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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION,

18 Plaintiff,

19 v.

20 ACTIVISION BLIZZARD, INC.,
21 BLIZZARD ENTERTAINMENT, INC.,
22 ACTIVISION PUBLISHING, INC., and
23 KING.COM, INC., and DOES ONE
24 through TEN, inclusive,

25 Defendants.

No. 2:21-CV-07682 DSF-JEM

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION FOR
LEAVE TO INTERVENE**

Date: April 4, 2022
Time: 1:30 PM
Place: Courtroom 7D
Judge: Honorable Dale S. Fischer

1 **I. INTRODUCTORY STATEMENT AND STATEMENT OF FACTS**

2 Applicant-Intervenor JESSICA GONZALEZ (hereinafter “Applicant-
3 Intervenor”) seeks leave of this Court to object to the Proposed Amended Consent
4 Decree (PACD) and to ask this Court to hold a fairness hearing on the PACD.

5 The U.S. Equal Employment Opportunity Commission (EEOC) is the federal
6 agency charged by Congress to interpret, administer, and enforce a number of
7 federal statutes banning employment discrimination, including Title VII of the Civil
8 Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq. (2016). In this
9 capacity, the Commission filed the Complaint herein alleging unlawful employment
10 practices in violation of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a) (Dkt. No.
11 50-1).

12 A person aggrieved by a violation of Title VII of the Civil Rights Act of
13 1964, as amended, shall have the right to intervene in a civil action brought by the
14 EEOC. 42 U.S.C. § 2000e-5(f)(1). In this case, Applicant-Intervenor JESSICA
15 GONZALEZ claims discrimination on the basis of her sex, and further claims
16 retaliation for engaging in protected activity under Title VII of the Civil Rights Act
17 of 1964, as amended. (See Declaration of Jessica Gonzalez, filed concurrently).
18 Applicant-Intervenor included these causes of action in her charge filed with the
19 California Department of Fair Employment and Housing (DFEH), and cross-filed
20 with the EEOC. (See Declaration of Jessica Gonzalez, ¶ 8, Exh. A, filed
21 concurrently)

22 Applicant-Intervenor’s claims also provide a cause of action and basis for
23 relief under the California Fair Employment and Housing Act, Cal. Gov. Code §§
24 12940, et seq. The DFEH filed a lawsuit against Defendants for violations of state
25 law that is currently pending in *Dept. Fair Empl. & Hous. v. Activision Blizzard,*
26 *Inc., et al.*, Case No. 21STCV26571 (Los Angeles Sup. Ct.). As a condition of
27 recovering damages for violations of her rights under federal law, the PACD forces
28 Applicant-Intervenor to waive her right to a remedy for a violation of state law,

1 despite her legal entitlement to recover damages for violations of California law.
2 Regardless of whether Applicant-Intervenor seeks to recover under the PACD, the
3 decree requires Defendants to move or destroy evidence that is pertinent to the
4 ongoing DFEH lawsuit, which covers Applicant-Intervenor. Should Applicant-
5 Intervenor decide to withdraw from the DFEH lawsuit and pursue her charges
6 individually, the terms of the PACD regarding destruction of evidence would still
7 interfere with her ability to vindicate her rights and recover under state and/or
8 federal law. Accordingly, Applicant-Intervenor now moves for leave to intervene
9 to object to the PACD and request this Court hold a fairness hearing.

10 To be clear, Applicant-Intervenor’s interests are not duplicative and have not
11 yet been addressed by this Court. Applicant-Intervenor is an aggrieved employee
12 and a charging party, and this Court has only addressed interests related to
13 enforcement rights of administrative agencies.

14 **II. ARGUMENT**

15 **A. PURSUANT TO FRCP 24(A)(1), APPLICANT-INTERVENOR MAY**
16 **INTERVENE AS OF RIGHT IN THIS ACTION**

17 Rule 24 of the Federal Rules of Civil Procedure (“Rule 24”) provides in
18 relevant part:

19 (a) Intervention of Right. Upon timely application anyone
20 shall be permitted to intervene in an action: (1) when a
21 statute of the United States confers an unconditional right
22 to intervene ...

23 Title VII expressly provides an aggrieved employee the unconditional right
24 to intervene in a civil action brought by the EEOC. 42 U.S.C. § 2000e-5(f)(1) (“the
25 person or persons aggrieved shall have the right to intervene in a civil action
26 brought by the Commission”); *EEOC v. Westinghouse Electric Corporation*, 675
27 F.2d 164, 165 (8th Cir. 1982). Since the relevant statute confers an entitlement to
28 intervene as of right, Applicant-Intervenor JESSICA GONZALEZ must be allowed
to intervene so long as her application is timely.

1 **B. APPLICANT-INTERVENOR’S REQUEST TO INTERVENE IS**
2 **TIMELY**

3 Rule 24(a) requires, as a condition precedent, that the application to intervene
4 be timely. It is within the Court’s discretion to determine if this application is
5 timely. *Yniguez v. Arizona*, 939 F.2d 727, 731 (9th Cir. 1991). Among the factors
6 to be considered in determining timeliness are: (1) how far the proceedings have
7 gone when the movant seeks to intervene, (2) the prejudice which resultant delay
8 might have caused the other parties; and (3) the reason for and length of the delay.
9 *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978); *County of Orange*
10 *v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986); *U.S. v. State of Washington*, 86
11 F.3d 1499, 1503 (9th Cir. 1996).

12 In determining whether a motion to intervene is timely, a court should
13 broadly construe the requirements of Rule 24 in favor of the moving party.
14 *Wetlands Water District v. United States*, 700 F.2d 561, 563 (9th Cir. 1983).
15 Where, as in this case, the intervention is sought as a matter of right, a court should
16 be more lenient in applying the timeliness requirement. *United States v. Oregon*,
17 745 F.2d 550, 552 (9th Cir. 1984).

18 Early intervention is favored. Intervention is not favored if any of the
19 existing parties are prejudiced by the fact that the moving party failed to intervene
20 at an earlier time. *United States v. Jefferson Co.*, 720 F.2d 1511, 1517 (11th Cir.
21 1983). In this case, Applicant-Intervenor JESSICA GONZALEZ seeks to intervene
22 to challenge the consent decree. The Court has neither approved the PACD nor
23 provided a date on which it intends to approve the PACD. Given that the limited
24 purpose of the intervention is to challenge the PACD and the current posture of
25 proceedings, this motion is timely.

26 Finally, courts usually examine the reason for and the length of the delay
27 when a party seeks to intervene in a case. Applicant-Intervenor did not previously
28 seek to intervene because the DFEH filed a motion to intervene on October 25,

1 2021. (Dkt. No. 24). Since Applicant-Intervenor is a covered by the pending
2 DFEH lawsuit, she saw no need to file a duplicative motion because she believed
3 the DFEH would adequately represent her interests as an employee within the state
4 of California. This Court denied that motion on December 20, 2021. (Dkt. No. 46)
5 Currently, there is no current or pending party that adequately represents Applicant-
6 Intervenor’s interests as an employee in the State of California who seeks to pursue
7 her federal and state law claims.

8 There is no prejudice to any of the parties as a result of Applicant-
9 Intervenor’s delay. Plaintiff and Defendants were already on notice that there are
10 parties who take issue with the PACD’s release of state law claims and requirement
11 that Defendants destroy certain documents. While the DFEH asserted its interest in
12 administering state law, Applicant-Intervenor is asserting her statutory rights as an
13 aggrieved party to seek both federal and state remedies for violations of federal and
14 state law. Accordingly, there is no prejudice to any of the parties in the instant
15 case.

16 Applying each of the foregoing considerations to the facts presented here, the
17 request to intervene being made by Applicant-Intervenor JESSICA GONZALEZ
18 should be deemed timely.

19 **C. PERMISSIVE INTERVENTION BY APPLICANT-INTERVENOR IS**
20 **ALSO JUSTIFIED IN THIS CASE**

21 Rule 24 provides in relevant part:

22 Permissive Intervention. Upon timely application anyone
23 shall be permitted to intervene in an action: ... (2) when
24 an applicant’s claim or defense and the main action have a
25 question of law or fact in common ... In exercising its
26 discretion the court shall consider whether the
27 intervention will unduly delay or prejudice the
28 adjudication of the rights of the original parties.

26 As described earlier, the PACD serves as a unnecessarily waives Applicant-
27 Intervenor’s state law claims and thus bars her from individually pursuing the

1 remedies afforded to her under state law in a state forum or from recovering
2 through the pending action brought by the California Department of Fair
3 Employment and Housing. Applicant-Intervenor’s federal and state law claims
4 share a common nucleus of operative fact and indeed both the federal and state-law
5 claims are for unlawful sex-based harassment, discrimination, and retaliation for
6 engaging in protected conduct. Since Applicant-Intervenor’s federal and state
7 causes of actions are intrinsically intertwined, she has a substantial interest in the
8 PACD and its terms, and in opposing an unnecessary release of her state law
9 claims.

10 Applicant-Intervenor also brings the present motion to preserve judicial
11 economy. *See Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (judicial
12 economy is a relevant consideration for intervention). During the meet and confer
13 with counsel, the Parties stated that if Ms. Gonzalez did not like the terms of the
14 PACD, then she did not have to opt into the PACD. Since the DFEH lawsuit only
15 covers state law claims, in order to pursue a remedy for her claims under federal
16 law, the parties explained that Ms. Gonzalez would have to file her own charge
17 with the EEOC and then bring an individual lawsuit against Defendants. This setup
18 calls for an unnecessary and concomitant waste of scarce judicial resources by
19 forcing California workers like Applicant-Intervenor to file a multiplicity of
20 individual lawsuits against Defendant in order to vindicate both their federal and
21 state-law rights.

22 As explained earlier, intervention at this time would not prejudice either
23 party to the action. Furthermore, no undue delay would result from the present
24 motion. To the extent this motion results in this Court holding a fairness hearing,
25 such result is not an “undue delay” because the purpose of seeking this Court’s
26 approval of the PACD is to ensure the agreement is fair and equitable to all those
27 interested, not just the parties at issue, and a fairness hearing furthers that purpose.

1 Finally, Applicant-Intervenor’s interest is not adequately represented by
2 Plaintiff EEOC to the extent that Applicant-Intervenor seeks to also enforce her
3 rights under state statutes, which Plaintiff EEOC does not administer or enforce.
4 “The burden of showing inadequacy of representation is ‘minimal’ and satisfied if
5 the applicant can demonstrate that the representation of its interests ‘may be’
6 inadequate.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893,
7 898 (9th Cir. 2011) (*quoting Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.
8 2003)). Indeed, consistent with Title VII and Supreme Court precedent, Applicant-
9 Intervenor has a right to pursue both her federal and state claims in separate forums
10 and to do so independently. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36,
11 47-49 (1974) (“Title VII provides for consideration of employment-discrimination
12 claims in *several forums*... [T]he legislative history of Title VII manifests a
13 congressional intent to allow an individual to pursue *independently* her rights under
14 *both* Title VII and other applicable state and federal statutes.”) (emphasis added).
15 This right encompasses Applicant-Intervenor’s right to participate in the DFEH
16 lawsuit, and to be able to have per claims properly prosecuted in that action.
17 Accordingly, a conflict of interest exists to the extent the PACD does not permit
18 Applicant-Intervenor to meaningfully pursue her state law claims by requiring the
19 destruction or suppression of evidence necessary for the DFEH prosecution to
20 protect California workers, including Applicant-Intervenor. (Dkt. Nos., 11-1, 24).

21 Plaintiff EEOC is required to consider, among other factors, the interests of
22 all employers, employees, and the nation at large in determining its settlement
23 posture and its aggressive pursuit of the matter. Therefore, there exists a conflict of
24 interest involving Plaintiff EEOC’s representation of current and former employees
25 of Defendants who are within the State of California. Because the EEOC lacks
26 authority to prosecute or settle state law claims. *See e.g. Victa v. Merle Norman*
27 *Cosmetics, Inc.*, 19 Cal. App. 4th 454, 463 (1993) (“The real barrier to litigation of
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1 plaintiff’s state law claims in the EEOC case was that the EEOC did not possess
2 standing to prosecute those claims.”). The EEOC’s internal guidance also reflects
3 this lack of authority to settle state law claims. (See Dkt. No. 24-6 at pp. 10-11).
4 Applicant-Intervenor does not believe that the PACD is consistent with public
5 interest. Indeed, the EEOC has previously rejected decrees as against the public
6 interest when they require a release of state law claims. *See e.g. EEOC v. Grays*
7 *Harbor Community Hosp.*, 791 F.Supp.2d 1004, 1009 (W.D.Wash. 2011) (EEOC
8 only authorized to enforce Title VII). Current and former Activision employees,
9 including Applicant-Intervenor, should receive the benefit of the same standard in
10 the instant case.

11 **III. CONCLUSION**

12 For all of the reasons set forth above, Applicant-Intervenor JESSICA
13 GONZALEZ respectfully requests that this Court grant her motion to intervene for
14 the limited purpose of objecting to the PACD and to ask this Court to hold a
15 fairness hearing.

16 Dated: March 4, 2022

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