

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Clark S. Cheney
Chief Administrative Law Judge

In the Matter of

CERTAIN SELECTIVE THYROID
HORMONE RECEPTOR-BETA
AGONISTS, PROCESSES FOR
MANUFACTURING OR RELATING TO
SAME, AND PRODUCTS CONTAINING
SAME

Investigation No. 337-TA-1352

**UNOPPOSED MOTION OF FOSTER MURPHY ALTMAN & NICKEL, PC TO
INTERVENE FOR THE LIMITED PURPOSE OF ADDRESSING COMPLAINANT'S
OMNIBUS MOTION FOR SANCTIONS**

Foster Murphy Altman and Nickel, PC (“Foster Murphy”) hereby moves, pursuant to 19 C.F.R. § 210.19, to intervene in this investigation for the limited purpose of defending Foster Murphy and its attorneys’ interests in response to Complainant Viking Therapeutics, Inc.’s Omnibus Motion for Sanctions (Mot. No. 1352-023) (“Motion” or “Motion for Sanctions”) filed June 30, 2023, seeking to hold Respondents Asclethis Biosciences Co., Ltd., Gannex Pharma Co., Ltd., Asclethis Pharmaceuticals Co., Ltd., Asclethis Pharma, Inc., and Jinzi Jason Wu (“collectively “Respondents”) and their counsel jointly and severally liable for, *inter alia*, monetary sanctions.

GROUND RULE 5.1 CERTIFICATION

Pursuant to Ground Rule 5.1, Foster Murphy has made reasonable, good-faith efforts to resolve the matter with the other parties and has consulted with counsel for Complainant, the Commission Investigative Staff, and Respondents’ other counsel prior to filing this motion. No party opposes this motion.

I. BACKGROUND

This investigation was instituted based on a Complaint filed by Viking Therapeutic’s Inc. (“Viking” or “Complainant”) on December 29, 2022. 88 Fed. Reg. 8,455 (Feb. 29, 2023). The Complaint alleges violations of section 337 by Respondents based upon the importation into the United States of certain selective thyroid hormone receptor-beta agonists, processes for manufacturing or relating to same, and products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or prevent the establishment of a domestic industry. *Id.*

Upon institution, the Commission *sua sponte* directed the presiding Administrative Law Judge to “hold an early evidentiary hearing, find facts, and issue an early decision, within 100 days of institution except for good cause shown, as to whether complainant can show that the threat or effect of the alleged unfair acts is to (i) to destroy or substantially injure an industry in the United States, or (ii) to prevent the establishment of such an industry.” *Id.*; see 19 C.F.R. § 210.10(b)(3) (2021). An evidentiary hearing was held just two months later, on April 13-17, 2023. The evidentiary hearing on the 100-day and remaining issues in the investigation is set for November 13-16, 2023. Order No. 26. The target date for this investigation is June 10, 2024.

The law firms Rimon, PC and Foster Murphy Altman & Nickel, PC entered their appearances representing Respondents in this investigation on February 9, 2023 and February 10, 2023, respectively. On June 28, 2023, the law firm of Kirkland & Ellis LLP (“Kirkland”) entered an appearance to also represent Respondents in this investigation.

On June 30, 2023, Complainant filed a motion for monetary and non-monetary sanctions based on alleged discovery abuse by Respondents and Respondents’ counsel at the law firms of Rimon, PC and Foster Murphy. Mot. No. 1352-023. In that Motion, Complainant asked the

Chief Administrative Law Judge to, *inter alia*, require Respondents and Respondents' counsel to pay certain of Complainant's attorneys' fees and costs.

The Motion briefly names Foster Murphy in connection with one of three categories of alleged discovery abuse. Motion for Sanctions at 23, 39-40. On July 12, 2023, Respondents (through Kirkland, Rimon, and Foster Murphy) filed their Opposition to that Motion, which opposes monetary sanctions and clarifies the limited scope of Foster Murphy's role in this investigation as unrelated to the allegedly sanctionable conduct. Opposition to Motion for Sanction at 2, fn. 2, and 9, fn. 5. Staff also responded on July 12, 2023, stating that it would be "unjust" to hold Foster Murphy responsible for any of Respondents' sanctionable behavior." Staff Response to Mot. No. 1352-023, EDIS Doc. ID 800201 at 19.¹

On August 9, 2023, Foster Murphy moved for leave to withdraw as counsel for Respondents due to Respondents' failure to pay any of its invoices; that motion was unopposed and is pending. Mot. No. 1352-026.

II. ARGUMENT

Foster Murphy should be permitted to intervene in this investigation for the limited purpose of defending itself against the Motion for Sanctions. On the issue of joint and several liability, Foster Murphy and its attorneys may have separate and distinct interests from Respondents and the Rimon law firm, are entitled to be heard with respect to those separate and distinct interests, and cannot necessarily rely on Respondents to defend those interests, if further defense is warranted. If further briefing or argument is requested or needed, Foster Murphy must be provided a meaningful opportunity to present facts and argument that there is no basis for the

¹ Complainant sought leave to reply in support of its Motion for Sanctions, but that proposed reply, and Respondents' opposition to that motion for leave, did not relate to any alleged conduct of Foster Murphy or the proposed sanctions against Foster Murphy. The CALJ has not ordered further briefing or argument on the Motion for Sanctions.

imposition of sanctions against the Foster Murphy firm and/or their attorneys and that Complainant's stated justification for requesting the imposition of joint and several liability at least as to Foster Murphy should be rejected.

Commission Rule 210.19 provides:

Any person desiring to intervene in an investigation or a related proceeding under this part shall make a written motion. . . . The Commission, or the administrative law judge by initial determination, may grant the motion to the extent and upon such terms as may be proper under the circumstances.

In considering whether intervention is proper under the circumstances, the Commission often looks to Fed. R. Civ. P. 24 for guidance and the factors set forth within that Rule. *See, e.g., Certain Electronic Devices With Imaging Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Comm'n. Op. at 57 (Dec. 1, 2011). Based on the factors set forth in Fed. R. Civ. P. 24, a motion to intervene is most persuasive where (1) the motion is timely, the (2) the movant has an interest relating to the property or transaction which is the subject of the action, (3) the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, (4) the movant is not adequately represented by existing parties, and (5) the intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *Id.* (citing Fed. R. Civ. P. 24 and *Certain Baseband Processor Chips and Chipsets*, Inv. No. 337-TA-543, Order No. 27 (Feb. 15, 2006); *see also Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof*, Inv. No. 337-TA-885, Order No. 14 (unreviewed Initial Determination) at 2 (Oct. 31, 2013).

Applying these five factors, the Commission has granted limited motions to intervene by counsel in cases involving joint and several liability between a client and its counsel for discovery sanctions. *See Certain Opaque Polymers*, Inv. No. 337-TA-883, Notice of

Commission Decision to Grant Motions to Intervene; Commission Decision to Review an Initial Determination Granting Default and Sanctions; Request for Written Submissions on Issues Under Review, Remedy, The Public Interest, and Bonding (Dec. 16, 2014). All five of these factors favor Foster Murphy's limited intervention here: Foster Murphy and its attorneys (a) bring this motion on a timely basis; (b) have an interest in the investigation because monetary sanctions are being sought by Complainant against Respondents and their counsel, including Foster Murphy; (c) disposition of the Motion without the participation of Foster Murphy and its attorneys would impair their ability to protect their interests; (d) Foster Murphy and its attorneys' interests may not be fully represented by the existing parties and their counsel; and (e) Foster Murphy and its attorneys' participation will not delay adjudication of the parties' original rights in the underlying substantive issues of the case. *See generally Certain Electronic Devices with Imaging Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Comm'n. Op. at 57 (Dec. 1, 2011); *Certain Sucralose, Sweeteners Containing Sucralose and Related Intermediate Compounds Thereof*, Inv. No. 337-TA-604, Order No. 7 (July 25, 2007); Fed. R. Civ. P. 24.

A. Foster Murphy's Motion is Timely

Foster Murphy is filing this motion to intervene in this investigation the day after filing its Motion to Withdraw as counsel for Respondents due to Respondents refusal to pay any of Foster Murphy's invoices. Foster Murphy had no basis or reason to request intervention at an earlier stage of the investigation.² This motion is being filed as soon as possible after it became

² For the avoidance of doubt, Foster Murphy supports Respondents' Opposition to the Motion for Sanctions and their Opposition to Complainant's Motion for Leave to Reply, and Foster Murphy does not require any additional, separate briefing on the issue at this time.

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