

1
2
3
4
5
6
7
8
9
10
11

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

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

14 Plaintiffs,

15 v.

16 SEAWORLD ENTERTAINMENT, INC.,
17 et al.,

18 Defendants.

Case No.: 14cv2129-MMA (AGS)

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

[Doc. No. 294]

19 Plaintiffs commenced this class action against Defendants in September 2014,
20 alleging violations of federal securities laws. *See* Doc. No. 1. On August 25, 2017, the
21 United States filed an unopposed motion to intervene for the limited purpose of partially
22 staying discovery through November 30, 2017, which the Court granted. *See* Doc. Nos.
23 210, 236. On November 30, 2017, the United States filed a second unopposed motion to
24 intervene for the limited purpose of extending the partial stay of discovery in this case
25 through April 2, 2018, which the Court granted. *See* Doc. Nos. 261, 267. The United
26 States has filed a third unopposed motion to intervene for the limited purpose of
27 extending the partial stay of discovery. *See* Doc. No. 294. For the reasons set forth
28 below, the Court **GRANTS** the government's motion.

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. 294-1 at 2.

8 Discovery is currently ongoing in this action, with a fact discovery cutoff date of
9 September 28, 2018. *See* Doc. No. 297. The United States filed the instant motion in
10 order to intervene and extend the partial stay of discovery for another two-month period.
11 *See* Doc. No. 294-1 at 2. Specifically, the government requests the Court stay the
12 depositions of seven individuals in this case through June 1, 2018. *See id.*

13 On April 3, 2018, the Court issued an Order requesting that 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. 295. On April 6,
16 2018, the United States filed an *ex parte* motion to file the declaration of Mark J.
17 Cipolletti under seal, which the Court granted.¹ *See* Doc. Nos. 298, 299.

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. Nos. 236, 267.
22 The government contends that permissive intervention is once again appropriate
23 “[b]ecause of the important interest in maintaining the integrity of criminal
24 investigations[.]” Doc. No. 294-1 at 2.

25
26
27
28

¹ Mr. Cipolletti’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 two orders. 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 June 1,

1 2018. *See* Doc. No. 294-1 at 2. Additionally, “the parties can continue deposing other
2 witnesses and taking written and document discovery.” *Id.* at 5. Finally, the parties do
3 not 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 of civil discovery in this
10 action in light of the ongoing criminal investigation. Specifically, the United States seeks
11 to stay the depositions of seven individuals through June 1, 2018. *See* Doc. No. 294-1 at
12 1-2.

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

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

23 *S.E.C. v. Glob. Express Capital Real Estate Inv. Fund, I, LLC*, 289 F. App’x 183, 190-91
24 (9th Cir. 2008) (citing *Keating*, 45 F.3d at 324-25).

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

1 does not seek an indefinite stay; rather, the United States seeks to stay the depositions of
2 seven individuals for approximately two months. Further, the nature of the criminal
3 investigation and the subject matter of the civil action are substantially similar. As such,
4 a stay would serve judicial economy. *See Grubbs v. Irely*, 2008 WL 906246, at *2 (E.D.
5 Cal. Mar. 31, 2008) (noting that the related nature of the civil and criminal actions weighs
6 in favor of a stay “because the parallel proceedings will likely involve an overlap of
7 witnesses and documentary evidence[.]”). Finally, the government has a strong interest
8 in protecting and maintaining the integrity of its criminal investigation, and a stay would
9 prevent premature disclosure of criminal discovery materials. Thus, this factor similarly
10 weighs in favor of a stay. *See Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962)
11 (“a trial judge should give substantial weight to [the public interest in law enforcement]
12 in balancing the policy against the right of a civil litigant to a reasonably prompt
13 determination of his civil claims or liabilities.”).

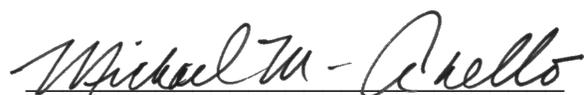
14 In considering the relevant factors, the Court finds that extending the partial stay of
15 discovery is appropriate at this time. Accordingly, the Court **GRANTS** the United
16 States’ motion to extend the partial stay of discovery through June 1, 2018.

17 CONCLUSION

18 Based on the foregoing, the Court **GRANTS** the government’s motion to intervene
19 and to extend the partial stay of discovery. As such, the depositions of James Atchison,
20 Daniel B. Brown, James Heaney, Frederick Douglas Jacobs, William Joshua Powers,
21 Kelly Repass, and Marc G. Swanson may not be noticed nor taken, nor any subpoenas for
22 such purpose be served, through **June 1, 2018**.

23
24 **IT IS SO ORDERED.**

25
26 Dated: April 10, 2018



27 HON. MICHAEL M. ANELLO
28 United States District Judge