

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC. <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

DEFENDANT CIA’S RESPONSE TO COURT’S MINUTE ORDER

Defendant Central Intelligence Agency (“CIA” or “the agency”) files this response to the Court’s Minute Order dated March 20, 2015, directing it to respond to Plaintiffs’ Motion for a Partial Stay of Case Against Defendant CIA Pending Issuance of Report of House Select Committee Probe (“Motion”). As explained below, because Plaintiffs have admitted that the majority of their claims against CIA are not ripe, CIA believes that the best course of action would be for Plaintiffs to file an amended complaint omitting the unripe claims, without prejudice to their ability to refile the claims once they are ripe. In the alternative, CIA does not oppose Plaintiffs’ Motion for Partial Stay.

Background

Plaintiffs’ Freedom of Information Act (“FOIA”) requests, submitted to CIA by letters dated February 24, 2014, and October 1, 2014, seek records related to the September 11, 2012 attack on the American embassy in Benghazi, Libya. *See* Am. Compl. ¶¶ 136-47. On March 5, 2015, Plaintiffs filed a Motion for Partial Stay of Case against Defendant CIA, asserting that the

majority of their claims against CIA will not be ripe until the U.S. House of Representatives Select Committee on Benghazi (“Select Committee”) issues its final report. *See* Dkt. No. 19.

Plaintiffs explain that the Select Committee has been tasked with “conduct[ing] a full and complete investigation and study and issue a final report of its findings to the House regarding all . . . activities that contributed to the [Benghazi] attacks.” *Id.* at 7. While Plaintiffs assert that “most information responsive to [their FOIA request dated February 14, 2012] may be exempt under FOIA Exemptions (b)(1) or (b)(3),” *id.* at 11, they argue that CIA nonetheless may be compelled to disclose responsive documents if CIA “officially acknowledge[s]” the requested information during the course of the Select Committee’s investigation. *Id.* at 4, 10.

Accordingly, Plaintiffs seek a partial stay of the case against the CIA, explaining that “[u]ntil the Select Committee issues its Report, litigation of CIA nondisclosures would result in unnecessary expenditure of the parties’ and the Court’s resources.” *Id.* at 11.

As noted in Plaintiffs’ Motion, CIA took no position on Plaintiffs’ request. *Id.* at 1. By Minute Order dated March 20, 2015, the Court directed CIA to respond to Plaintiffs’ Motion no later than March 27, 2015. Because Plaintiffs have admitted that certain claims against CIA are not ripe, CIA believes that the appropriate course would be for Plaintiffs to file an amended complaint omitting these unripe claims, without prejudice to their ability to refile these claims when they are ripe. In the alternative, CIA does not oppose Plaintiffs’ Motion for Partial Stay.

Argument

The ripeness doctrine “prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies.” *Nat’l Park Hospitality Ass’n v. Dep’t of the Interior*, 538 U.S. 803, 807-08 (2003). It requires that an issue “have taken on fixed and final shape so that a court can see what legal issues it is

deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Pub. Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 244 (1952). In assessing ripeness, courts evaluate both “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977).

Here, CIA takes no position on whether Plaintiffs’ claims against it are ripe, or whether disclosure of any information would be required after the Select Committee issues its report. Nonetheless, CIA respectfully suggests that because Plaintiffs do not believe that their claims are ripe, they should file an amended complaint omitting the unripe claims, pursuant to Rule 15(a)(2). Such an amendment would voluntarily dismiss the claims, without prejudice to Plaintiffs’ right to refile these claims once they have ripened. In the alternative, CIA does not oppose Plaintiffs’ Motion for Partial Stay.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend its complaint once as a matter of right and otherwise may amend only with leave of court or with the written consent of the adverse party. Fed. R. Civ. P. 15(a). “[T]he voluntary elimination or dismissal of fewer than all of a plaintiff’s claims may occur *only* by amendment of the complaint pursuant to Federal Rule of Civil Procedure 15.” *Lemmons v. Georgetown Univ. Hosp.*, 241 F.R.D. 15, 30 (D.D.C. 2007) (“Fed. R. Civ. P. 41(a)(1) is not the appropriate vehicle should a plaintiff decide to unequivocally abandon a particular claim out of several.” (internal quotation marks and brackets omitted)). *See also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005) (stating that “withdrawals of individual claims against a given defendant are governed by [Federal Rule of Civil Procedure] 15, which addresses amendments to

pleadings” (citation omitted)); 8 James Wm. Moore et al., Moore’s Federal Practice § 41.21[2] (4th ed. 2006) (stating that “[a] plaintiff wishing to eliminate particular claims or issues from the action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a)”).

Here, CIA would consent to Plaintiffs’ amendment of their complaint to omit the unripe claims without prejudice to their ability to refile those claims after the Select Committee issues its final report. CIA believes that, under the circumstances, this is the most appropriate course of action. In the alternative, CIA does not oppose Plaintiffs’ Motion for Partial Stay.

Conclusion

As explained above, because Plaintiffs have admitted that certain of their claims against CIA are not ripe, the best course of action is for Plaintiffs to file an amended complaint omitting the unripe claims. In the alternative, CIA does not oppose Plaintiffs’ Motion for Partial Stay.

Dated: March 27, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2015, I filed the attached Defendant CIA's Response to Court's Minute Order electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

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