

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

JARROD MCKINNEY,

Plaintiff,

v.

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

Defendants.

No. 2:21-cv-00212-RWS

STATUS REPORT

In accordance with the Court's August 30, 2021, Order, ECF No. 40, Defendants respectfully submit this status report.

1. Plaintiff in this action challenges Section 1005 of the America Rescue Plan Act of 2021. Because Plaintiff is a member of classes certified by the District Court for the Northern District of Texas in *Miller v. Vilsack*, 4:21-cv-595 (N.D. Tex.), that similarly challenge the same statutory provision, Defendants moved for, and the Court granted, a stay of this action pending the outcome of the *Miller* litigation. *See* ECF No. 40 (Aug. 30, 2021).
2. Plaintiff subsequently moved in the *Miller* litigation to opt out of the certified classes. *See* Motion to Opt Out of Certified Classes, *Miller*, ECF No. 78 (Sept. 3, 2021). The *Miller* court denied the motion, and Plaintiff remains a member of the *Miller* classes. *See* Order, *Miller*, ECF No. 100 (Oct 13, 2021).
3. The *Miller* class litigation remains ongoing. On October 12, 2021, the Federation of Southern Cooperatives/Land Assistance Fund (the Federation) moved to intervene as a defendant in *Miller*. *See* Mot. to Intervene, *Miller*, ECF No. 93 (Oct. 12, 2021). The district court denied the motion to intervene, *see* Order, *Miller*, ECF No. 143 (Dec. 8, 2021), and the Federation appealed, Notice of Appeal, *Miller*, ECF No. 147 (Dec. 17, 2021). On

- March 24, 2022, the Fifth Circuit reversed, *see* Opinion of the Fifth Circuit, *Miller*, ECF No. 180 (March 28, 2022), and the district court accordingly permitted the Federation to intervene, *see* Order, *Miller*, ECF No. 185 (April 5, 2022)
4. To accommodate the Federation's participation as a party, the district court amended its scheduling order. *See* Order, *Miller*, ECF No. 186 (April 5, 2022); *see also* Order, *Miller*, ECF No. 196 (April 22, 2022) (denying motion to reconsider schedule). Under the terms of that schedule, summary judgment briefing will be complete on August 2, 2022.
 5. Because the *Miller* case is still pending, and Plaintiff remains a member of the classes certified in that case, the presumption against duplicative litigation and the interests of judicial efficiency weigh in favor of continuing the stay.

Dated: May 27, 2022

Respectfully submitted,

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LESLEY FARBY
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/s/ Michael F. Knapp
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, a copy of the foregoing notice was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/Michael F. Knapp
Michael F. Knapp
Trial Attorney