

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

*Plaintiff,*

v.

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

*Defendants.*

No. 3:21-cv-00514-MMH-JRK

**DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY**

Defendants hereby move for leave to file a reply brief, of not more than fifteen pages, in support of their motion to stay proceedings in this case and to address several arguments and factual contentions raised in Plaintiff's Opposition, ECF No. 49. In support of the instant motion, Defendants state as follows:

1. In his Opposition, Plaintiff raises several arguments that Defendants have not had the opportunity to address, including that Defendants' requested stay is "immoderate," that Defendants have engaged in "inequitable conduct" in seeking a stay, and that Plaintiff intends to attempt to opt-out of the classes in *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.)—classes certified under Rule 23(b)(2), which does not contain an opt-out provision. *See* Pl.'s Opp'n 8, 14 n.11. Plaintiff also

incorrectly argues that he will be prejudiced by a stay, and that Defendants will not be prejudiced and that judicial efficiency will not be served by a stay, without adequately accounting for the case law in the class action context that demonstrates the opposite.

2. Plaintiff's Opposition also includes statements about the scope of the class claims and proceedings in *Miller* that are either factually incorrect or irrelevant. Defendants believe it is important to correct the record on these points to ensure that the Court's consideration of Defendants' stay motion is informed by a complete and accurate understanding of the facts and circumstances of the *Miller* litigation.

3. Defendants believe it is important to address all of these points and would appreciate the opportunity to do so.

4. Defendants thus seek leave of Court to file a reply brief of not more than fifteen pages, excluding the certificate of service. Defendants will be prepared to file their reply brief within ten days of the date of this motion.

5. Pursuant to Local Rule 3.01(g), undersigned counsel conferred by email with counsel for Plaintiff, who indicated that Plaintiff objects to Defendants' request to file a reply brief.

**MEMORANDUM**

Although a reply as of right is not provided for in this District, the Court has broad discretion to grant leave to file a reply. *See* Local Rule 3.01(d). Here, Defendants seek leave of Court to file a reply of not more than fifteen pages, excluding the certificate of service, to respond to numerous arguments raised in Plaintiff's Opposition. Defendants will endeavor to prepare a reply brief that will assist the Court in rendering a decision on Defendants' motion to stay proceedings. Defendants respectfully submit that good cause exists to permit Defendants to file a reply in this instance.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that the Court grant Defendants leave to file a reply brief of not more than fifteen pages within ten days of the date of this motion.

Dated: July 27, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

LESLEY FARBY  
Assistant Branch Director  
Civil Division, Federal Programs Branch

/s/ Emily Newton  
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*Counsel for Defendants*

**Certificate of Service**

I hereby certify that on July 27, 2021, a copy of the foregoing motion was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Emily Newton  
EMILY SUE NEWTON  
U.S. Department of Justice