

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

AIR FORCE OFFICER,

Plaintiff,

v.

LLOYD J. AUSTIN, III, individually and in his official capacity as Secretary of Defense; FRANK KENDALL, III, individually and in his official capacity as Secretary of the Air Force; and ROBERT I. MILLER, individually and in his official capacity as Surgeon General of the Air Force,

Defendants.

Civil Action No. 5:22-cv-00009-TES

**DEFENDANTS' MOTION TO STAY DEADLINES
TO ANSWER PLAINTIFF'S AMENDED COMPLAINT AND
RESPOND TO PLAINTIFF'S MOTION TO CERTIFY CLASS
AND MOTION FOR CLASS-WIDE PRELIMINARY INJUNCTION**

Defendants, by and through the United States Attorney for the Middle District of Georgia, hereby move the Court to stay (1) Defendants' deadline to answer Amended Complaint (ECF No. 56), (2) Defendants' deadline to respond to Plaintiff's Motion to Certify Class (ECF No. 57), and (3) Defendants' deadline to respond to Plaintiff's Motion for Class-Wide Preliminary Injunction (ECF No. 58).

Plaintiff filed her Amended Complaint, Motion to Certify Class, and Motion for Class-Wide Preliminary Injunction on February 28, 2022. Today, Defendants have contemporaneously filed a Motion to Strike Plaintiff's Amended Complaint. As explained in that motion, Plaintiff's Amended Complaint is improper because Plaintiff may not amend as a matter of course under Federal Rule of Civil Procedure 15(a)(1) and has failed to receive either Defendants' consent or

the Court's leave to amend under Rule 15(a)(2). Moreover, Plaintiff lacks standing to serve as a representative of the putative class described in her Amended Complaint and Motion to Certify Class, and the Court should strike her Amended Complaint accordingly.

Defendants' responses to Plaintiff's Motion to Certify Class and Motion for Class-Wide Preliminary Injunction must be filed within 21 days after service of those motions. M.D. Ga. L.R. 7.2. Therefore, Defendants' response briefs are due by March 21, 2022. Federal Rule of Civil Procedure 15(a)(3) provides that "[u]nless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later." Here, Plaintiff filed and served her Amended Complaint on February 28, 2022. Thus, pursuant to Rule 15(a)(3), if the Court grants Plaintiff leave to amend, Defendants' Answer to the Amended Complaint will be due by March 14, 2022.

By Plaintiff's own admission, any response to her Motion to Certify Class and Motion for Class-Wide Preliminary Injunction will require extensive investigation into more than 8,200 servicemembers' requests for religious exemption from the Air Force's COVID-19 vaccine requirement. And yet, as explained above and in Defendants' Motion to Strike, Plaintiff lacks standing to pursue class-wide preliminary injunctive relief. Thus, given Plaintiff's improperly filed Amended Complaint, and Defendants' bona fide challenge to Plaintiff's standing to pursue such class certification and class-wide preliminary injunctive relief—and, importantly, to conserve valuable resources for the Court and parties—Defendants request that the Court stay Defendants' upcoming deadlines.

Federal Rule of Civil Procedure 12(a)(4)(A) provides that where a party "serv[es] a motion under [Rule 12] . . . the responsive pleading must be served within 14 days after notice of" the

court's denial of the motion. Fed. R. Civ. P. 12(a)(4)(A). Therefore, Defendants understand that their responsive pleading to Plaintiff's original Complaint, or the Amended Complaint, will not become due unless and until the Court denies its Rule 12(f) Motion to Strike. *See id.* Nevertheless, out of an abundance of caution, Defendants ask the Court to stay the deadline to answer Plaintiff's original Complaint or Amended Complaint.¹

Likewise, Defendants ask that the Court stay the deadlines for the Defendants to respond to Plaintiff's Motion to Certify Class (ECF No. 57) and Motion for Class-Wide Preliminary Injunction (ECF No. 58) until the Court resolves the threshold issue of Plaintiff's standing.

Respectfully submitted, this 10th day of March, 2022.

PETER D. LEARY
UNITED STATES ATTORNEY

By: s/ Lance Simon
LANCE SIMON
ASSISTANT UNITED STATES ATTORNEY
Georgia Bar No. 447643
ROGER C. GRANTHAM, JR.
ASSISTANT UNITED STATES ATTORNEY
Georgia Bar No. 860338
United States Attorney's Office
Middle District of Georgia
P. O. Box 1702
Macon, GA 31202
Phone: (478) 621-2663
Fax: (478) 621-2737
Email: Lance.Simon@usdoj.gov
Roger.Grantham@usdoj.gov

¹ On February 24, 2022, Plaintiff agreed to Defendants' request to enter into a stipulation (pursuant to the Court's Local Rule 6.1) to extend Defendants' March 14 deadline to answer the original Complaint by 30 days, which would've advanced the answer deadline to April 13. Before the stipulation was docketed, however, Plaintiff filed her Amended Complaint. Because Plaintiff's Amended Complaint is procedurally defective, it is unclear whether her original Complaint or Amended Complaint is currently her operative pleading. Accordingly, Defendants thought it appropriate to move to strike the Amended Complaint and ask the Court to stay the March 14 responsive pleading deadline, out of an abundance of caution, even though its Rule 12(f) Motion to Strike should accomplish the same.