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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8

9 AMERICAN SMALL BUSINESS
10 LEAGUE,

11 Plaintiff,

12 v.

13 DEPARTMENT OF DEFENSE,

14 Defendant,

15 SIKORSKY AIRCRAFT CORPORATION

16 Proposed Intervenor.
17 _____/

No. C 14-02166 WHA

**ORDER GRANTING MOTION
TO INTERVENE**

18 In this action under the Freedom of Information Act, third party Sikorsky Aircraft
19 Corporation moves to intervene, solely for the purposes of appeal. For the reasons stated below,
20 Sikorsky's motion is **GRANTED**.

21 The facts of this case are discussed in detail in the order denying the parties' cross
22 motions for summary judgment (Dkt. No. 28). In brief, plaintiff American Small Business
23 League is an organization that promotes the interests of small businesses.

24 On August 9, 2013, and under the Freedom of Information Act, plaintiff requested the
25 following document from defendant agency Department of Defense: "[t]he most recent master
26 [C]omprehensive [S]ubcontracting [P]lan submitted by Sikorsky Aircraft Corporation for
27 participating in the Comprehensive Subcontracting Plan Test Program for the Department of
28 Defense" (Belshaw Decl. Exh. A).

1 On September 3, 2013, the agency denied plaintiff's FOIA request. After an appeal of
2 the agency's response, which has yet to be answered, plaintiff began the present action. On
3 November 20, 2014, the parties' cross motions for summary judgment were denied and the
4 agency was ordered to release Sikorsky's Comprehensive Subcontracting Plan to plaintiff by
5 January 22, 2015 (Dkt. Nos. 28, 32).

6 Now, third party Sikorsky moves to intervene because Sikorsky is uncertain whether the
7 agency will appeal the order requiring it to turn over the document at issue.

8 The main issue is whether Sikorsky's motion to intervene is timely. Under FRCP 24,
9 timeliness is determined with reference to three factors: "(1) the stage of the proceeding at which
10 an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and
11 length of the delay." *Cal. Dep't of Toxic Substances Control v. Comm. Realty Projects, Inc.*, 309
12 F.3d 1113, 1119 (9th Cir. 2002).

13 This order finds that Sikorsky's motion to intervene, solely for the purposes of appeal, is
14 timely. While Sikorsky should not have sat on the sidelines and waited this long to intervene, its
15 intervention will not prejudice plaintiff or any other party. Furthermore, as the motion to
16 intervene is solely for appeal purposes, it will not cause further delay in the district court.


17 At oral argument, plaintiff acknowledged that it will not suffer any prejudice due to
18 Sikorsky's intervention. Rather, plaintiff objected that allowing Sikorsky to intervene at this
19 stage is simply unfair, as Sikorsky does not have a valid excuse for its delay. Although this
20 order agrees that Sikorsky should not have waited so long, Sikorsky will be allowed to intervene.

21 CONCLUSION

22 For the reasons stated above, Sikorsky's motion to intervene, solely for appeal purposes,
23 is **GRANTED**.

24
25 **IT IS SO ORDERED.**

26 Dated: January 20, 2015.

27 
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE