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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ONGKARUCK SRIPETCH; AMANDA
FLORES; BREHNNEN KNIGHT;
ANDREW MCALPINE, ASHMIT
PATEL; MICHAEL WEXLER;
DOMINIC WILLIAMS; ADTRON INC.
a/k/a STOCKPALOOZA.COM; ATG
INC.; DOIT, LTD.; DOJ CAPITAL,
INC.; KING MUTUAL SOLUTIONS
INC.; OPTIMUS PRIME FINANCIAL
INC.; ORCA BRIDGE; REDLINE
INTERNATIONAL; and UAIM
CORPORATION,

Defendants.

Case No.: 20-cv-01864-H-AGS

**ORDER GRANTING MOTION TO
INTERVENE AND STAY THE
ACTION PENDING CRIMINAL
PROCEEDINGS**

[Doc. No. 49.]

On January 6, 2021, the United States of America filed motion to intervene and stay the proceedings in the above civil action pending resolution of the parallel criminal case – United States v. Sripetch, 20-cr-160-H. (Doc. No. 49.) The Government represents that Plaintiff Securities and Exchange Commission takes no position as to the Government’s

1 motion; Defendant Andrew McAlpine joins the Government’s motion; and Defendants
2 Ongkaruck Sripetch and Amanda Flores do not oppose the Government’s motion. (Id. at
3 2.) On January 13, 2020, Defendant Brehnen Knight filed a response stating that he does
4 not oppose the Government’s motion. (Doc. No. 53.) For the reasons below, the Court
5 grants the United States’ motion to intervene and to stay the pending action pending
6 criminal proceedings.

7 **BACKGROUND**

8 **I. The Present Civil Action**

9 On September 21, 2020, Plaintiff SEC initiated the present civil action against
10 Defendants Ongkaruck Sripetch, Amanda Flores, Brehnen Knight, Andrew McAlpine,
11 Ashmit Patel, Michael Wexler, and Dominic Williams (“the Individual Defendants”) and
12 against Defendants Adtron Inc. aka Stockpalooza.com, ATG Inc., DOIT Ltd., Doji Capital,
13 Inc., King Mutual Solutions Inc., Optimus Prime Financial Inc., Orca Bridge, Redline
14 International, and UAIM Corporation (“the Entity Defendants”). The SEC alleges that,
15 from at least August 2013 through at least February 2019, the Defendants worked as a
16 network to engage in stock “scalping” schemes to manipulate the common stock of at least
17 20 companies. “Scalping” is “a known practice whereby the owner of shares of a security
18 recommends that security for investment and then immediately sells it at a profit upon the
19 rise in the market price which follows the recommendation.” SEC v. Abellan, 674 F. Supp.
20 2d 1213, 1219 (W.D. Wash. 2009); see Lowe v. SEC, 472 U.S. 181, 224 (1985) (White, J.,
21 concurrence) (describing “scalping” as where “a person associated with an advisory service
22 ‘purchas[es] shares of a security for his own account shortly before recommending that
23 security for long-term investment and then immediately sell[s] the shares at a profit upon
24 the rise in the market price following the recommendation.’” (quoting SEC v. Capital Gains
25 Research Bureau, Inc., 375 U.S. 180, 181 (1963))).

1 In each of the alleged schemes, a subset of the Defendants would begin by obtaining
2 stock in a certain microcap company that is thinly traded,¹ and they would usually hold
3 that stock in the name of one of the Entity Defendants. (Doc. No. 1, Compl. ¶¶ 31-32; Doc.
4 No. 6-1 at 2.) Next, some of the Defendants would promote the company at issue. (Id.)
5 In most instances, a Defendant or Defendants paid an intermediary entity, which then wired
6 the funds, minus a commission, to third-party promoters who would run promotional
7 campaigns for the stock. (Id.) In some instances, Defendant Adtron – a company owned
8 and controlled by Defendant Sripetch – would also conduct a promotional campaign. (Id.)
9 Then, shortly after the beginning of the promotional campaign, Defendants would sell, or
10 “dump,” the relevant stock at inflated prices caused by the promotions. (Id.) Some of the
11 stock allegedly involved in these schemes were VMS Rehab Systems, Inc. (“VMS”) and
12 Argues Worldwide Inc. (“ARGW”). (Doc. No. 1, Compl. ¶¶ 6-7, 38, 69-99, 113-31.)
13 Plaintiff SEC asserts that these practices mislead the public and constitute illegal
14 “scalping” that violates certain anti-fraud provisions of the federal securities laws. (Doc.
15 No. 6-1 at 2; Doc. No. 1, Compl. ¶ 33.)

16 On September 21, 2020, Plaintiff SEC filed a complaint against Defendants Sripetch,
17 Flores, Knight, McAlpine, Patel, Wexler, Williams, Adtron, ATG, DOIT, Doji, King
18 Mutual, Optimus Prime, Orca Bridge, Redline, and UAIM, alleging various claims for:
19 violations of Sections 9(a) and 10(b) of the Exchange Act; violations of Sections 5(a), 5(c),
20 and 17(a) of the Securities Act; violations of Rule 10b-5; and aiding and abetting violations
21 of those provisions. (Doc. No. 1.) On September 22, 2020, Plaintiff SEC filed an ex parte
22 motion for a temporary restraining order against Defendants Sripetch, Knight, Patel, and
23 Flores. (Doc. No. 6.) On September 22, 2020, the Court granted Plaintiff’s motion and
24 entered the requested TRO. (Doc. No. 12.)

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27 ¹ “Microcap stocks are defined based on the market capitalization of the issuer; these stocks tend to
28 have a share price of less than one cent.” SEC v. Alpine Sec. Corp., 354 F. Supp. 3d 396, 406 (S.D.N.Y. 2018).

1 On October 5, 2020, the Court held an order to show cause hearing. At the hearing,
2 the Court temporarily granted the SEC's motion for a preliminary injunction, and the Court
3 converted the September 22, 2020 TRO into a preliminary injunction.² (Doc. No. 17.)

4 On November 2, 2020, the Court issued an order granting the SEC's motion for a
5 preliminary injunction and granting the parties' joint request for an order modifying the
6 preliminary injunction, and the Court issued the preliminary injunction as to Defendants
7 Sripetch, Patel, and Flores. (Doc. Nos. 28, 29.) By the present motion, the United States
8 of America moves: (1) to intervene in the present action; and (2) to stay the present civil
9 action pending resolution of the criminal case United States v. Sripetch, 20-cr-160-H.
10 (Doc. No. 49 at 1-2.)

11 **II. The Criminal Action**

12 On January 8, 2020, the United States of America filed an indictment against
13 Defendants Sripetch, Wexler, Patel, and McAlpine. United States v. Sripetch, 20-cr-160-
14 H, Docket No. 1 (S.D. Cal., filed Jan. 8, 2020). In the indictment, Defendants are charged
15 with conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 and securities
16 fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b-5. Id.
17 Defendant Sripetch is also charged with three counts of manipulative trading in violation
18 of 15 U.S.C. §§ 78i(a)(1) and 78ff. Id. These charges are based on allegations that
19 Defendants Sripetch, Wexler, and McAlpine conspired to engage in a pump-and-dump
20 stock scheme as to VMS stock and allegations that Defendant Sripetch, Wexler, and
21 McAlpine conspired to engage in a pump-and-dump stock scheme as to ARGW stock. Id.
22 This criminal case is currently pending before this Court.

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26 ² In its motion for a TRO, the SEC requested an asset freeze as to Defendant Knight in the amount
27 of \$687,032.27 and an accounting. (Doc. No. 6 at 1.) The Court granted this request and included that
28 specific relief in the TRO. (Doc. No. 12.) At the October 5, 2020 order to show cause hearing, the SEC
requested that the asset freeze be lifted as to Defendant Knight. (Doc. No. 17.) The Court granted the
SEC's request and lifted the asset freeze as to Knight. (Id.)

1 **DISCUSSION**

2 **I. The Government’s Motion to Intervene**

3 Federal Rule of Civil Procedure 24(b)(1)(B) provides: “On timely motion, the court
4 may permit anyone to intervene who: . . . has a claim or defense that shares with the main
5 action a common question of law or fact.” The Ninth Circuit has held that a district court
6 may grant permissive intervention where the party seeking intervention “shows (1)
7 independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim
8 or defense, and the main action, have a question of law or a question of fact in common.”
9 Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 955 (9th Cir. 2009) (quoting Nw.
10 Forest Resource Council v. Glickman, 82 F.3d 825, 839 (9th Cir. 1996)). In addition, Rule
11 24(b)(3) “requires that the court ‘consider whether the intervention will unduly delay or
12 prejudice the adjudication of the original parties’ rights.” Id. (quoting Fed. R. Civ. P.
13 24(b)(3)).

14 The United States has satisfied the three requirements above. First, no independent
15 ground for jurisdiction is needed as the United States does seek to litigate a claim in this
16 action; rather, the United States is only seeking to intervene in the action for the limited
17 purpose of moving for a stay. See Beckman Indus., Inc. v. Int’l Ins. Co., 966 F.2d 470,
18 473 (9th Cir. 1992) (“[A]n independent jurisdictional basis is not required because
19 intervenors do not seek to litigate a claim on the merits.”). Second, the motion is timely
20 because the civil action is still in the pleading stage with the parties having engaged in
21 little, if any, discovery, and a trial schedule has not yet been set. Third, the civil action and
22 the criminal action involve common questions of law and fact as all of the defendants in
23 the criminal action are named defendants in the civil action, and the two actions involve
24 overlapping allegations of securities fraud based on some of the same pump-and-dump
25 schemes, specifically the alleged schemes involving VMS Rehab and ARGW stocks.
26 (Compare Doc. No.1, Compl. with United States v. Sripetch, 20-cr-160-H, Docket No. 1
27 (S.D. Cal., filed Jan. 8, 2020).)

1 The Court concludes, in its discretion, that the United States may intervene in this
2 civil action to seek a stay to avoid prejudice in the criminal action. See SEC v. Giguiere,
3 No. 18CV1530-WQH-JLB, 2018 WL 9516048, at *2 (S.D. Cal. Oct. 24, 2018) (“Courts
4 have allowed the United States government to intervene in a civil case for the purpose of
5 moving to stay discovery and other proceedings until the resolution of a related criminal
6 case.”); SEC v. Mazzo, No. SACV121327DOCANX, 2013 WL 12172132, at *1 (C.D. Cal.
7 Sept. 3, 2013) (“The U.S. Attorney’s ability to intervene is well established when there are
8 parallel criminal and civil proceedings that involve common questions of law and fact.”).
9 As such, the Court grants permissive intervention to the United States for the limited
10 purpose of seeking a stay of the civil action.

11 **II. The Government’s Motion to Stay**

12 A district court has “broad discretion to stay proceedings as an incident to its power
13 to control its own docket.” Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing Landis v. N.
14 Am. Co., 299 U.S. 248, 254 (1936)). “The Constitution does not ordinarily require a stay
15 of civil proceedings pending the outcome of criminal proceedings.” Keating v. Office of
16 Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995). “Nevertheless, a court may decide in
17 its discretion to stay civil proceedings . . . when the interests of justice seem[] to require
18 such action.” Id. (internal quotation marks omitted).

19 “The decision whether to stay civil proceedings in the face of a parallel criminal
20 proceeding should be made ‘in light of the particular circumstances and competing interests
21 involved in the case.’” Id. A court “should generally consider the following factors:”

22 (1) the interest of the plaintiffs in proceeding expeditiously with this litigation
23 or any particular aspect of it, and the potential prejudice to plaintiffs of a
24 delay; (2) the burden which any particular aspect of the proceedings may
25 impose on defendants; (3) the convenience of the court in the management of
26 its cases, and the efficient use of judicial resources; (4) the interests of persons
27 not parties to the civil litigation; and (5) the interest of the public in the
28 pending civil and criminal litigation.

1 Keating v. Office of Thrift Supervision, 45 F.3d 322, 324–25 (9th Cir. 1995); see Blue
2 Cross & Blue Shield of Alabama v. Unity Outpatient Surgery Ctr., Inc., 490 F.3d 718, 724
3 (9th Cir. 2007).

4 “‘A stay should not be granted unless it appears likely the other proceedings will be
5 concluded within a reasonable time.’ Generally, stays should not be indefinite in nature.”
6 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir.
7 2007) (citations omitted). “The proponent of a stay bears the burden of establishing its
8 need.” Clinton, 520 U.S. at 708.

9 The United States argues that a stay of the civil action pending resolution of the
10 criminal action is appropriate for several reasons. First, the United States argues that the
11 efficient use of judicial resources supports a stay of the civil action. (Doc. No. 49 at 8-10
12 (citing SEC v. Nicholas, 569 F. Supp. 2d 1065, 1070 (C.D. Cal. 2008) (“[T]he civil and
13 criminal cases are inextricably intertwined and cannot reasonably proceed independent of
14 each other. The SEC complaint and criminal indictment concern a number of identical
15 [allegations]. . . Given the high degree of overlap and interrelatedness of the cases, dual
16 litigation does not serve the interests of efficiency or judicial economy. . . . Finally,
17 collateral estoppel in the criminal case may expedite the resolution of the civil case.”).)
18 Second, the United States argues that a stay is necessary to prevent the potential prejudice
19 that could occur if discovery in the civil action is used to circumvent the more limited scope
20 of discovery in the criminal action. (Doc. No. 49 at 11 (citing SEC v. Chestman, 861 F.2d
21 49, 50 (2d Cir. 1988) (“The government ha[s] a discernible interest in intervening in order
22 to prevent discovery in the civil case from being used to circumvent the more limited scope
23 of discovery in the criminal matter.”).) Third, the United States argues that a stay is
24 appropriate to prevent one-sided discovery in the civil action due to the invocation of Fifth
25 Amendment rights. (Doc. No. 49 at 8, 10 (citing Nicholas, 569 F. Supp. 2d at 1070 (“The
26 specter of parties and witnesses invoking their Fifth Amendment rights would render civil
27 discovery largely one-sided; the SEC would produce scores of documents and witness
28 testimony only to be precluded from gathering reciprocal discovery from the

1 Defendants.”).) See also Giguiere, 2018 WL 9516048, at *3 (“The claims of Fifth
2 Amendment rights made by parties and witnesses in this civil case will render civil
3 discovery complicated, costly, and one-sided.”).

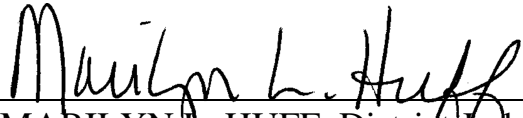
4 After considering the relevant factors and the United States’ arguments, the Court,
5 exercising its sound discretion, grants the United States’ request for a stay of the civil
6 action. See, e.g., Giguiere, 2018 WL 9516048, at *3. Nevertheless, the Court declines to
7 stay the action pending resolution of the criminal case as that would be a stay of indefinite
8 duration. Cf. Dependable Highway, 498 F.3d at 1066 (“Generally, stays should not be
9 indefinite in nature.”). Rather, the Court grants a six-month stay of the action without
10 prejudice to the United States seeking a further stay of the action.

11 **CONCLUSION**

12 For the reasons above, the Court grants the United States’ motion to intervene in the
13 action for the limited purposes of moving for a stay. In addition, the Court grants the
14 United States’ motion to stay. The Court stays the action pending the criminal case United
15 States v. Sripetch, 20-cr-160-H, for six months from the date this order is filed. The stay
16 is without prejudice to the United States requesting a further stay of the action.

17 **IT IS SO ORDERED.**

18 DATED: January 19, 2021

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20 MARILYN L. HUFF, District Judge
21 UNITED STATES DISTRICT COURT
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