UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS

THOMAS HEDGEPETH, et al., **Class Agents,** **v.** **MERRICK GARLAND, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE,** **Agency.**	**EEOC NO. 570-2016-00501X** **AGENCY CASE NO. M-94-6376** **OFO Appeal 2024003880**

NOTICE OF RELEVANT FILING

Class Agents, on behalf of themselves and a class of individuals they represent, file this notice to alert the EEOC Office of Federal Operations that the U.S. Department of Justice ("the Agency") has filed a Motion to Stay Matthew Fogg's civil action in the U.S. District Court for the District of Columbia pending the resolution of this appeal. Exhibit 1; Exhibit 2. The Agency argues that a stay in the United States District Court for the District of Columbia is warranted because the outcome of this appeal will bear on whether Mr. Fogg's civil action is barred by res judicata or related doctrines. Ex. 2. The Agency also argues that the balance of equities and considerations of judicial economy further merit a stay in federal district court. *Id.* Class Agents wanted to make the Office of Federal Operations aware that the pendency of the appeal in this action will likely have an effect on the resolution of the litigation between Mr. Fogg and the Agency in federal court. The appeals in this matter have been fully briefed and are ripe for a decision by the Office of Federal Operations.

October 21, 2024

Respectfully Submitted,

/s/ Christine Dunn

Christine Dunn
Saba Bireda
Kate Mueting
James Hannaway
SANFORD HEISLER SHARP, LLP
700 Pennsylvania Ave., S.E., Suite 300
Washington, D.C. 20003
Telephone: (202) 499-5200
Facsimile: (202) 499-5199

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MATTHEW FOGG,

Plaintiff,

v.

MERRICK GARLAND,
Attorney General,

Defendant.

Civil Action No. 24-0792 (CRC)

DEFENDANT'S MOTION TO STAY
PENDING RESOLUTION OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

INTRODUCTION

Merrick Garland, in his official capacity as Attorney General, through undersigned counsel, respectfully moves to stay its response to the Complaint in this case pending resolution of a class action settlement agreement that encompasses most of the claims in this case.

In short, Plaintiff Matthew Fogg filed a charge with the Equal Employment Opportunity Commission ("EEOC") in 1994 against the U.S. Marshals Service asserting discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), on behalf of current and former African American Deputy U.S. Marshals, and African American applicants for Deputy U.S. Marshal positions. *See* https://usmssettlement.com. In 2023, the parties agreed to settle the Administrative Class Complaint. *Id.* The EEOC Administrative Judge approved the parties' Settlement Agreement (the "Agreement") by Order dated June 13, 2024, but its terms and conditions will not be effective until litigation is resolved, including after any appeals of the settlement are exhausted and the Office of Federal Operations approves of the settlement. *Id.*

Fogg was formerly a class agent in the administrative class complaint, but he is now just a class member in that proceeding. Fogg submitted a claim form to obtain proceeds from the Agreement, which also released any claims that he may have had against the Marshals Service arising under the Agreement and Class Claim. *See* Claim Form & Release for Fogg, ECF No. 8-2. The Agreement was also executed by counsel for the class. Once the Agreement is confirmed by the EEOC's Office of Federal Operations, most, if not all, of Fogg's claims in this case will likely be barred by res judicata or other doctrines.

For these reasons, as well as those described in more detail below, the Marshals Service proposes that its obligation to respond to the Complaint in this case be stayed pending resolution of the class action settlement agreement. The Marshals Service further proposes that the parties

file a joint status report within sixty days after the EEOC's Office of Federal Operations rules on the approval of the Agreement.

The Marshals Service has attempted to confer with counsel for Fogg about this motion but has not gotten Fogg's position about whether he opposes or consents to this motion. The Marshals Service assumes Fogg opposes this motion.

BACKGROUND

I. Fogg's Individual Claims

A. *Fogg v. Gonzales*, Civ. A. No. 94-2814 (D.D.C.)

Individually, Fogg has an extensive history pursuing discrimination claims related to his prior employment with the Marshals Service. In 1978, Fogg became a Deputy U.S. Marshal in Washington, DC. *Fogg v. Gonzales*, 492 F.3d 447, 450 (D.C. Cir. 2007). In 1985, he filed an administrative Equal Employment Opportunity ("EEO") complaint with the Marshals Service alleging racial discrimination because he had "received a harsh reprimand" and transfer "ostensibly as punishment for having misused a government car." *Id.* From 1989 to 1992, Fogg was assigned to a task force that tracked fugitives. *Id.* Twice during his time on the task force, he alleged he was not given his regularly scheduled performance rating and did not receive an expected promotion from the GS-12 to the GS-13 level. *Id.* Fogg was eventually promoted to GS-13, but by 1993 he allegedly had been "stripped of most of his task force supervisory responsibilities" and was "out of the field and in a desk job." *Id.* All this allegedly occurred with his 1985 EEO complaint still unresolved. *Id.*

Experiencing "severe psychological stress," Fogg stopped working in March 1993. *Id.* In December of that year, the Marshals Service gave Fogg a "fitness-for-duty" examination and in November 1994 ordered him back to work. *Id.* Fogg reported to work but left after a "few hours." *Id.* He did not return to work and did not comply with two subsequent directives to appear for a

fitness-for-duty examination. *Id.* In 1995, the Marshals Service dismissed Fogg for insubordination, and he appealed to the Merit Systems Protection Board ("MSPB"), which upheld his dismissal as lawful. *Id.*

Fogg then sued the Marshals Service in district court. *Id.* A jury found the Marshals Service had violated Title VII by subjecting Fogg to a racially hostile work environment from 1985 until his dismissal in 1995 and by discriminating against him on account of his race in twelve of the thirteen instances he had alleged. *Id.* The jury awarded $4,000,000 in compensatory damages, which the district court remitted to $300,000 in accordance with the cap placed upon damages by the 1991 amendments to Title VII. *Id.*

After several rounds of appeals and remands, Fogg ultimately obtained a judgment against the Marshals Service. Judgment, *Fogg v. Gonzales*, Civ. A. No. 94-2814 (D.D.C. Feb. 25, 2008), ECF No. 226.

B. *Fogg v. Sessions*, Civ. A. No. 18-1075 (JEB) (D.D.C.)

In 2018, Plaintiff pursued additional claims against the Marshals Service, as well as the EEOC, related to his prior employment and earlier civil action. He filed a complaint in this Court alleging that he was subjected to discrimination on the basis of race and reprisal when: (1) the Marshals Service failed to process an August 7, 2003, request for EEO counseling based on an allegation that in July 2003, an attorney from the Marshals Service's Office of General Counsel contacted him and threatened to criminally prosecute him if he did not return his credentials, and (2) since 1999, the Marshals Service refused to implement, or engage in a good faith effort to reach a resolution of, the relief due as a result of the 1999 jury verdict in his earlier action, and failed to properly implement the relief and associated benefits as a result of the February 25, 2008 court judgment referenced above. *See generally* Am. Compl., *Fogg v. Sessions*, Civ. A. No. 18-1075 (JEB) (D.D.C. Nov. 16, 2018), ECF No. 4.

The Court ultimately dismissed the case because Plaintiff failed to serve the defendants. *See* Min. Order, *Fogg v. Sessions*, Civ. A. No. 18-1075 (JEB) (D.D.C. Nov. 28, 2018) ("As Plaintiff has failed to serve Defendants with the Complaint (or the Amended Complaint) despite two extensions and has provided no reason for such failure (or a further extension request), the Court ORDERS that the case is DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 4(m)."); Min. Order, *Fogg v. Sessions*, Civ. A. No. 18-1075 (JEB) (D.D.C. Dec. 14, 2018) ("The Court ORDERS that Plaintiff's Motion for Reconsideration is DENIED WITHOUT PREJUDICE as Plaintiff has failed to comply with Fed. R. Civ. P. 4(i), which provides for the manner of service on the United States or its officers being sued in an official capacity.").

II. Administrative Class Complaint – *Hedgepeth v. Garland*, No. 570-2016-00501X (E.E.O.C.)

On July 12, 1994, Plaintiff, then proceeding pro se, filed an administrative class complaint alleging that the Marshals Service discriminated against him and other African Americans based on their race with respect to various employment practices relating to Deputy U.S. Marshal positions. *See* Order Granting Preliminary Approval of Settlement Agreement, *Fogg v. Garland*,[1] No. 570-2016-00501X (E.E.OC. Sept. 21, 2023), ECF No. 8-6; *see also* https://usmssettlement.com/wp-content/uploads/2023/09/Order-Granting-Preliminary-Approval.pdf. In 1996, an EEOC Administrative Judge declined to certify the class complaint, citing a lack of specific information to support class certification. *Id.* The Marshals Service adopted the Administrative Judge's order and dismissed the complaint. *Id.* Plaintiff appealed the dismissal to the EEOC's Office of Federal Operations, which closed the appeal based on a clerical error in 1997. *Id.*

[1] By EEOC order, on May 15, 2024, the case name *Fogg v. Garland*, No. 570-2016-00501X (E.E.O.C.) was changed to *Hedgepeth v. Garland*, No. 570-2016-00501X (E.E.O.C.), following Plaintiff's removal as a class agent.

Nearly ten years later, represented by counsel, Plaintiff successfully petitioned the EEOC's Office of Federal Operations to reopen the case. *Id.* The EEOC's subsequent appellate decision overturned the 1996 dismissal of the class complaint and remanded the complaint to the EEOC Washington Field Office for a decision on class certification. *See Fogg v. Dep't of Just.*, Appeal No. 01964601, 2006 WL 1520828 (E.E.O.C. May 26, 2006).

In March 2007, an Administrative Judge again denied class certification and dismissed the class complaint. The Marshals Service adopted the Administrative Judge's order. The class agents again appealed, and the EEOC reversed the Administrative Judge's order denying class certification. *Fogg v. Dep't of Just.*, Appeal No. 0120073003, 2012 WL 2952023 (E.E.O.C. July 11, 2012). The Agency filed a request to reconsider, which the EEOC denied. *Fogg v. Dep't of Just.*, Request No. 0520120575, 2015 WL 9997282 (E.E.O.C. Nov. 17, 2015).

The parties spent the next several years engaged in extensive, contentious discovery and motions practice. *See* Order Granting Preliminary Approval of Settlement Agreement, *Fogg v. Garland*, No. 570-2016-00501X (E.E.O.C. Sept. 21, 2023), ECF No. 8-6; *see also* https://usmssettlement.com/wp-content/uploads/2023/09/Order-Granting-Preliminary-Approval.pdf. The parties and the Administrative Judge participated in regular status conferences to resolve disputes and address obstacles to the development of the evidence caused by the age of the case, the lengthy liability period, and the breadth of the claims. *Id.* The parties exchanged over 1.2 million documents and conducted forty-two depositions. *Id.*

On August 13, 2021, the then-assigned Administrative Judge granted the class agents' motion to amend, further revising the class definition to include:

> All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Division assignments, and all African American current and former Deputy U.S.

> Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to present.

Id.

In early 2022, the parties reported that they were engaged in settlement negotiations. *Id.* The Administrative Judge stayed litigation deadlines for settlement, and from March 2022 through August 2023, the parties provided periodic status updates on the progress of their settlement talks. *Id.* The parties participated in about thirty settlement conferences during this period. *Id.*

On August 31, 2023, the class agents, through counsel, filed their unopposed motion for preliminary approval of the proposed class settlement. *Id.* On September 8, 2023, the parties and the Administrative Judge met for a status conference to discuss the approval motion and Agreement. On September 14, 2023, the class agents submitted revised documentation addressing the issues discussed during the status conference. *Id.*

On September 21, 2023, the Administrative Judge preliminarily approved the Agreement, which provided $15 million in monetary relief for the class, as well as significant non-monetary programmatic relief. *Id.* The deadline to object to the Settlement Agreement was January 11, 2024. *See* Class Compl. Notice of Resolution at 3, 10, ECF No. 8-5; *see also* https://usmssettlement.com/wp-content/uploads/2023/10/Notice-of-Resolution.pdf. The deadline to submit a claim form to request payment was January 26, 2024. *Id.* at 4, 9. By submitting a claim form to request payment, a claimant expressly released any and all claims the claimant may have had against the Marshals Service. For example, some of the provisions of the claim form and release read as follows:

- I release the United States, DOJ, USMS, its agents, contractors, servants, and employees, in both their official and individual capacities, from any and all liability, claims, causes of action, appeals, grievances and complaints, pending or potential, which arise out of the Class Claim through the Date of Notice of Resolution.

- The Settlement Agreement constitutes a release from all claims and actions in any forum arising out of the Class Claim that have or could have been brought, as grievances, EEO complaints, or other causes of action within the USMS, DOJ, the EEOC, the Merit [Systems] Protection Board, the Office of Special Counsel, or any United States District or Court of Appeals.

- The Settlement Agreement is a complete accord and satisfaction of any and all Class Claims that occurred before Date of Notice of Resolution, including, but not limited to, equitable and legal relief, backpay, front pay, attorneys' fees and costs, and compensatory and punitive damages.

Claim Form at 10, *Hedgepeth v. Garland*, No. 570-2016-00501X (E.E.O.C.), ECF No. 8-3; *see also* https://usmssettlement.com/wp-content/uploads/2023/10/Settlement-Exhibit-A-Claim-Form-2023.10.17-clean.pdf. Plaintiff submitted a claim form and release, which he executed on January 25, 2024. *See* Claim Form & Release for Fogg, ECF No. 8-2.

By Order dated June 13, 2024, the Administrative Judge granted final approval of the settlement agreement. On July 13, 2024, Plaintiff filed a notice of appeal with the EEOC's Office of Federal Operations challenging the final approval. Currently, the Marshals Service and class claimants are waiting for the Office of Federal Operations to rule on the Administrative Judge's final approval of the class action settlement.

III. This Action – *Fogg v. Garland*, Civ. A. No. 24-0792 (CRC) (D.D.C.)

Despite Plaintiff's submission of a claim form and executed release, on March 19, 2024, he filed the instant suit in this Court. *See generally* Compl., ECF No. 1. Plaintiff indicated in his Complaint that he has done so for numerous reasons, including grave dissatisfaction with the underlying administrative proceedings seemingly because of allegations that the class legal representatives were "operating with a conflict of interest and/or not in accordance with the D.C. Bar's rules of professional conduct and responsibility." Compl. ¶ 8. He adds:

> The attorneys' failed to adequately represent the interest of the class in the underlying administrative proceedings, by approving a preliminary settlement on behalf of the class prior to seeking the approval of the class representative Fogg, and by failing to provide a copy to Fogg so he could adequately voice his objection

> to the same prior to a fairness hearing, and thus their actions allegedly constitute a fraud on the tribunal and a violation of several rules of professional responsibility of the D.C. Bar, culminating in Fogg having no choice but to file the case pro se in Federal court in order to fulfill his duties and responsibilities as the named class representative and after filing a D.C. Bar complaint against said counsel seeking disciplinary action so as to protect the class and the public from their continued alleged misconduct in the future.

Compl. ¶ 85, ECF No. 1.

Essentially, Plaintiff seeks to relitigate the thirty-year old administrative class complaint from the ground up and be a class representative against the Marshals Service in this case, asserting purported class claims for race discrimination, retaliation, hostile work environment, and retaliatory harassment. *See* Compl. ¶¶ 92-111. He also pursues an individual claim for retaliatory harassment, seemingly because of some workers compensation and taxation issues. *See id.* ¶¶ 112-120.

LEGAL STANDARD

Courts have the "inherent" power to stay proceedings due to "economy of time and effort for itself, for counsel, and for litigants." *Bledsoe v. Crowley*, 849 F.2d 639, 645 (D.C. Cir. 1988) (internal quotation marks omitted) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). This power is "appropriately exercised where a separate proceeding bearing upon the case is pending." *Hulley Enters. Ltd. v. Russian Fed'n*, 211 F. Supp. 3d 269, 276 (D.D.C. 2016). A stay may be warranted where resolution of the separate proceeding "will likely 'narrow the issues in the pending cases and assist in the determination of the questions of law involved.'" *Id.* (quoting *Landis*, 299 U.S. at 253). A stay is justifiable even where the "parallel proceedings 'may not settle every question of fact and law,' but would settle some outstanding issues and simplify others." *Bridgeport Hosp. v. Sebelius*, Civ. A. No. 09-1344, 2011 WL 862250, at *1 (D.D.C. Mar. 10, 2011) (quoting *Landis*, 299 U.S. at 256). "[P]arallel litigation of factually related cases in separate

fora is inefficient" and should be avoided. *Handy v. Shaw, Bransford, Veilleux & Roth*, 325 F.3d 346, 349 (D.C. Cir. 2003).

When a party requests a stay pending other proceedings, the court considers: "(i) What effect, if any, will the completion of the other proceedings have on the proceedings before this Court?; and (ii) How, if at all, will [Plaintiff] be burdened if a stay is granted, and how, if at all, will Defendant be burdened if a stay is denied?" *United States ex rel. Vt. Nat'l Tel. Co. v. Northstar Wireless, LLC*, 288 F. Supp. 3d 28, 31 (D.D.C. 2017) (cleaned up). To determine whether the balance of hardships favors a stay, the court considers three factors: "(1) harm to the nonmoving party if a stay does issue; (2) the moving party's need for a stay—that is, the harm to the moving party if a stay does not issue; and (3) whether a stay would promote efficient use of the court's resources." *Campaign Legal Ctr. v. Correct the Rec.*, Civ. A. No. 23-0075 (JEB), 2023 WL 2838131, at *2 (D.D.C. Apr. 7, 2023). If there is a "'fair possibility' that a stay would adversely affect another party, the movant for the stay must demonstrate a 'clear case of hardship or inequity in being required to go forward.'" *Nat'l Indus. for the Blind v. Dep't of Veterans Affs.*, 296 F. Supp. 3d 131, 137–38 (D.D.C. 2017) (quoting *Landis*, 299 U.S. at 255). The court's determination whether a stay is warranted "is inextricably intertwined with the nature of the specific case." *Wrenn v. District of Columbia*, 179 F. Supp. 3d 135, 137 (D.D.C. 2016).

ARGUMENT

The Court should grant this stay because once the Office of Federal Operations rules on the Administrative Judge's approval of the Settlement Agreement, most, if not all, of Plaintiff's claims in this case will be barred by res judicata or related doctrines, as Plaintiff can no longer establish Article III standing. *See* U.S. Const. art. III, § 2, cl. 1.

This case is similar to the one confronted by the Court in *Brown v. Wells Fargo Bank, N.A.*, 25 F. Supp. 3d 144, 148 (D.D.C. 2014). In that case, as here, a plaintiff and class member sought

to litigate claims covered by a prior class settlement. In holding that the claims were barred by res judicata, the Court observed:

> Under the doctrine of res judicata, once a claim is litigated and that litigation results in a final decision on the merits, be it by a motion for summary judgment, by a trial, or by a settlement between the parties resulting in a final judgment, the issue is decided permanently. A class action settlement has the same preclusive effect as a prior individual action settlement if the moving party can show that the nonmoving party "was adequately represented by a party who actively participated in the litigation."

Id. (citations omitted).

Once the Agreement here is effective, Fogg's claims will likely be barred by res judicata in addition to other grounds. Plaintiff is currently a class member in the *Hedgepeth* administrative class proceeding—indeed, Fogg was formerly a class agent (i.e., lead plaintiff) in that matter. As such, Fogg clearly had notice of the proposed settlement. Indeed, Plaintiff filed a claim form to obtain some of the proceeds, which released any other claims he may have had. *See* Claim Form & Release for Fogg, ECF No. 8-2. And Plaintiff's Complaint in this case clearly indicates that these claims would mostly be resolved by the certified administrative class complaint.

The conclusion of the *Hedgepeth* proceedings may render the Court's adjudication of the instant cases simple because the final settlement agreement contains releases of liability provisions that could bar both of Plaintiff's claims. *See Rohr Indus., Inc. v. Wash. Metro. Area Transit Auth.*, 720 F.2d 1319, 1325 (D.C. Cir. 1983) (stays appropriate when related agency actions may produce results that will render complex fact patterns simple or lengthy proceedings short). By affirming the Administrative Judge's approval of the Agreement, the Office of Federal Operations would also affirm the Agreement's provisions that bar claims arising from the class claims of the class agents and class members.

The Office of Federal Operations is fully briefed on *Hedgepeth*'s lengthy history and underlying issues and is poised to decide the appeal. Completion of these proceedings will result

in a complete administrative record, which the Court would find valuable to its own adjudication. *See Seneca Nation of Indians v. U.S. Dep't of Health & Hum. Servs.*, 144 F. Supp. 3d 115, 119 (D.D.C. 2015); *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) (finding administrative proceedings produce useful records for subsequent judicial consideration that promote judicial economy). A complete administrative record in *Hedgepeth* would better inform the Court's adjudication of the instant cases, given the Office of Federal Operation's familiarity with the extensive *Hedgepeth* proceedings.

The balance of hardships further favors a stay. First, Plaintiff will not suffer any harm from the stay. As explained above, it seems as though he will be able to obtain proceeds of the monetary settlement as a class member if the Office of Federal Operations affirms the final approval of the Settlement Agreement. Second, the Marshals Service may be harmed if the stay is not granted, because the Marshals Service may be forced to engage in discovery on claims that should be barred and ultimately dismissed. The prospect of discovery on whether a class should be certified in this matter is not a hypothetical concern. Rather, the Marshals Service has already expended significant litigative resources in defending a purported class action involving its merit promotion processes and employment practices relating to African American Deputy U.S. Marshals in this very Court. *See Brewer v. Lynch*, Civ. A. No. 08-1747 (BJR) (D.D.C). The Court denied class certification in *Brewer* on September 30, 2015. *See Brewer v. Lynch*, Civ. A. No. 08-1747 (BJR), 2015 WL 13604257 (D.D.C. Sept. 30, 2015). Following a show cause order, that action was abandoned to pursue the EEO administrative class action in *Fogg*. *See* Resp. to Show Cause Order, *Brewer v. Lynch*, Civ. A. No. 08-1747 (BJR) (D.D.C. Feb. 15, 2019), ECF No. 235. The Court dismissed the case via Minute Order on February 15, 2019, in light of the response to show cause order.

Granting a stay would also promote efficient use of the Court's resources, allowing the Court to analyze all the Marshals Service's arguments for dismissing this case in one motion as opposed to piecemeal motions as the arguments become ripe. *Cf. Allen v. District of Columbia*, Civ. A. No. 20-2453 (TSC), 2024 WL 379811, at *5 (D.D.C. Feb. 1, 2024) ("In sum, [the plaintiff] has not shown he will be harmed by a stay, and any harm he may suffer is outweighed by the harm to the District in the absence of a stay and this court's judicial economy gains in waiting less than six months for binding guidance from the Supreme Court.").

Although not directly analogous, *Steele v. United States*, Civ. A. No. 23-0918 (RCL), 2024 WL 1111639 (D.D.C. Mar. 14, 2024) is a case with similar circumstances that supports the Marshals Service's request for a stay. There, an attorney and a law firm reached an agreement to serve as counsel in a class action. *Id.* at *2. The Court later appointed the other firm as class counsel. *Id.* When the attorney became dissatisfied with the other firm's representation, he filed a new suit, seeking to represent the same class and advance claims not advanced in the first lawsuit. *Id.* The Court disapproved of the attorney's parallel litigation:

> Permitting a "class counsel in exile" to unleash parallel, duplicative litigation against a defendant is not in the interest of judicial economy, fairness to defendants, or sound judicial policy. . . . The Court is not blind to what is going on here. Mr. Buckley has often vented his exasperation with and resentment of class counsel's exercise of its authority. . . . Mr. Buckley has not come to terms with the Court's decision to vest the authority of class counsel in Motley Rice LLC and not him. . . . Mr. Buckley's evident purpose in launching this action is to wrest control of litigation from class counsel in *Steele I* and do an end-run around the Court's orders in that case. . . . As far back as 2020, in the midst of his failed hostile takeover of *Steele I*, Mr. Buckley warned that if the Court did not put him in charge of the case and permit him to amend the complaint to add [additional arguments], "the class will have been shortchanged, as bringing another lawsuit to cover such matters would be painful (and illogical, when the matters should be handled here)."

Id. at *12.

Ultimately, the Court dismissed the case for claim splitting. *Id.* The Court noted the "important interests served by preclusion doctrines, including 'protection of litigants from the

vexation and expense of repetitious litigation, protection of the courts from the burden of unnecessary litigation, promotion of respect for the judicial process and confidence in the conclusiveness of judicial decision-making, avoidance of disconcertingly inconsistent results, and securing the peace and repose of society.'" *Id.* at *13. The Court continued:

> Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm. . . . Permitting splinter suits by disgruntled plaintiffs' attorneys would impede the ability of the underlying class action to serve the purposes envisaged by Congress, including by potentially undermining the authority and efficacy of class counsel and complicating the resolution of the class action.

Id. at *12–13.

Here, like the attorney in *Steele*, Plaintiff has indicated that he is pursuing this lawsuit because he is dissatisfied with how the *Hedgepeth* administrative class complaint was handled. *See* Compl. ¶¶ 8, 85 (alleging that counsel representing the class in *Hedgepeth* violated the D.C. Rules of Professional Conduct and thus Plaintiff had "no choice" but to file this case). Allowing this case to continue would raise many of the same concerns from *Steele*. Thus, this case should be stayed.

* * *

CONCLUSION

For the reasons above, the Court should grant this motion for a stay and order the parties to file a joint status report within sixty days of the EEOC's Office of Federal Operations ruling on the Administrative Judge's order approving the Settlement Agreement.

Date: October 15, 2024
Washington, DC

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar # 481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: */s/ Sam Escher*
SAM ESCHER, D.C. Bar # 1655538
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2531
Sam.Escher@usdoj.gov

Attorneys for the United States of America

REC 10/24/24