; *see Blair*, 181 F.3d at 839 (staying or consolidating are "best means of avoiding wasteful overlap"); *Horns v. Whalen*, 922 F.2d 835 (4th Cir. 1991); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988). What was true in all of the many cases Defendants have identified—and as the courts recognized in granting Defendants' motion to stay in *Carpenter* and *Joyner*—is equally true here.

Plaintiffs thus miss the point of the stay Defendants seek. It is not to avoid the ordinary burden of defending a lawsuit. It is to avoid interference "with the orderly administration of the class action." *Gillespie*, 858 F.2d at 1103. It is to minimize the risk of "inconsistent standards"—here the possibility of conflicting orders as to *these Plaintiffs* in two separate but overlapping cases. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). And the stay is also to ease the burden on both the Court and on Defendants of "*duplicative* litigation" in multiple fora. *Id.* As the Seventh Circuit explained in *Blair*, a stay often favors either the first filed or the "more comprehensive" action. 181 F.3d at 838. *Miller* is both the first filed and, because it encompasses the claims of the entire class, more comprehensive.

Nor would Plaintiffs be prejudiced by a stay. Plaintiffs misleadingly suggest that the *Miller* class counsel's intent to file a second amended complaint will slow that litigation—failing to mention that the stated purpose of that amendment is to *narrow* the litigation to the constitutional challenge to § 1005 advanced on behalf of members of the certified classes (including these Plaintiffs). *Compare* Pls.' Opp. 9, *with* ECF 21-1 (*Miller* Joint Report) at 2. And that litigation is already moving at a faster pace than this litigation. Unlike here, Defendants in *Miller* have already answered the relevant claims and the court has already adjudicated a preliminary injunction.

There is thus no force to Plaintiffs' assertion that the stay Defendants seek here will be immoderate. Plaintiffs' claims will not sit idle while this litigation is stayed. Quite the opposite, their claims will proceed apace *in the class action*, together with the claims of all members of the certified classes. In *those* circumstances—*i.e.*, "where, as here, the claims made in an individual lawsuit overlap with the claims being pursued by a certified class of which the individual is a member"—stays are

"routine[]." *Richard K.*, 2019 WL 3083019, at *7. And, given that the individual plaintiff's claim still proceeds, "indefinite" stays are not immoderate even though they remain in place "pending resolution of" the class action. *Lunde v. Helms*, 898 F.2d 1343, 1345 (8th Cir. 1990).

The request for a stay, rather than dismissal, "accommodates the possibilit[y]" that Plaintiffs are later excluded from the classes. *Richard K.*, 2019 WL 3083019, at *8; *see also Carpenter* Or. 6 (noting that plaintiff could seek to lift stay if later excluded from *Miller* litigation). Because Plaintiffs "remain[] member[s]" of the *Miller* classes, they are litigating their claims in two fora. *Richard K.*, 2019 WL 3083019, at *8. This condition is contrary to the purpose of a (b)(2) class, to the rule against maintaining two separate, like actions, and to the overwhelming weight of authority on this issue.[2]

Plaintiffs' reliance on the recent denial of a similar motion in *Holman v. Vilsack*, 2021 WL 3354169 (W.D. Tenn. Aug. 2, 2021), is misplaced. Defendants respectfully disagree with that decision. Indeed, the same court that denied a stay in *Holman* just granted one in *Joyner*, where further briefing led the court to correct its view of a plaintiff's potential to opt-out of the *Miller* litigation. *See Joyner* Or. 6. This Court should not compound the earlier error by permitting additional duplicative litigation. *Holman* also turned on factors not present here, such as the availability of a specific Sixth Circuit precedent and the *Holman* plaintiffs' maintenance of separate claims not raised here. *See Joyner* Or. 4 n.1 (distinguishing that court's order in *Holman*). Here, Plaintiffs' APA claim is wholly duplicative of the constitutional claims, and Plaintiffs' request for nominal damages—a remedy, not a claim—is no reason to deny a stay. And contrary to Plaintiffs' assertion, their claims will not wither on the vine during a stay, but instead will proceed in *Miller*. *Joyner* Or. 6;

And Plaintiffs' immediate interests are already protected by three preliminary injunctions, including one entered by the *Miller* court itself. Plaintiffs try to conjure prejudice by objecting to

[2] Plaintiffs are unlikely to succeed in opting out of the *Miller* classes, which were certified under Rule 23(b)(2). *See Carpenter* Or. 5. Such classes are "*mandatory* classes: The Rule *provides no opportunity* for (b)(1) or (b)(2) class members to opt out[.]" *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 361-62 (2011) (emphasis added). Individual opt-outs are incompatible with Rule 23(b)(2) classes seeking injunctive relief, as such "relief *must perforce* affect the entire class at once." *Id.* at 361-62; *see also id.* at 360 (emphasizing "indivisible" nature of 23(b)(2) relief). *See also Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 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); *Messier v. Southbury Training Sch.*, 183 F.R.D. 350, 355-56 (D. Conn. 1998).

various litigation decisions made by *Miller* class counsel. One such objection is to the inclusion of certain additional claims in the *Miller* litigation, but Plaintiffs concede both that the *class* claims are limited to the challenge to § 1005 and also that class counsel has indicated they will "likely" drop the other claims that these Plaintiffs object to. Plaintiffs also object that class counsel has indicated they do not believe factual discovery is necessary, whereas Plaintiffs apparently believe that unspecified "paperwork" may be important to adjudicating this facial challenge to an Act of Congress.

In essence, Plaintiffs contend that a stay prejudices them because they will lose control of the litigation. Such concerns are commonly raised and rejected and are no reason to deny a stay. *See, e.g.*, *Emerson v. Sentry Life Ins. Co.*, 2018 WL 4380988, at *2 (W.D. Wis. Sept. 14, 2018) (granting stay when nonmovant "fail[ed] to provide a plausible account of what she stands to lose by proceeding as a member of the [other action's] class, other than representation by the counsel of her choice"). As part of the class certification in *Miller*, a district judge already determined that class counsel "will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief." *Miller* Or. 12. 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 decides Rule 23 questions). As the court explained in granting Defendants' motion for a stay in *Carpenter*, "Plaintiff's argument that her interests are only adequately served by her own attorneys flies against the *Miller* court's finding that counsel in the *Miller* case 'will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief.'" *Carpenter* Or. 6; *see Joyner* Or. 5. Plaintiffs' "rights and grievances as to [Defendants] will be protected and adjudicated just like any other class member's." *Emerson*, 2018 WL 4380988, at *2.[3]

For these reasons, the Court should stay proceedings pending resolution of *Miller*.

[3] To the extent Plaintiffs disagree with the approach taken by class counsel, procedural mechanisms such as intervention may be available for them to raise their concerns in the *Miller* litigation. *See, e.g.*, *Goff*, 672 F.2d at 704. Plaintiffs' complaint that class counsel has "never communicated with Plaintiffs" rings hollow when class counsel specifically committed to contacting Plaintiffs' counsel. *See* ECF No. 21-1 at 5. Regardless, any such concerns will hold 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.

Dated: August 20, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2021, I electronically filed the foregoing brief using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: August 20, 2021

/s/ Michael F. Knapp
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Exhibit 1

Order Granting Stay

ECF No. 33, Carpenter v. Vilsack et al., No. 21-cv-103-NDF (D. Wyo.) August 16, 2021

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

LEISL M. CARPENTER,

Plaintiff,

vs.

THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture, et al.,

Defendants.

Case No. 21-CV-0103-F

ORDER GRANTING DEFENDANTS' MOTION TO STAY

This matter comes before the Court on Defendants' motion to stay proceedings pending resolution of related class action. CM/ECF Document (Doc.) 27. Defendants identify a related class action, *Miller v. Vilsack*, 4:21-cv-595 pending in the Northern District of Texas, wherein the judge ordered class certification under Federal Rule of Civil Procedure 23 and enjoined Defendants from administering a recently enacted loan-forgiveness program under Section 1005 of the American Rescue Plan Act of 2021 (ARPA) for socially disadvantaged farmers. Doc. 28-1. Defendants argue Plaintiff is a member of the classes certified by *Miller* and Defendants will be bound by any relief granted to the classes with respect to Plaintiff should the equal protection claim prevail. Because of this, Defendants request a stay of this case as continued adjudication of the case would be unnecessarily duplicative (thus waste resources) and risk inconsistent results. Defendants

also argue a stay would not prejudice Plaintiff who is a class member and currently protected by the preliminary injunction entered in *Miller* as well as the nationwide injunctions entered by other courts.

Plaintiff opposes a stay arguing Defendants have failed to satisfy the standard for granting a stay and Plaintiff would be prejudiced because Plaintiff has no control over *Miller*'s pace or the legal theories advanced. For the reasons that follow, the Court is persuaded that Defendants satisfy the grounds for a stay of this case and any potential for prejudice can be mitigated by the Court.

Background

Plaintiff is a Wyoming rancher and young mother of Danish, Norwegian and Swedish ancestry. Doc. 1, p. 2. In 2012, she took out a real estate loan from the U.S. Department of Agriculture's Farm Service Agency which is covered under the terms of ARPA. *Id*. at p. 4. She alleges she would be eligible for the loan forgiveness program in Section 1005 of ARPA, and future FSA loans, except for the fact that she is not a member of any of the racial groups that are eligible for loan forgiveness. *Id*. She alleges Section 1005 of ARPA imposes racial classifications in violation of the Equal Protection clause of the Fifth Amendment of the U.S. Constitution. *Id*. at pp. 11-12. She also alleges Defendants are exceeding their authority in administering Section 1005, by illegally permitting persons who receive loan forgiveness under ARPA to be eligible for future FSA loans. *Id*. at pp. 12-13. Plaintiff seeks declaratory and injunctive relief.

Applicable Legal Standard

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "Allowing the same issue to be decided more than once wastes litigants' resources and adjudicators' time." *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 140 (2015); *see also Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) ("[a]s between federal district courts, . . . the general principle is to avoid duplicative litigation"). Thus, it is a "well established policy that a court may, in its discretion, defer or abate proceedings where another suit, involving the identical issues, is pending . . . and it would be duplicative, uneconomical, and vexatious to proceed." *Blinder, Robinson & Co. v. SEC*, 692 F.2d 102, 106 (10th Cir. 1982).

However, courts are cautioned that the power to stay must not to be exercised lightly, considering a party's "right to proceed in court should not be denied except under the most extreme circumstances." *Commodity Futures Trading Com'n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983). In exercising such discretion, courts weigh various factors, including (1) the interests of judicial economy, (2) hardship or inequity if the movant is required to go forward, (3) harm to the non-movant in the issuance of a stay, (4) and the public interests at stake. *See United Steelworkers of Am. v. Or. Steel Mills, Inc.*, 322 F.3d 1222, 1227 (10th Cir. 2003) (quoting *Landis, et al. v. North American Co.*, 299 U.S. 248, 254, 57 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with

economy of time and effort for itself, for counsel, and for litigants").[1] In short, the decision on whether to grant a stay is largely committed to the "carefully considered judgment" of the district court. *Colo. River Water Conservation Dist.*, 424 U.S. at 818.

Discussion

Interests of Judicial Economy

Defendants argue a stay promotes judicial economy by avoiding simultaneous, duplicative litigation of Plaintiff's claim in multiple courts and the risk of conflicting results. Defendants also argue courts regularly stay cases pending resolution of related class actions. *See, e.g., Yazzie v. Ray Vickers' Special Cars, Inc*., 180 F.R.D. 411, 414 (D.N.M. 1998) (class actions seek "to facilitate judicial economy by avoidance of multiple suits on the same subject matter" and "to deter inconsistent results"); *Taunton Gardens Co. v. Hills*, 557 F.2d 877, 879 (1st Cir. 1977) (upheld stay as "within the district court's discretion to find that the public interest, the court's interest in efficient procedures, and the 'interest of justice'" should allow the government "a reasonable opportunity to resolve its obligations in the national class action").

Defendants also argue *Miller* was the first-filed case and under the first-filed rule, "when two courts have concurrent jurisdiction, the first court in which jurisdiction attaches

[1] Plaintiff relies on *United Steelworkers* in arguing for a different set of factors applicable to motions for stay, which includes the requirement to demonstrate movant's likelihood of prevailing in the related proceeding. For the reasons argued by Defendants, the Court agrees that the factors argued by Plaintiff (taken from *Battle v. Anderson*, 564 F.2d 388, 397 (10th Cir. 1977)), relate to a motion to stay enforcement of a judgment, not a motion to stay consideration of a claim. For this reason, the Court will not consider Plaintiff's argument that Defendants have failed to establish that they have a likelihood of succeeding on the merits in *Miller*.

has priority to consider the case." *Hospah Coal Co. v. Chaco Energy Co*., 673 F.2d 1161, 1163 (10th Cir. 1982) (citation omitted). Under the "first-filed-rule," Defendants argue the parties and issues are identical given that Plaintiff is a class member in the *Miller* case which certified classes for purposes of resolution of the principle issue brought in this case. *See Wakaya Perfection, LLC v. Youngevity Int'l, Inc*., 910 F.3d 1118, 1124 (10th Cir. 2018) (factors for consideration are "(1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." (citation omitted)).

Plaintiff argues judicial economy is not a relevant factor and, if it were relevant, Defendants fail to satisfy their burden. Plaintiff argues *Miller* does not involve the same parties, will not adequately consider all Plaintiff's interests and is not truly duplicative. As to the argument on the "first-filed-rule," Plaintiff argues the amended complaint in *Miller* which added plaintiffs who held farm loans was filed a week after Plaintiff filed her complaint, thus her complaint in this case is the first filed.

As to this factor, the Court concludes the interests of judicial economy strongly favor a stay. Defendants are correct that *Miller* involves the same parties given that Plaintiff is a member of the classes certified by the *Miller* court under Fed. R. Civ. P. 23(b)(2) upon a finding that the four threshold requirements for class certification are met and "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011); Doc. 28-1. Plaintiff does not dispute that she is a class member and would receive relief in *Miller* but argues she may opt-out of the classes. This scenario is speculative especially considering that Rule 23(b)(2) classes are "mandatory classes" with no opt-out opportunity. *Walmart*, 564

U.S. at 362. Should Plaintiff seek and be permitted to opt-out, though, Plaintiff may advise the Court and seek to lift the stay.

Plaintiff also argues her interests in the pace of the litigation and the right to advance her own legal theories through her own counsel are not adequately protected by a stay. These interests are present in every situation wherein courts stay individual actions which overlap with claims pursued by a certified class of which the individual is a member. *See, e.g., Richard K. v. United BeHavioral Health*, 2019 WL 3083019, at *7 (S.D.N.Y.). Further, Plaintiff's argument that her interests are only adequately served by her own attorneys flies against the *Miller* court's finding that counsel in the *Miller* case "will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief." Doc. 28-1, p. 12.

Further, Plaintiff argues the issues are not identical as she has a second claim, not pled in *Miller*, that Defendants are illegally permitting persons who receive loan forgiveness under ARPA to be eligible for future FSA loans. While this is correct, Defendants are also correct that Plaintiff's interests in her second claim are adequately protected by the *Miller* court's preliminary injunction because no person will receive loan forgiveness under ARPA for purposes of gaining eligibility for future FSA loans.

Finally, the chronology of events supports a stay. Jurisdiction vested with the *Miller* court prior to the commencement of this action,[2] and the *Miller* court has already taken

[2] While Plaintiff argues the Court should consider only the date of the amended complaint in *Miller* for determining which case was filed first, this argument is unpersuasive. There is no dispute that jurisdiction vested first with the *Miller* court.

significant action through its preliminary injunction and certification of classes. In comparison, this action has not proceeded beyond the filing of Plaintiff's complaint and Defendant's motion for stay.

For all the foregoing reasons, the Court finds the interests of judicial economy weigh strongly in favor of a stay.

Hardship or Inequity if the Movant is Required to go Forward

Defendants argue, in the absence of a stay, they would be required to defend against identical, significant claims in multiple courts at the same time, including in eleven other cases around the country. Plaintiff argues the motion should be denied for failure to show "irreparable harm."

In considering the relevant factor, the Court is satisfied that Defendants need not show irreparable harm, but rather Defendants are called upon "to make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which [Defendant] prays will work damage to some one else." *Landis*, 299 US at 256. Plaintiff argues the concerns of defending against duplicative claims in separate courts does not satisfy the relevant factor.

As to this factor, the Court finds Defendants have made a case of hardship and inequity if required to defend against twelve cases simultaneously on varying schedules and in different jurisdictions. There is no dispute that this is a burden on the government and, consequently on the taxpaying public. Whether this is "a clear case" is subject to reasonable debate. However, this factor must be considered in light of the importance of the issues at stake, and also judged (or balanced) against the possibility of damage or harm

to Plaintiff. There is no dispute that the issues at stake in the litigation pending in the various districts are quite significant. Plaintiffs in all cases are seeking a constitutional ruling which, if successful, would invalidate federal legislation. The significance of the issues is supportive of Defendants' argument that they have made a clear case of hardship or inequity. Further, given the Court's finding that a stay is not likely to harm Plaintiff, the Court finds, on balance, this factor weighs somewhat in favor of a stay.

Harm to the Non-Movant in the Issuance of a Stay

Defendants argue Plaintiff is a member of classes certified by the *Miller* court specific to Plaintiff's claim against the continued enforcement of the racial exclusions in Section 1005 of ARPA and, in the meantime, Plaintiff will benefit by the preliminary injunction entered by courts preserving the status quo which prohibits enforcement of the racial exclusions. Defendants also point out that both cases are at early stages, thus a stay in this case would not disrupt or delay litigation, but rather would promote efficient resolution.

Plaintiff argues a stay would cause substantial harm because Plaintiff has no say as to the pace at which *Miller* would proceed in the district court or perhaps on appeal. Plaintiff also argues she will be required to watch counsel other than her own making strategic decisions and legal arguments that she has no say in. Finally, Plaintiff identifies her second claim of illegal action as a claim not subject to adjudication in *Miller*, and that this claim warrants timely adjudication.

Plaintiff's arguments that she will be harmed by a stay have been adequately discussed in the context of the factor relating to judicial economy. Further, the likelihood

of harm can be mitigated by the Court. Should progress in the *Miller* case flounder, or in the unlikely event that the injunction is lifted, or the class is decertified, or the *Miller* court allows Plaintiff to opt out of the Rule 23(b)(2) classes, Plaintiff can certainly seek an order lifting the stay. In short, the Court finds that its authority to control the duration of the stay adequately mitigates any fair possibility that the stay will work damage against Plaintiff. Consequently, this factor weighs in favor of a stay.

The Public Interests at Stake

Defendants argue the public interests are served by a stay given the importance of the issues at stake and the public's interest in just and efficient resolution of cases – especially those like this one – of "extraordinary public moment." *Clinton*, 520 U.S. at 707 (citation omitted).

Plaintiff argues the public in general has a strong interest regarding the prompt and efficient handling of all litigation, specifically including this litigation, and that Defendants fail to satisfy their burden on this factor.

The public interests at stake include not just the prompt and efficient handling of this case. Rather, those interests include the importance of the issues at stake as previously discussed, and the prompt and efficient resolution of those issues from the overall perspective of the litigation pending in all twelve district courts. The taxpayer interests are not served by requiring the government to defend multiple suits on the same subject matter in all twelve courts. The interests of farmers and ranchers who are disqualified from seeking loan-forgiveness under Section 1005 of ARPA (including Plaintiff) are not served by the potential for inconsistent results announced at varying times, should all cases

proceed separately. And those interests which prompted Congress to enact Section 1005 of ARPA are similarly not served by a potential for inconsistent results. Considering the public interests at stake in a case such as this, which exceed in scope Plaintiff's interest in "the usual rule that litigation is conducted by and on behalf of the individual named part[y] only," *Wal-Mart Stores, Inc*., 564 U.S. 348, the Court finds this factor weighs strongly in favor of a stay.

Conclusion

For all the foregoing reasons, the Court finds and concludes Defendants have met their burden to warrant a stay of this case. Therefore, the Court GRANTS Defendant's Motion to Stay Proceedings Pending Resolution of Related Cass Action (Doc. 27). On good cause, Plaintiff may, at any time, seek to lift the stay. Further, Defendants shall file and serve a status report every six (6) months reporting on the *Miller* case progress, and shall also PROMPTLY report any action:

1. By the *Miller* court to decertify any class or otherwise proceed such that plaintiffs in the *Miller* case no longer represent themselves and "all farmers and ranchers in the United States who are currently excluded from the definition of 'socially disadvantaged farmer or rancher,' as defined in 7 U.S.C. § 2279(a)(5) – (6) and as interpreted by the Department of Agriculture." Doc. 28-1, p. 23, fn. 3.
2. By any court which affects the nationwide preliminary injunction which enjoins Defendants or any person acting in concert or participation with them, from discriminating on account of race or ethnicity in administering Section 1005 of ARPA for any applicant who is a member of the certified classes.

IT IS SO ORDERED.

Dated this 16th day of August, 2021.

NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

Exhibit 2

Order Granting Stay

ECF No. 21, Joyner v. Vilsack, No. 1:21-cv-1089 (W.D. Tenn.)

August 19, 2021

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.	)	

ORDER GRANTING DEFENDANTS' MOTION TO STAY

Before the Court is Defendants' Motion to Stay Proceedings Pending Resolution of Related Class Action filed on July 16, 2021. (ECF No. 12.) Defendants seek to stay proceedings in this case in light of the certification of classes in the Northern District of Texas that, Defendants argue, include the Plaintiff in this case. Plaintiff has responded in opposition. (ECF No. 14.) Also before the Court is Defendants' Reply to Plaintiff's Response. (ECF No. 18.) For the following reasons, Defendants' Motion is **GRANTED**.

BACKGROUND

Plaintiff is a self-described non-minority "small farmer" specializing in growing corn and beans, who lives and works in Gibson, County, Tennessee, which is located in the Western District of Tennessee. On June 15, 2021, Plaintiff filed the Complaint in this case, alleging that the U.S. Department of Agriculture's ("USDA") implementation of Section 1005 of the American Rescue Plan Act of 2021 ("ARPA") is violative of the Fifth Amendment's Equal Protection Clause under

the United States Constitution. Section 1005 of ARPA, the Farm Loan Assistance Program for Socially Disadvantaged Farmers and Ranchers, appropriates funds to "provide a payment in an amount up to 120 percent of outstanding indebtedness" of USDA farm loans held by "socially disadvantaged" famers or ranchers. Pub. L. No. 117-2, § 1005 (2021). The USDA interprets the phrase "socially disadvantaged" to mean the racial classifications of "Black, American Indian/Alaskan Native, Hispanic, or Asian, or Hawaiian/Pacific Islander." See American Rescue Plan Debt Payments FAQ, Question 1, https://www.farmers.gov/americanrescueplan/arp-faq. Because Plaintiff does not fall under the definition of a "socially disadvantaged" farmer based on his race, he is ineligible for debt relief under Section 1005, notwithstanding his substantial outstanding farm debt. Challenges to Section 1005 are pending in several courts across the country. In a distinct case also challenging the constitutionality of ARPA's Section 1005, *Holman v. Vilsack*, 1:21-cv-1085, this Court has granted a request for a preliminary injunction and imposed a nationwide injunction on the disbursement of Section 1005 funds pending a resolution in the case.

In their Motion to Stay, Defendants indicate that a related class action, *Miller v. Vilsack*, 4:21-cv-595, is pending in the Northern District of Texas. The court in that case has certified a class under Federal Rule of Civil Procedure 23(b)(2) and also enjoined Defendants from administering Section 1005's loan program. Defendants argue that the instant case should be stayed pending the resolution of the *Miller* case because Plaintiff is a mandatory member of the class certified in *Miller* and Defendant will be bound by any relief granted to the class with respect to Plaintiff should the class prevail on their equal protection claim. Therefore, because the claims being litigated in this case and in *Miller* are identical and are dispositive for this case, Defendants argue that a stay is necessary to preserve judicial resources and prevent duplicative litigation.

Plaintiff opposes a stay, arguing that Plaintiff would be prejudiced by submitting to the result in a case over which he can exercise no control over the legal strategies employed. Plaintiff additionally argues that he will be substantially burdened by having to wait for the resolution of the Texas class action and that the *Miller* litigation is not duplicative in that the *Miller* plaintiffs request relief that is contrary to that in Plaintiff's Complaint.

STANDARD OF REVIEW

"A district court's power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). However, "it is also clear that a court must tread carefully in granting a stay of proceedings, since a party has a right to a determination of its rights and liabilities without undue delay." *Ohio Envtl. Council v. U.S. Dist. Court, S. Dist. of Ohio, E. Div.*, 565 F.2d 393, 396 (6th Cir. 1977). When determining whether to grant a stay, courts may consider multiple factors. The most important consideration is the balance of hardships; the moving party has the burden of proving that the non-moving party will not be injured by a stay. *Int'l Bhd. of Elec. Workers, Loc. Union No. 2020, AFL-CIO v. AT&T Network Sys. (Columbia Works)*, 879 F.2d 864 (6th Cir. 1989) (Table) (quoting *Landis*, 299 U.S. 248, 255.) Also relevant is whether granting a stay will further the interest of judicial efficiency, particularly whether a "separate suit in another jurisdiction involves the same issues and parties and is likely to consider adequately all interests before the court considering a stay." *Id*. "[T]he burden is on the party seeking the stay to show that there is pressing need for delay, and that neither the other party nor the public will suffer harm from entry of the order." *Ohio Envtl. Council,* 565 F.2d 393, 396.

ANALYSIS

In considering the balance of hardships, the Court finds that Defendants have met their burden of showing that neither the Plaintiff nor the public will suffer harm from the proposed stay. Plaintiff argues that he was not consulted on the approach in the Texas case and that he will be prejudiced by potentially being inadequately represented by the plaintiffs' attorneys in *Miller*. Further, Plaintiff asserts that he "owes hundreds of thousands of dollars in federal loans – for which more payments are due, and more and more interest is charged as time goes on" – therefore, asking him to wait in uncertainty for a resolution in the *Miller* case will be extremely burdensome for him. These arguments are unavailing considering, first, that this Court and others have imposed a preliminary injunction to preserve the status quo for Plaintiff and, second, because Plaintiff would be bound by the decision in *Miller*, regardless of the result in the instant case.

The Court notes that it has issued a preliminary injunction enjoining the distribution of Section 1005 funds in *Holman v. Vilsack*[1], which was filed in this Court prior to the instant case and is litigating an identical issue. That case is further along than the instant case, a Scheduling Conference having been set for September 2, 2021. Therefore, even in the absence of the *Miller* case, Plaintiff's status with regard to Section 1005 litigation will be preserved pending the resolution of another case, *Holman*. Further, as Plaintiff notes in his Response, Plaintiff is not requesting that the definition of "socially disadvantaged farmer" be extended to encompass him. Rather, in his "Prayer for Relief" Plaintiff requests that the Court enjoin Defendants from implementing Section 1005 on the basis of race. Even if Plaintiff had requested that the Court fashion a "non-discriminatory" basis for implementing Section 1005, which it did not, the Court would not be inclined to re-write an act of Congress. Thus, Plaintiff would still owe hundreds of

[1] *Holman* is distinguishable from the present action because Plaintiff in that case raised an additional claim concerning the meaning of "debt forgiveness," which is not raised in *Miller* or the instant case.

thousands of interest-accumulating USDA loans should the case be resolved in his favor according to the relief he requested, undercutting Plaintiff's argument that he is burdened by the time necessary to resolve this case because of financial uncertainty. Additionally, while the Court appreciates that Plaintiff has an interest in controlling the pace of the litigation and the legal theories employed, that ability would be curtailed to some extent in this Court notwithstanding the Texas class action because of the ongoing litigation in *Holman*. Also, the Court credits the *Miller* court's finding that counsel for that class action "will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief." (ECF No. 12-1 at 12.) Plaintiff would also not be voiceless as a class member in *Miller*, as Defendants state, mechanisms such as intervention are available to him should he wish to raise any concerns in the Texas litigation. The fact that this case is still in a very early stage, especially relative to *Miller*, the sole upcoming deadline being Defendants' August 30 deadline to respond to Plaintiff's Complaint, also mitigates in favor of finding that Plaintiff would not be greatly prejudiced by a stay. On balance therefore, Plaintiff will be minimally prejudiced by a stay whereas Defendants will be significantly prejudiced by having to litigate identical cases in two different courts.

Not only will Defendants be prejudiced by litigating identical claims in two separate courts, but the judicial system itself will be harmed by the inefficiencies arising from such. Plaintiff disagrees, arguing that a stay would not serve the interests of judicial economy because the *Miller* litigation is not duplicative of the present action. Plaintiff incorrectly states that the class action in *Miller* requests that the court extend the definition of "socially disadvantaged" to encompass white ethnic groups that have suffered past prejudice and discrimination. This ignores the language of the *Miller* court's certification order which clearly establishes classes only as to the challenge to the validity of Section 1005 on Equal Protection grounds, excluding all other claims, among them

the request to extend the definition of "socially disadvantaged." (ECF No. 12-1 at 6) Plaintiff does not dispute that he is a member of the classes which include "all farmers and ranchers in the United States who are encountering, or who will encounter, racial discrimination from the United States Department of Agriculture on account of section 1005 of the American Rescue Plan Act" and "all farmers and ranchers in the United States who are currently excluded from the definition of 'socially disadvantaged farmer or rancher,' as defined in 7 U.S.C. § 2279(a)(5)–(6)5 and as interpreted by the Department of Agriculture." (ECF No. 12-1 at 5-6.) Plaintiff also allows that the *Miller* litigation was the first-filed case and under the first-filed rule, when two federal courts have concurrent jurisdiction, the first court in which jurisdiction attaches has priority over the case. *See Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs., Inc.,* No. 00–3183, 2001 WL 897452, *3 (6th Cir. July 31, 2001) ("The first-to-file rule is a well-established doctrine that encourages comity among federal courts of equal rank.") Most compellingly, Plaintiff is bound by the class certification in *Miller*, which was certified under Rule 23(b)(2). The Supreme Court has instructed that classes certified under Rule 23(b)(2) are mandatory, providing "no opportunity" for class members to opt out and not even requiring district courts to afford class members notice of the certification. *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 361-62 (2011). Accordingly, Plaintiff will not be deprived of "his day in court" as he asserts, because he is a member of a mandatory class action litigating the same claim he brings in this Court. Given Plaintiff's inability to opt out of the *Miller* class action, the identical nature of the class action claim, and the fact that *Miller* was filed first and is substantially more developed than this case, it is an inefficient use of judicial resources to continue litigation in this Court while the *Miller* case is ongoing. Judicial efficiency mitigates in favor of a stay pending resolution of *Miller*.

CONCLUSION

For the foregoing reasons, the Court finds that Defendants have met their burden to warrant a stay in this case pending the resolution of the class challenge to the validity of Section 1005 in *Miller v. Vilsack*, 4:21-cv-595. Accordingly, Defendants' Motion to Stay Proceedings Pending Resolution of Related Class Action (ECF No. 12) is **GRANTED**. Plaintiff may move to lift the stay for good cause should Plaintiff seek and be permitted to opt-out of the classes in *Miller* or if the *Miller* court takes action to decertify the classes of which Plaintiff is a member.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: August 19, 2021.