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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

LEISL M. CARPENTER, Plaintiff, v. **THOMAS J. VILSACK**, in his official capacity as Secretary of Agriculture, et al., Defendants.	Case No. 21-cv-103-F

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF RELATED CLASS ACTION

Plaintiff Carpenter is indisputably a member of a class certified in ongoing litigation in the Northern District of Texas. And like the central claim here, the class claim being pressed on her behalf in Texas is that Section 1005 of the American Rescue Plan Act violates equal protection. As explained, courts in these circumstances routinely stay, or even dismiss, the individual action in favor of the class action, to facilitate judicial economy by avoiding multiple suits on the same subject matter and to prevent inconsistent results. *See* Defs.' Mem. 8-10. Plaintiff fails to contend with this rationale and consequently does not undermine Defendants' showing that a stay is likewise warranted here.

At the outset, Plaintiff's Opposition relies on the wrong standard. As explained in *United Steelworkers of Am. v. Or. Steel Mills, Inc.*, 322 F.3d 1222 (10th Cir. 2003), a district court may either stay *proceedings*, *id.* at 1227 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)), or may proceed to judgment but then stay the *judgment*, *id.* (citing *Battle v. Anderson*, 564 F.2d 388, 397 (10th Circ. 1977)).[1] The former uses the *Landis* factors, the latter, those in *Battle* (the "*Nken* factors," *see Nken v. Holder*, 556 U.S. 418 (2009)). To be sure, the Tenth Circuit's mention of two alternatives has caused confusion, but the "courts that have directly confronted the question have overwhelmingly concluded that the *Landis* test or something similar governs" a motion to stay proceedings. *Kuang v. DoD*, 2019 WL 1597495, at *3 (N.D. Cal. Apr. 15, 2019) (citing cases). Courts in this circuit have thus applied *Landis* when considering a stay of proceedings. *See Navico Inc. v. Garmin Int'l*, 2016 WL 8115365, at *2 (N.D. Okla. Jan. 15, 2016); *Kendall State Bank v. Fleming*, 2012 WL 3143866, at *2 (D. Kan. Aug. 1, 2012); *Sexton v. Col. Springs*, 2020 WL 6393111, at *4 (D. Colo. Nov. 2, 2020) (likelihood of success irrelevant).

Importantly then, contrary to Plaintiff's suggestion that judicial economy is irrelevant, *see* Pl.'s Opp. 7, judicial economy is a key factor when considering a motion to stay proceedings given the equities it is meant to address. *See Kuang*, 2019 WL 1597495, at *3 (quoting *Landis*, 299 U.S. at 254 ("'[T]he power to stay proceedings is incidental to the power inherent in every court to control the

[1] All internal alterations, citations, and subsequent history are omitted unless otherwise indicated.

disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'")). Even more so here. Because class actions seek "to facilitate judicial economy by avoidance of multiple suits on the same subject matter" and "to deter inconsistent results," *Yazzie v. Ray Vickers' Special Cars, Inc.*, 180 F.R.D. 411, 414 (D.N.M. 1998), those are the primary considerations used to assess stay motions in cases like this one, *see* Defs.' Mem. 5-7.

Plaintiff largely ignores this rationale and cites cases that did not involve concurrent class actions to suggest that stays, particularly stays based on judicial economy, should be "rare[]." Pl.'s Opp. 7. But the reasoning in the cases Plaintiff cites is that "'[t]he right to proceed in court should not be denied except under the most extreme circumstances.'" *Id.* at 2 (quoting *Kennedy Oil v. Luca Techs., Inc.*, 2013 WL 12284416, at *2 (D. Wyo. Apr. 19, 2013)). That rationale has no application here where Plaintiff *is* proceeding in court, as a member of classes certified in *Miller*, pressing an equal protection challenge to Section 1005.[2] 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; Defs.' Mem. 8-10.[3]

And routine for good reason: "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

[2] Plaintiff notes that she "may yet" seek to opt out of the classes certified in *Miller*, Pl.'s Opp. 8 n.3, and that the Government "may … appeal the grant of class certification," *id.* at 4. Attempts to avoid stays based on such speculation have been rejected for good reason. Defendants' request for a stay, rather than dismissal, "accommodates the possibilit[y]" that the *Miller* court could grant a future motion by Plaintiff to opt out of the classes or that the classes could be decertified. *Richard K. v. United Behavioral Health*, 2019 WL 3083019, at *8 (S.D.N.Y. June 28, 2019); *see also Thiele v. Energen Res. Corp.*, 2015 WL 13899009, at *2 (D. Colo. Dec. 7, 2015). Because Plaintiff "remains a member" of the *Miller* classes, *Richard K.*, 2019 WL 3083019, at *8, she is litigating her claim in two fora—contrary to the purpose of a (b)(2) class, the rule against maintaining two separate like actions, *see infra*, and the weight of authority on this issue. And Plaintiff is unlikely to succeed in any attempt to opt out of the *Miller* classes. *See Wal-Mart Stores v. Dukes*, 564 U.S. 338, 361-62 (2011) (explaining that Rule 23(b)(2) classes are "*mandatory* classes: The Rule *provides no opportunity* for…(b)(2) class members to opt out.").

[3] Indeed, other than the recent decision in *Holman v. Vilsack*, No. 21-01085 (W.D. Tenn. Aug. 2, 2021), ECF No. 49, Plaintiff fails to cite one case in which a court denied a stay in similar circumstances.

action once the member's class has been certified." *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986). Indeed, allowing a member of a certified class to proceed with individual litigation in another court 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." *Richard K.*, 2019 WL 3083019, at *6. And it would "undermine the efficiency goals of class litigation," including "preventing inconsistent adjudications." *Id.*; *see also Horns v. Whalen*, 922 F.2d 835 (4th Cir. 1991) (explaining same).

Plaintiff attempts to circumvent this case law by arguing that "[t]he instant litigation is not truly duplicative" because she has brought "a wholly distinct claim" from those in *Miller*, namely her "loan forgiveness" claim in Count II. Pl.'s Opp. 5, 8. There are several problems with Plaintiff's argument. First, "in *Landis*, the Supreme Court rejected the argument that a court's authority to stay proceedings before it in favor of proceedings in another court is limited to those instances when the parties and issues in the several cases are identical." *Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484–85 (10th Cir. 1983). Second, Plaintiff fails to contend with the fact that her claims largely *do* overlap with those in *Miller*, with the consequent potential for inconsistent results. Third, Plaintiff's claim is not "wholly distinct" from those in *Miller*; indeed, if the classes in *Miller* were to succeed in invalidating § 1005, Plaintiff's "loan forgiveness" claim would be moot because it depends on the distribution of payments under § 1005. And fourth, Plaintiff's "loan forgiveness" claim should be dismissed because § 1005 does not provide "debt forgiveness" as the term is statutory defined and Plaintiff lacks standing to bring that claim because any harm to her would be based on multiple contingencies that cannot support an injury-in-fact for Article III purposes.[4]

[4] For this and other reasons, Defendants respectfully disagree with the *Holman* decision, which relied in part on the existence of the same "loan forgiveness" claim alleged here. *See* ECF 49 at 3.

If the Court does not stay proceedings, Defendants plan to file a motion to dismiss Count II of Plaintiff's Complaint. If the Court were persuaded by Plaintiff's argument that a stay should not be granted because of her additional claim, Defendants would propose that the Court defer proceedings except for briefing a motion to dismiss and defer ruling on the stay motion until it resolves the motion to dismiss. *See Sexton*, 2020 WL 6393111, at *4 (stay pending a ruling on motion to dismiss).

Plaintiff otherwise tries to distinguish the cases Defendants rely on, but she misstates the facts, and by focusing on their procedural history, again fails to deal with their central reasoning. For instance, she calls *Taunton Gardens* "inapposite" based on her representations that "the district court … was considering a motion for preliminary injunction by the time *a final judgment* in a concurrent case had been issued" and that, unlike the "indefinite stay proposed by the government in this case," "the duration of the stay [was] adequately circumscribed." Pl.'s Opp. 9. But the district court entered a stay in *Taunton Gardens* "pending entry of a final judgment in the [related] class action," 421 F. Supp. at 526, Defendants are likewise seeking a stay pending resolution of the class action, and in any event, the reasons for upholding the stay in *Taunton Gardens* apply equally here: "the public interest, the court's interest in efficient procedures, and the interest of justice would best be served by allowing [the Government] … to resolve its obligations in the national class action" where the "case presents issues of public moment"; "involves the administration of a major federal program"; and the Government "has been called upon to litigate the same issue in more than ten district courts." 557 F.2d at 879.[5]

The Court should also grant a stay because it will not prejudice Plaintiff but would harm Defendants and the public interest. In opposition, Plaintiff relies heavily on her assertion that she will be prejudiced by a stay, *see* Pl.'s Opp. 4-6, but she fails to address the fact that the interests she seeks to vindicate are protected by three nationwide injunctions that prohibit Defendants from making payments under Section 1005. *See* Order, *Faust v. Vilsack*, No. 21-548 (E.D. Wis.), ECF 49 (staying consideration of plaintiffs' motion for a preliminary injunction because plaintiffs "have the protection they seek" by virtue of a nationwide injunction of Section 1005). And, far from prejudicing Plaintiff,

[5] Plaintiff also argues that the first-filed rule does not support Defendants' request for a stay because "[t]he amended complaint in *Miller*," which Plaintiff contends corrected a jurisdictional deficiency, "was filed a week after Plaintiff filed her complaint." *Id.* But the filing date[]" is what "constitute[s] the date[] that jurisdiction attached." *Wakaya Perfection, LLC v. Youngevity Int'l, Inc.*, 910 F.3d 1118, 1126 (10th Cir. 2018). Plaintiff cites no authority to suggest that her view that the *Miller* court did not have jurisdiction over the original complaint—a question never adjudicated in *Miller*—has any bearing on the first-filed determination. *See* Pl.'s Opp. 10. And a stay should be granted regardless.

a stay would benefit her because she would not be required to expend further resources in this Court while maintaining the opportunity to obtain the relief she seeks as a class member in *Miller*. Plaintiff nonetheless argues that she would be prejudiced by a stay because "different counsel" will be determining the "legal theories" and "pace" of the *Miller* proceedings. Pl.'s Opp. 1, 4. But that will always be the case when a class is certified. Hence, as part of the certification in *Miller*, a district judge already determined that class counsel (who have already obtained a preliminary injunction for their clients while Plaintiff's complaint has been pending) "will adequately represent the interests of class members similarly situated in zealously pursuing the requested relief." Order 12, ECF 60. Any prejudice that Plaintiff could possibly suffer because her counsel is not in control of the *Miller* proceedings is not sufficient to deny a stay here, as evidenced by the numerous decisions granting similar stays in the context of a concurrent class action. *See* Defs.' Mem. 8-10.

Given the scant evidence of prejudice to Plaintiff, it is questionable whether "there is even a fair possibility that the [requested] stay … will work damage to [her]." *Kendall*, 2012 WL 3143866, at *2. But even if there were, Defendants have "ma[d]e out a clear case of hardship or inequity in being required to go forward." *Id.* The burdens of duplicative and varied discovery and proceedings have been found sufficient to warrant a stay when plaintiffs in just one concurrent case were members of a certified class. *See Richard K.*, 2019 WL 3083019, at *9. Even more so where Defendants are subject to twelve lawsuits challenging Section 1005. Plaintiff's only retort is that the Department of Justice is "the largest law firm in the world." Pl.'s Opp. 1. It is also the busiest.[6] And in any event, "[b]y conserving judicial resources, a stay will serve not only the interest of … the Parties," but also, of "the courts" "and the public in an orderly and efficient use of judicial resources." *Richard K.*, 2019 WL 3083019, at *9; *see also Sexton*, 2020 WL 6393111, at *3 (explaining same).

[6] *See, e.g.,* https://www.justice.gov/usao/page/file/1285951/download (statistics for 2019, indicating over 140,000 cases filed in 2019, *excluding* Main Justice).

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Respectfully submitted,

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