



GLENN S. LEON
Chief
U.S. Department of Justice
Criminal Division, Fraud Section

CHRISTOPHER FENTON
MATTHEW REILLY
BLAKE GOEBEL
Trial Attorneys
1400 New York Avenue, N.W.
Washington, D.C. 20005
christopher.fenton@usdoj.gov
matthew.reilly2@usdoj.gov
blake.goebel@usdoj.gov
(202) 514-0561 (Fenton)
(202) 320-8523 (Reilly)
(202) 768-2277 (Goebel)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

Securities and Exchange Commission,

Plaintiff,

vs.

Semisub, Inc., Curtiss Edward Jackson, and
Jamey Denise Jackson,

Defendants.

Case No. 1:22-CV-00349-SOM-KJM

**GOVERNMENT'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ITS MOTION:**

- (1) TO INTERVENE; and**
- (2) TO STAY DISCOVERY**

Hon. Susan Oki Mollway

The United States of America, by Glenn S. Leon, Chief of the Fraud Section
of the Criminal Division of the U.S. Department of Justice (the "Government") (Trial

Attorneys Christopher Fenton, Matthew Reilly, and Blake Goebel appearing), respectfully: (i) moves to intervene in this securities fraud enforcement action by the U.S. Securities and Exchange Commission (“Civil Action”) under Federal Rule of Civil Procedure 24 (“Rule 24”); and (ii) moves for an initial six-month stay of discovery, with leave to seek extensions thereof, in light of the Government’s prosecution of Defendants Curtiss Edward Jackson and Jamey Denise Jackson based upon similar allegations¹ underlying the claims asserted in this Civil Action. *See United States v. Curtiss Jackson and J. Denise Jackson*, 22-cr-00093-JM (unsealed Oct. 24, 2022)

I. FACTUAL BACKGROUND

As the Court knows, the Civil Action was brought by Plaintiff U.S. Securities and Exchange Commission seeking to enjoin Defendants from violating the federal securities laws, and for other relief, and alleging that they engaged in fraudulent scheme to defraud investors in Semisub, Inc. (“Semisub”), misappropriated investor funds, and made untrue statements of material fact to investors. *See* Dkt. 1. Both Defendants have answered, generally denying the allegations in the complaint. *See* Dkts. 15, 18. To the Government’s knowledge, document discovery is set to

¹ While the Government has not indicted Semisub, Inc.—a Defendant in the Civil Action—given that the charges against the individual Defendants stem from and intersect with their roles as Semisub’s CEO and President, respectively, the facts in the Civil Action alleged against Semisub substantially overlap with those underlying the Government’s prosecution of the individual Defendants.

commence on October 31, 2022. *See* Dkts. 34, 45. As discussed further herein, issues that will be the subject of discovery in the Civil Action are within the scope of the criminal action.

II. LEGAL STANDARD

Under Rule 24(a)(2), the Court must permit anyone to intervene who “claims an interest relating to the property or transaction that is the subject of the action, and [he] is so situated that disposing of the action may as a practical matter impair or impede [his] ability to protect [his] interest” Alternatively, under Rule 24(b)(1)(B), the Court may permit anyone to intervene who “has a claim or defense that shares with the main action a common question of law or fact.” Rule 24 “traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

With respect to the requested stay, the Court has discretion to stay civil proceedings “when the interests of justice seem [] to require such action.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (quoting *United States v. Kordel*, 397 U.S. 1, 12 n. 27 (1970)). “The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made ‘in light of the particular circumstances and competing interests involved in the case.’” *Id.* (quoting *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989)). “[A]ny public interest in the swift conclusion of a civil trial is balanced

by the countervailing public interest in law enforcement and the proper prosecution of the accused.” *Hawaii Cent. Fed. Credit Union v. Kealoha*, No. CV 18-00108 LEK-KJM, 2018 WL 5499530, at *3 (D. Haw. Oct. 29, 2018); *see also Bureerong v. Uvawas*, 167 F.R.D. 83, 87 (C.D. Cal. 1996) (quoting *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962)) (“a trial judge should give substantial weight to [the public interest in law enforcement] in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims or liabilities.”) (alteration in original).

III. ARGUMENT

A. Intervention under Either Provision of Rule 24 Is Appropriate

Under Rule 24(a)(2), a party seeking intervention as of right must show that: (1) the application is timely; (2) it has a “significant protectable interest” relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; and (4) the existing parties may not adequately represent the applicant’s interest. *Arakaki*, 324 F.3d at 1083. Here, the Government meets these requirements. The Government’s motion is timely because the parties in the Civil Action have yet to engage in discovery. Moreover, “[i]t is well established that the United States Attorney may intervene in a federal civil action to seek a stay of discovery when there is a parallel criminal proceeding, which is anticipated or

already underway that involves common questions of law or fact.” *Bureerong*, 167 F.R.D. at 86 (collecting cases). The Government has a “distinct and discernable interest in intervening in order to prevent discovery in the civil case from being used to circumvent the more limited scope of discovery in the criminal matter” and “[c]learly, neither the [p]laintiffs nor the [d]efendants have this identical interest.” *Id.* (quotations omitted). Moreover, the Government has conferred with Plaintiff’s counsel and Plaintiff does not oppose the Government’s motion.²

Under Rule 24(b)(1)(B), which provides an alternative basis for intervention, a party may intervene in a civil action when it “has a claim or defense that shares with the main action a common question of law or fact.” In addition to considering whether common questions exist, courts must also consider whether there is an independent ground for jurisdiction and whether “intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” *Mishewal Wappo Tribe of Alexander Valley v. Salazar*, 534 F. App’x 665, 667 (9th Cir. 2013) (quoting Fed. R. Civ. P. 24(b)(3)). The Government meets these requirements as well. Here, key questions of fact relevant to Plaintiff’s claims are encompassed within the scope of the pending criminal prosecution. The Government also has an independent

² As the individual Defendants are appearing *pro se* in the Civil Action, the Government did not confer with the individual Defendants or their counsel in the criminal matter prior to filing this motion. Therefore, Defendants’ positions on both intervention and the request for a stay are unknown.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.