

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

COLONEL FINANCIAL MANAGEMENT )  
OFFICER, United States Marine Corps, *et al.*, )  
for themselves and all others similarly situated, )

Plaintiffs, )

v. )

LLOYD AUSTIN, in his official capacity as )  
Secretary of the United States Department of )  
Defense, *et al.*, )

Defendants. )

No. 8:22-cv-01275 SDM-TGW

**PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM ON  
PLAINTIFFS’ REPRESENTATION OF PUTATIVE CLASS**

Pursuant to the Court’s Order of June 2, 2022 (Doc. 194), Plaintiffs submit this supplemental memorandum explaining the suitability of named Plaintiffs to represent the putative class of United States Marines. For the following reasons, as well as those explained in Plaintiffs’ Motion to Certify Class (Doc. 35) and Plaintiffs’ Supplemental Memorandum in Support of Classwide Preliminary Injunction (Doc. 176), the Court should certify a class of United States Marines and enter a classwide preliminary injunction enjoining and restraining Defendants from enforcing their vaccine policies in violation of class members’ rights under the First Amendment and the Religious Freedom Restoration Act.

**RESTATED PROPOSED CLASS**

Plaintiffs propose that the Court certify a class of all United States Marines who are subject to Defendants’ COVID-19 Vaccine Mandate, have requested a religious

exemption or accommodation from the Mandate based on sincerely held religious beliefs against receiving a COVID-19 vaccine, and have been denied a religious exemption or accommodation. All Plaintiffs are members of the proposed class.

### **ARGUMENT**

“A principal factor in determining the appropriateness of class certification is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class.” *Lyons v. Georgia-Pacific Corp. Salaried Emps. Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (cleaned up). “This requirement applies to class counsel and to the named plaintiff who seeks to act as class representative.” *Physicians Healthsource, Inc. v. Doctor Diabetic Supply, LLC*, No. 12–22330–CIV, 2014 WL 7366255, at \*6 (M.D. Fla. Dec. 24, 2014).

#### **I. PLAINTIFFS WILL FAIRLY AND ADEQUATELY REPRESENT THE INTERESTS OF THE CLASS OF UNITED STATES MARINES.**

The adequacy of the representation is typically analyzed under two separate factors: (1) whether any substantial conflict of interest exists between the representative and the class, and (2) whether the representative will adequately prosecute the action. *See, e.g., Sosna v. Iowa*, 419 U.S. 393, 403 (1975); *see also Herman v. Seaworld Parks & Entm’t, Inc.*, 320 F.R.D. 271, 294 (M.D. Fla. 2017). Plaintiffs should be deemed adequate to represent the members of the class because there are no conflicts in the pursuit of their respective claims, and Plaintiffs have adequate “incentives to pursue the rights of the class vigorously.” *Physicians Healthsource*, 2014 WL 7366255, at \*6.

Plaintiffs' claims are identical to those of the putative class members whose requests for religious accommodation from the COVID-19 vaccine mandate have been denied. (*See* Doc. 198, ¶¶ 25–39, 99–113.) Four of the named Plaintiffs, individually, are properly venued in this Court, having established their domiciles in Florida counties within the Tampa Division. (Doc. 198, ¶¶ 33, 37, 38, 39.) Plaintiff MIDSHIPMAN 2/C has received a final denial of her appeal for a religious accommodation (Doc. 198, ¶ 38), and the other Division-domiciled Plaintiffs have requested religious accommodation, been denied, and appealed, and merely await the imminent and inevitable final denials of their appeals. Thus, Plaintiffs include Marines who are properly venued in this Court and have ripe claims. (Order, Doc. 40, at 30 (concluding “‘ripeness’ can occur *no later than* the moment the member must irreparably receive the injection or irreparably defy an order” (emphasis added)).)

There is no conflict between Plaintiffs and the putative class because all class members are seeking the same relief—an injunction prohibiting their immediate discipline and removal from the Marines for failure to accept a vaccine that violates their sincerely held religious beliefs. (Doc. 198, ¶¶ 25–39, 99–113.) Indeed, as Northern District of Texas Judge Reed O'Connor noted, “[t]he potential class members, then, are those who seek to remain in the Navy and refuse to compromise their religious beliefs (i.e., continue to forgo the vaccine). That group is intently interested in the relief the Named Plaintiffs seek, especially as the Navy begins to involuntarily separate unvaccinated sailors.” *U.S. Navy SEALS 1–26 v. Austin*, No. 4:21-cv-1236-O, 2022 WL 1025144, at \*8 (N.D. Tex. Mar. 28, 2022). The same is true of the Marines before this

Court. All seek to retain their current missions in the Marine Corps while refusing to compromise their sincerely held religious beliefs. (Doc. 198, ¶¶ 25–39, 99–113.) All seek the protection afforded them by the First Amendment and the Religious Freedom Restoration Act. And all are intently interested in the Court’s prior orders protecting their fellow Marines (Docs. 111, 173) and desperately hoping that identical injunctive relief will protect them and their fellow brothers and sisters in arms.

Plaintiffs’ commitments to fairly and adequately representing the interests of the proposed class is indisputable. Plaintiffs all selflessly provide service to the Country, willing to risk their lives for their fellow servicemembers and citizens. All Plaintiffs serve the same government, under the same Constitution and laws, and they live under an oath to protect and defend them. Allowing Plaintiffs to prosecute this action for Marine class members, to vindicate the constitutional and civil rights they are oath-bound to protect, should give the Court no pause. All Plaintiffs have demonstrated a willingness to pursue these claims in the face of court martial, dishonorable discharge, termination, or other severe sanctions (Doc. 198, ¶ 114), and the Court should find them more than adequate class representatives.

## **II. PLAINTIFFS’ UNDERSIGNED COUNSEL WILL ADEQUATELY REPRESENT THE INTERESTS OF THE CLASS OF UNITED STATES MARINES.**

Under Rule 23, “[t]he adequacy of representation requirement includes not only the likelihood that the representative parties will adequately pursue the claims and interests of the class but also the adequacy of legal counsel representing the named

plaintiffs.” *Barlow v. Marion Cnty. Hosp. Dist.*, 88 F.R.D. 619, 628 (M.D. Fla. 1980).

Plaintiffs’ counsel will adequately represent the interests of the class.

In assessing the adequacy of class counsel, courts “must consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.”

*Physicians Healthsource*, 2014 WL 7366255, at \*6 (quoting Fed. R. Civ. P. 23(g)).

“Counsel will be deemed adequate if they are shown to be qualified, adequately financed, and possess sufficient experience in the subject matter of the class action.”

*City of St. Petersburg v. Total Containment, Inc.*, 265 F.R.D. 630, 651 (S.D. Fla. 2010). As this Court has similarly explained, class counsel provide adequate representation when they “are qualified, experienced, and generally able to conduct the proposed litigation.” *Spinelli v. Capital One Bank*, 265 F.R.D. 598, 602 (M.D. Fla. 2009) (quoting *Pop’s Pancakes, Inc. v. NuCo2*, 251 F.R.D. 677, 683 (S.D. Fla. 2008); see also *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985) (same).

Plaintiffs’ counsel have pursued the instant litigation on behalf of a large putative class consisting (originally) of servicemembers from every branch of the United States Armed Forces, and have successfully obtained injunctive relief on behalf of a number of those servicemembers. (Docs. 67, 111, 173, 174.) More specifically, Plaintiffs’ counsel have already obtained two preliminary injunctions for Marines in this action. (Docs. 111, 173.) And, in addition to the success already obtained on behalf of Marines in this action, Plaintiffs’ counsel have decades of combined,

extensive experience in constitutional, employment, and other complex litigation matters, and specific, precedent-setting experience litigating COVID-19 restrictions on civil and constitutional rights around the country. (Doc. 35-1, ¶¶ 3–10.) Plaintiffs’ counsel have handled and are currently handling numerous matters in federal courts around the country concerning the denial of religious accommodations from forced vaccine mandates. (Doc. 35-1, ¶¶ 6–8.) Plaintiffs’ counsel also have a wealth of experience in class actions, collective actions, multi-plaintiff actions, multi-district litigation, and other forms of complex litigation. (Doc. 35-1, ¶ 9.) In sum, Plaintiffs’ counsel have more than sufficient skill, experience, and resources to adequately represent the interests of the proposed class. (Doc. 35-1, ¶ 12.)

### **CONCLUSION**

Because Plaintiffs in this action comprise United States Marines with ripe claims identical to those of the proposed class, including Marines properly venued individually in this Court, and because Plaintiffs will fairly and adequately represent the interests of the proposed class in seeking and obtaining injunctive relief against Defendants’ unlawful refusal to comply with the requirements of the First Amendment and Religious Freedom Restoration Act, the Court should certify the proposed class of United States Marines and enter a classwide preliminary injunction enjoining and restraining Defendants from enforcing their policies in violation of Plaintiffs’ rights under the First Amendment and the Religious Freedom Restoration Act.

s/ Daniel J. Schmid \_\_\_\_\_

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