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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on behalf  
of all others similarly situated, et al.,

Plaintiffs,

v.

SEAWORLD ENTERTAINMENT, INC.,  
et al.,

Defendants.

Case No.: 14cv2129-MMA (AGS)

**ORDER GRANTING UNITED  
STATES' UNOPPOSED MOTION  
TO INTERVENE AND TO EXTEND  
PARTIAL STAY OF DISCOVERY**

[Doc. No. 261]

Plaintiffs commenced this class action against Defendants in September 2014, alleging violations of federal securities laws. *See* Doc. No. 1. On August 25, 2017, the United States filed an unopposed motion to intervene for the limited purpose of partially staying discovery through November 30, 2017, which the Court granted. *See* Doc. Nos. 210, 236. On November 30, 2017, the United States filed a second unopposed motion to intervene for the limited purpose of extending the partial stay of discovery in this case through April 2, 2018. *See* Doc. No. 261. For the reasons set forth below, the Court **GRANTS** the government's motion to intervene and to extend the partial stay of discovery.

1 **BACKGROUND**

2 On June 23, 2017, Defendant SeaWorld Entertainment, Inc. submitted a Form 8-K  
3 to the U.S. Securities and Exchange Commission which disclosed “an investigation by  
4 the U.S. Department of Justice concerning disclosures and public statements made by  
5 [SeaWorld] and certain executives and/or individuals on or before August 2014,  
6 including those regarding the impact of the ‘Blackfish’ documentary, and trading in the  
7 Company’s securities.” Doc. No. 261-1 at 2.

8 Discovery is currently ongoing in this action, with a fact discovery cutoff date of  
9 January 22, 2018. *See* Doc. No. 237. The United States filed the instant motion in order  
10 to intervene and extend the partial stay of discovery for another four-month period. *See*  
11 Doc. No. 261-1 at 2. Specifically, the government requests the Court stay all depositions  
12 in this case through April 2, 2018. *See id.*

13 On November 30, 2017, the Court issued an Order requesting the United States  
14 submit a supporting declaration of counsel in connection with the government’s motion  
15 to intervene and to extend the partial stay of discovery. *See* Doc. No. 262. On December  
16 6, 2017, the United States filed an *ex parte* motion to file the declaration of Michael J.  
17 Rinaldi under seal, which the Court granted.<sup>1</sup> *See* Doc. Nos. 264, 265, 266.

18 **DISCUSSION**

19 **1. Motion to Intervene**

20 The Court previously found permissive intervention by the government to be  
21 appropriate pursuant to Federal Rule of Civil Procedure 24(b). *See* Doc. No. 236. The  
22 government contends that permissive intervention is once again appropriate “[b]ecause of  
23 the important interest in maintaining the integrity of criminal investigations[.]” Doc. No.  
24 261-1 at 2.

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<sup>1</sup> Mr. Rinaldi’s declaration relates to matters concerning the ongoing criminal investigation.

1 Federal Rule of Civil Procedure 24 governs motions to intervene in federal court.  
2 Specifically, pursuant to Rule 24(b), courts may allow permissive intervention to anyone  
3 who:

4 (A) is given a conditional right to intervene by a federal statute;  
5 or (B) has a claim or defense that shares with the main action a  
6 common question of law or fact. [. . .] (3) Delay or Prejudice. In  
7 exercising its discretion, the court must consider whether the  
8 intervention will unduly delay or prejudice the adjudication of  
9 the original parties' rights.

10 Fed. R. Civ. P. 24(b)(1)-(3). Further, a party seeking to permissively intervene must  
11 establish that their motion was timely and that the court has an independent jurisdictional  
12 basis for the party's claims. *See C.S. ex rel. Struble v. California Dep't of Educ.*, 2008  
13 WL 962159, at \*2 (S.D. Cal. Apr. 8, 2008).

14 Here, the Court finds that permissive intervention is appropriate for the same  
15 reasons articulated in the Court's previous order. First, the United States' motion is  
16 timely because discovery is ongoing. *See S.E.C. v. Holcom*, 2013 WL 12073831, at \*2  
17 (S.D. Cal. Sept. 6, 2013) (finding the United States' motion to intervene timely "because  
18 the parties have engaged in little . . . discovery."). Second, the United States does not  
19 assert a new claim based on state law; thus, the Court has independent grounds for  
20 jurisdiction. *See id.* Third, the civil action and the criminal investigation clearly involve  
21 common questions of law and fact, as the Department of Justice is investigating the same  
22 disclosures and public statements made by SeaWorld and its executives which form the  
23 basis of the civil complaint. *See S.E.C. v. Mazzo*, 2013 WL 12172132, at \*1 (C.D. Cal.  
24 Sept. 3, 2013) ("The U.S. Attorney's ability to intervene is well established when there  
25 are parallel criminal and civil proceedings that involve common questions of law and  
26 fact.") (citing *Bureerong v. Uvawas*, 167 F.R.D. 83, 86 (C.D. Cal. 1996)). Fourth, the  
27 parties' rights will not be unduly delayed or prejudiced if the Court permits the United  
28 States to intervene for the limited purpose of extending the stay of depositions. The  
requested partial stay is not indefinite. Rather, the requested stay expires on April 2,

1 2018. *See* Doc. No. 261-1 at 2. Additionally, “the parties could continue, for instance, to  
2 take written and document discovery” during this time. *Id.* Finally, the parties do not  
3 oppose the instant motion. *See id.* at 1.

4 Thus, in considering all of the relevant factors, the Court concludes, in its  
5 discretion, that the United States may intervene to extend the partial stay of discovery.  
6 Accordingly, the Court **GRANTS** the government’s motion to intervene for the limited  
7 purpose of extending the partial stay of discovery in the civil action.

## 8 **2. Motion to Stay**

9 Second, the United States moves to extend the partial stay civil discovery in this  
10 action in light of the ongoing criminal investigation. Specifically, the United States seeks  
11 to stay all depositions through April 2, 2018. *See* Doc. No. 261-1 at 1.

12 Courts have discretion to stay civil proceedings where the interests of justice  
13 appear to require it. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir.  
14 1995). Courts should consider the following factors in determining whether to stay civil  
15 proceedings in light of parallel criminal proceedings:

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17 (1) the extent to which the defendant’s Fifth Amendment rights are  
18 implicated, (2) the interest of the plaintiffs in proceeding expeditiously, (3)  
19 the burden the proceedings may impose on the defendants, (4) the  
20 convenience of the court and the efficient use of judicial resources, (5) the  
21 interests of persons not parties to the civil litigation, and (6) the interest of  
the public in the pending civil and criminal litigation.

22 *S.E.C. v. Glob. Express Capital Real Estate Inv. Fund, I, LLC*, 289 F. App’x 183, 190-91  
23 (9th Cir. 2008) (citing *Keating*, 45 F.3d at 324-25).

24 Here, the *Keating* factors weigh in favor of a extending the temporary and partial  
25 stay of discovery. First, the parties do not oppose extending the partial stay. *See*  
26 *Bureerong*, 167 F.R.D. at 87 (citing the plaintiffs’ lack of opposition to a requested stay  
27 as a factor militating in favor of the stay). Additionally, as noted above, the United States  
28 does not seek an indefinite stay; rather, the United States seeks to stay depositions for

1 approximately four months. Further, the nature of the criminal investigation and the  
2 subject matter of the civil action are substantially similar. As such, a stay would serve  
3 judicial economy. *See Grubbs v. Irely*, 2008 WL 906246, at \*2 (E.D. Cal. Mar. 31, 2008)  
4 (noting that the related nature of the civil and criminal actions weighs in favor of a stay  
5 “because the parallel proceedings will likely involve an overlap of witnesses and  
6 documentary evidence[.]”). Finally, the government has a strong interest in protecting  
7 and maintaining the integrity of its criminal investigation, and a stay would prevent  
8 premature disclosure of criminal discovery materials. Thus, this factor similarly weighs  
9 in favor of a stay. *See Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962) (“a trial  
10 judge should give substantial weight to [the public interest in law enforcement] in  
11 balancing the policy against the right of a civil litigant to a reasonably prompt  
12 determination of his civil claims or liabilities.”).

13 In considering the relevant factors, the Court finds that extending the partial stay of  
14 discovery is appropriate at this time. Accordingly, the Court **GRANTS** the United  
15 States’ motion to extend the partial stay of discovery through April 2, 2018.

16 **CONCLUSION**

17 Based on the foregoing, the Court **GRANTS** the government’s motion to intervene  
18 and to extend the partial stay of discovery. As such, no depositions may be noticed nor  
19 taken, nor any subpoenas for such purpose be served, through **April 2, 2018**.

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21 **IT IS SO ORDERED.**

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23 Dated: December 7, 2017



24 HON. MICHAEL M. ANELLO  
25 United States District Judge  
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