# In the United States Court of Federal Claims

No. 13-465C
(Filed: September 30, 2016)



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| FAIRHOLME FUNDS, INC. et al., | * |
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| Plaintiffs, | * |
| | * |
| v. | * |
| | * |
| THE UNITED STATES, | * |
| | * |
| Defendant. | * |

**ORDER**

On Friday, September 16, 2006, the clerk's office received from Michael Sammons his pro se motion to intervene in the above-captioned case, which was transmitted to chambers the following business day. By his order, the court directs the clerk of court to file the motion. Because the motion to intervene is ill-conceived, the court need not await a response from all counsel of record before ruling on it. Further, the court notes that because there is no evidence to suggest that Mr. Sammons is an attorney, there is no need to issue a show cause order related to the imposition of sanctions for the filing of a motion that is both frivolous and vexatious.[1]

## I. BACKGROUND

In his motion, Mr. Sammons describes himself as "a member of the plaintiff-class with beneficial ownership of $1,000,000 par amount of [government-sponsored enterprise ("GSE")] preferred stock." Intervenor's Mot. 1. He seeks "to intervene as a matter of right for the limited purpose of challenging this Court's jurisdiction" over plaintiffs' Fifth Amendment takings claim pursuant to Rule 24(a) of the Federal Rules of Civil Procedure ("FRCP"). Id. at 1-4. The legal arguments set forth in Mr. Sammons's motion are, among other things, contrary to statute, well-settled case law, and the legal positions asserted by all parties to this litigation.[2]

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[1] Mr. Sammons's motion reflects a profound misunderstanding of this court's operations and procedures, as well as the procedural history of this case. Other than addressing the contours of this court's jurisdiction and explaining the frivolous nature of the motion, the undersigned declines to address the remainder of Mr. Sammons's unfounded claims.

[2] Indeed, defendant's motion to dismiss, which was filed pursuant to Rule 12(b)(1) and 12 (b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"), does not challenge this court's authority to entertain Fifth Amendment Takings claims. Rather, defendant argues, among other things, that the court lacks jurisdiction over the complaint because: (1) the

The gravamen of Mr. Sammons's motion to intervene is that the Court of Federal Claims lacks the authority to exercise jurisdiction over and adjudicate Fifth Amendment takings claims. According to Mr. Sammons, only United States district courts, not the Court of Federal Claims, can exercise jurisdiction over Fifth Amendment takings claims. Id. at 1. Mr. Sammons misapprehends this court's jurisdiction.

## II. DISCUSSION

### A. The Court of Federal Claims Possesses Exclusive Jurisdiction Over Fifth Amendment Takings Claims Exceeding $10,000

The Court of Federal Claims was established under Article I of the United States Constitution. 28 U.S.C. § 171(a) (2012). Article I also provides for the appointment of the court's judges. Id. § 172(a). The judges of this court are appointed by the President and confirmed by the United States Senate. Id.

This court's authority to act was conferred by Congress through the Tucker Act. Id. § 1491. In this statute, commonly referred to as the "Big" Tucker Act, Congress specifically waived sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States. Id. § 1491(a)(1). Because the Tucker Act is merely a jurisdictional statute and "does not create any substantive right enforceable against the United States for money damages," United States v. Testan, 424 U.S. 392, 398 (1976), that right must appear in another source of law, such as a "money-mandating constitutional provision, statute or

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Federal Home Finance Agency ("FHFA"), when acting in its role as conservator, is not acting as the United States, Def.'s Mot. Dismiss 12-16; (2) no liability can attach as a result of United States Department of the Treasury's ("Treasury Department") execution of the Third Amendment because Treasury Department was acting as a market participant, not as the sovereign, when it entered into that agreement with the FHFA, id. at 26-28; (3) plaintiffs cannot establish the facts necessary to state a takings claim, id. at 32-38; and (4) plaintiffs' claims are not ripe, id. at 38-42. Then, in its supplemental motion to dismiss, which was filed pursuant to RCFC 12(b)(1), defendant seeks the dismissal of the claims of "plaintiffs Fairholme Funds, Inc., the Fairholme Fund (collectively the Fairholme hedge funds), and all other plaintiffs who did not own shares in Fannie Mae or Freddie Mac (the Enterprises)[] on August 17, 2012, the date of the alleged Fifth Amendment taking in this case." Def.'s Suppl. Mot. Dismiss 1. Defendant argues that "[t]hese plaintiffs lack Article III standing to maintain their takings claim because they did not own the property alleged to have been taken until many months after the alleged taking occurred." Id. (footnote omitted.). All of defendant's comprehensive arguments in support of dismissing plaintiffs' complaint notwithstanding, nowhere in either of its motions to dismiss does defendant argue that the United States Court of Federal Claims ("Court of Federal Claims") lacks jurisdiction to adjudicate takings claims against the United States. The reason is clear: to do so would be contrary to statute and case law and would result in court-imposed sanctions against government counsel for making an argument contrary to the law in violation of RCFC 11.

regulation that has been violated, or an express or implied contract with the United States." Loveladies Harbor. Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc). One such money-mandating constitutional provision is the Takings Clause of the Fifth Amendment to the United States Constitution, which provides: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960). The Takings Clause does not prohibit the taking of property. Brown v. Legal Found. of Wash., 538 U.S. 216, 235 (2003). Rather, it proscribes a taking without just compensation. Id.; see also First English Evangelical Lutheran Church of Glendale v. Cnty. of L.A., 482 U.S. 304, 315 (1987) (providing that the Takings Clause "is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking" in a claim asserted against a county).

The Court of Federal Claims possesses jurisdiction to entertain Fifth Amendment takings claims against the United States. See McGuire v. United States, 707 F.3d 1351, 1356 (Fed. Cir. 2013) ("Because [the plaintiff's] takings claim fell within the scope of the Tucker Act (and was a claim for over $10,000), jurisdiction was proper only in the Claims Court."); John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1354 (Fed. Cir. 2006) ("The Tucker Act, 28 U.S.C. § 1491(a)(1), provides the Court of Federal Claims with jurisdiction over takings claims brought against the United States."), aff'd, 552 U.S. 130 (2008); Morris v. United States, 392 F.3d 1372, 1375 (Fed. Cir. 2004) ("Absent an express statutory grant of jurisdiction to the contrary, the Tucker Act provides the Court of Federal Claims exclusive jurisdiction over takings claims for amounts greater than $10,000."); Murray v. United States, 817 F.2d 1580, 1583 (Fed. Cir. 1987) (noting that "the 'just compensation' required by the Fifth Amendment has long been recognized to confer upon property owners whose property has been taken for public use the right to recover money damages from the government"). Consequently, Mr. Sammons's attempt to challenge this court's jurisdiction over takings claims by intervening in this case is a pointless exercise.

In sum, regardless of the whether plaintiffs' claims in this case are ultimately found to be meritorious, the Court of Federal Claims and its judges are empowered to exercise jurisdiction over Fifth Amendment takings claims. Congress granted this court jurisdiction over Fifth Amendment takings claims against the United States. 28 U.S.C. § 1491. Consequently, the purpose for which Mr. Sammons seeks intervention is frivolous and would result in a waste the resources of the court and all parties to this litigation.

**B. The Jurisdiction of the United States District Courts Is Limited to Claims That Do Not Exceed Damages in the Amount of $10,000**

Because Mr. Sammons suggests that Article III district courts are the proper for a for Fifth Amendment takings claims against the federal government, the court finds that it would be beneficial to explain the jurisdiction of the district courts. The "Little" Tucker Act, 28 U.S.C. § 1346(a)(2), specifically provides:

> (a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:
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> . . . .
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> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41.

(emphasis added). The congressional mandate of the "Little" Tucker Act is unambiguous—district courts are specifically precluded from hearing Fifth Amendment takings claims in excess of $10,000. Consequently, if Mr. Sammons seeks to avoid subjecting himself to litigation in this court, he may pursue a takings claim in a district court so long as the amount of damages he seeks does not exceed the "Little" Tucker Act's $10,000 statutory ceiling. Indeed, at least one district court has opined concerning whether the effect of the Third Amendment rose to the level of a taking. Specifically, in Perry Capital LLC v. Lew, 70 F. Supp. 3d 208 (D.D.C. 2014), the United States District Court for the District of Columbia, an Article III tribunal, rejected all of the plaintiffs' challenges regarding the effect of the Third Amendment. The court further observed that it lacked jurisdiction over plaintiffs' takings claims because they exceeded the $10,000 limit of the "Little" Tucker Act:

> As an initial matter, the defendants argue that the class plaintiffs' takings claims belong in the Court of Federal Claims rather than in this Court. Pursuant to the so-called "Big" Tucker Act, 28 U.S.C. § 1491(a)(1), the Court of [Federal] Claims maintains exclusive jurisdiction over claims against the United States that exceed $10,000. Under the "Little" Tucker Act, 28 U.S.C. § 1346(a)(2), the Court of [Federal] Claims shares concurrent jurisdiction with federal district courts over claims against the United States not exceeding $10,000. In this Circuit, for complaints that include potential claims over $10,000, Little Tucker Act jurisdiction is only satisfied by a "clearly and adequately expressed" waiver of such claims. See Waters v. Rumsfeld, 320 F.3d 265, 271-72 (D.C. Cir. 2003) ("[F]or a district

> court to maintain jurisdiction over a claim that might otherwise exceed $10,000, a plaintiff's waiver of amounts over that threshold must be clearly and adequately expressed.") (internal quotation marks and citation omitted). Here, the class plaintiffs argue that "expressly limit[ing] the prospective takings class to individuals who suffered losses less than $10,000" is an adequate alternative to waiver, and that waiver is "premature" until the class certification phase. Class Pls.'s Opp'n at 53. Yet the plaintiffs' refusal to clearly and adequately waive claims exceeding $10,000 in either their pleadings or subsequent opposition brief contravenes Circuit precedent. See Goble v. Marsh, 684 F.2d 12, 15-16 (D.C. Cir. 1982); Stone v. United States, 683 F.2d 449, 454 n.8 (D.C. Cir. 1982) ("Generally a plaintiffs' waiver should be set forth in the initial pleadings."). Nevertheless, the Circuit has also made clear its preference that the District Court should not transfer a case that is defective on Little Tucker Act grounds to the Court of Claims "without first giving [the plaintiffs] an opportunity to amend their complaints to effect an adequate waiver." Goble, 684 F.2d at 17.
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> Thus, while the class plaintiffs' takings pleading is inadequate for jurisdiction in this Court under the "Little" Tucker Act, in keeping with the tenor of Circuit case law, the Court would generally provide the class plaintiffs "an opportunity to amend their complaints to effect an adequate waiver." Id. However, doing so here is unnecessary, since the Court finds that the class plaintiffs' takings claims are dismissed on alternative grounds.[3]

Id. at 240 (footnote added).

### C. Plaintiff Has Not Satisfied the Four Requirements for Intervention

Turning to the merits of the motion for intervention, the court's ruling is informed by RCFC 24, which, mirroring FRCP 24(a)(2),[4] provides:

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[3] On October 2, 2014, the district court's decision in Perry Capital was appealed to the United States Court of Appeals for the District of Columbia ("D.C. Circuit"). Of note, documents produced during discovery conducted in the instant action, which remains ongoing, were lodged under seal with the D.C. Circuit prior to the April 15, 2016 oral argument in that case. As of the filing of this order, the D.C. Circuit has not yet ruled on the appeal. In addition, as recently as September 22, 2016, some of the plaintiffs filed a sealed letter advising the D.C. Circuit of additional authorities.

[4] Although Mr. Sammons brings his motion pursuant to the FRCP, the Court of Federal Claims is governed by its own set of rules: the RCFC. In this case, as in many cases, it is a distinction without a difference, as the RCFC tend to mirror the FRCP. See Zoltek Corp. v.

> On a timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

In other words, RCFC 24(a)(2) movants "must show that: (1) they have an interest relating to the property or transaction that is the subject of the action; (2) without intervention the disposition of the action may, as a practical matter, impair or impede the applicants' ability to protect that interest; . . . (3) their interest is inadequately represented by the existing parties," and (4) their motion is timely filed. Freeman v. United States, 50 Fed. Cl. 305, 308-09 (2001). Courts reviewing such motions must construe them "in favor of intervention." Am. Mar. Transp., Inc. v. United States, 870 F.2d 1559, 1561 (Fed. Cir. 1989). However, courts are nonetheless "entitled to the full range of reasonable discretion in determining whether the . . . requirements [for intervention] have been met." Rios v. Enter. Ass'n Steamfitters Local Union No. 638 of U.A., 520 F.2d 352, 355 (2d Cir. 1975), quoted in Chippewa Cree Tribe of Rocky Boy's Reservation v. United States, 85 Fed. Cl. 646, 653 (2009). Indeed, "[i]ntervention is proper only to protect those interests which are of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." Am. Mar. Transp., 870 F.2d at 1561 (internal quotation marks omitted).

Intervention is proper only to protect those interests that are "'of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.'" United States v. AT & T Co., 642 F.2d 1285, 1292 (D.C. Cir. 1980) (quoting Smith v. Gale, 144 U.S. 509, 518 (1892)). Thus, the interest may not be either indirect or contingent. See, e.g., New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 463 (5th Cir. 1984); Dilks v. Aloha Airlines, Inc., 642 F.2d 1155, 1157 (9th Cir. 1981) (per curiam).

Performing a proper analysis is difficult when the court is confronted with a specious motion. Nevertheless, the court will scrutinize Mr. Sammons's motion under RCFC 24(a). Pursuant to the first requirement of the test for intervention, the movant must show that his interest in the property is "of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." Smith, 144 U.S. at 518, quoted in Chippewa Cree Tribe, 85 Fed. Cl. at 654. In addition, the movant must demonstrate that his interest is legally protectable—"one which the substantive law recognizes as belonging to or being owned by the applicant." Id. (internal quotation marks omitted). In this case, the movant's alleged interest is both direct and legally protectable. Mr. Sammons claims that he is a member of the "plaintiff-class" and is the beneficial owner of one million dollars' worth of GSE

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United States, 71 Fed. Cl. 160, 167 (2006) (noting that interpretation of a rule of the FRCP "informs the Court's analysis" of the corresponding rule of the RCFC).

stock through Cede & Co., which he describes as the "nominal holder of record."[5] Intervenor's Mot. 1. Although no motion for class certification has been filed in this case, Mr. Sammons claims that he owns GSE stock. "[N]o Federal law of which this court is aware has ever imposed certainty as a requirement of proof, particularly at the outset of litigation—and RCFC 24(a) is no exception, as it only requires that the disposition of the case may impede or impair an applicant's interests." Klamath Irrigation Dist. v. United States, 64 Fed. Cl. 328, 333 (2005) (internal quotation marks omitted). Assuming that Mr. Sammons is a GSE stockholder, as he claims, then the outcome of this litigation may impact his ownership rights.[6] Thus, Mr. Sammons has satisfied the first requirement of the four-prong test. However, merely satisfying the first requirement does not end the court's inquiry.

With respect to the second requirement, the movant must show that "without intervention the disposition of the action may, as a practical matter, impair or impede the applicant['s] ability to protect [his] interest." Freeman, 50 Fed. Cl. at 308. In other words, intervention is "inappropriate where relief is available elsewhere." Chippewa Cree Tribe, 85 Fed. Cl. at 657. In this case, Mr. Sammons asserts that the purpose of his motion for intervention is to challenge this court's subject matter jurisdiction. According to Mr. Sammons, the Court of Federal Claims cannot adjudicate Fifth Amendment takings claims because it is an Article I court. Mr. Sammons is incorrect. Indeed, as explained above, this court is the exclusive forum for adjudicating Fifth Amendment takings claims against the United States in excess of $10,000. 28 U.S.C. §§ 1346(a)(3), 1491(a)(1). Ironically, by seeking to attack this court's jurisdiction, Mr. Sammons unwittingly aligns himself with the defendant, the only party to this litigation challenging this court jurisdiction, albeit on other grounds. Moreover, if Mr. Sammons elects to limit his damages claim against the United States to an amount that does not exceed $10,000, he may file suit in federal district court. Of course, at least one district court has opined that the

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[5] As explained below, plaintiffs have not yet moved for class certification in this case. Furthermore, if Cede & Co. is a corporation, it may only be represented by counsel. RCFC 83.1(a)(3) specifically provides that an "individual who is not an attorney . . . may not represent a corporation . . . in any other proceeding before this court." See Talasila, Inc. v. United States, 240 F.3d 1064, 1066 (Fed. Cir.) ("[A corporation] must be represented by counsel in order to pursue its claim against the United States in the Court of Federal Claims."), reh'g and reh'g en banc denied (Fed. Cir. 2001); Finast Metal Prods. Inc. v. United States, 12 Cl. Ct. 759, 761 (1987) ("A corporate 'person' can no more be represented in court by a non-lawyer—even its own president and sole shareholder—than can any individual."). This rule applies even in those situations in which a financial hardship is imposed on the corporate plaintiff. Richdel, Inc. v. Sunspool Corp., 699 F.2d 1366, 1366 (Fed. Cir. 1983) (noting that "substantial financial hardship" did not waive the rule requiring corporations to be represented by counsel).

[6] It bears noting that Mr. Sammons also appears to seek to transfer this case to a United States district court, which would, of course, lack jurisdiction over any Fifth Amendment takings claim that exceeded $10,000. Thus, if this court were to transfer the instant action, it would prejudice every plaintiff in this and all the related actions pending before it.

United States is not liable under the Fifth Amendment.[7] See Perry Capital, 70 F. Supp. 3d at 240.

Furthermore, despite Mr. Sammons's objection to this court's adjudication of claims brought under the Fifth Amendment's Takings Clause, claims over which this court undeniably possesses subject matter jurisdiction, Mr. Sammons cannot demonstrate that his ability to protect his interest in GSE stock would be impaired if the court denied his motion for the simple reason that he, at any time, remains free to bring a separate suit. See, e.g., TRW Envtl. Safety Sys., Inc. v. United States, 16 Cl. Ct. 516, 519 (1989) (finding that the putative intervenor "would not appear to be substantially prejudiced by a denial of its motion, for [he] retains [his] right to bring a separate action"); Ackley v. United States, 12 Cl. Ct. 306, 309 (1987) (finding that the rights of the putative intervenor would not be prejudiced by the court's denial of his motion to intervene because he had already filed a separate action).

With respect to establishing the third requirement for intervention, the movant must show that his interests are not adequately being represented by the existing parties. To satisfy this requirement, "a movant need only show that the representation of his interests 'may be' inadequate." Fifth Third Bank of W. Ohio v. United States, 52 Fed. Cl. 202, 205 (2002) (quoting Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 (1972)). In this case, Mr. Sammons claims that "no party to the action is willing to raise the meritorious issue that Judge Sweeney, as a non-article III judge, does not have authority under the Constitution to hear the case." Intervenor's Mot. 1. However, as explained above, the Court of Federal Claims has exclusive jurisdiction over Fifth Amendment takings claims against the United States for claims that exceed $10,000 in damages, and concurrent jurisdiction with federal district courts over Fifth Amendment takings claims for less than $10,000. Accordingly, the undersigned possesses the authority to hear plaintiffs' case. Mr. Sammons fails to identify any inadequacy in plaintiffs' representation of his interests. As explained above, the allegations contained in the motion for intervention are not only contrary to law, but are at odds with the postures of both plaintiffs and defendant in this case—none of which has argued that the Court of Federal Claims lacks subject matter over this matter because it is an Article I court. Accordingly, Mr. Sammons fails to meet the third requirement of the test for intervention.

With respect to the final element, timeliness, the court must examine (1) how long the movant knew or reasonably should have known of his rights, (2) whether existing parties would be more prejudiced by the court's granting the motion than the movant would be prejudiced by

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[7] The Perry Capital court found, among other things, that it agreed with the defendants' argument that, "the plaintiffs fail to plead a cognizable property interest, for takings purposes, because the GSEs—and, therefore, the plaintiff shareholders—lack the right to exclude the government from their property." 70 F. Supp. 3d at 241. The court reasoned that because "the GSE shareholders necessarily lack the right to exclude the government from their investment when FHFA places the GSEs under governmental control—e.g., into conservatorship," plaintiffs failed to state a claim upon which relief can be granted pursuant to FRCP 12(b)(6). Id. at 240-42. The court also found that "[e]ven if the class plaintiffs could claim a cognizable property interest—and they cannot—their claims would still fail on a motion to dismiss under existing Supreme Court regulatory takings precedent." Id. at 243.

the court's denying the motion, and (3) whether there exist any unusual circumstances that tip the balance in favor of either granting or denying the motion. Chippewa Cree Tribe, 85 Fed. Cl. at 658. "The court determines timeliness from all the circumstances and exercises 'sound discretion' in making its determination." John R. Sand & Gravel Co. v. United States, 59 Fed. Cl. 645, 649 (2004) (quoting NAACP v. New York, 413 U.S. 345, 366 (1973)), aff'd, 143 F. App'x 317 (Fed. Cir. 2005).

Mr. Sammons does not indicate how long he has known about his rights, but there is no question that the Third Amendment was entered into by the Treasury Department and the FHFA on August 17, 2012. However, stockholders have knowledge of a claim when they do not receive a dividend when it is due. In this case, Mr. Sammons could have proceeded, if he thought it was in his best interest, to file suit in district court in 2012. Indeed, because Mr. Sammons refers to himself as a "class-plaintiff," he may be represented in the Perry Capital litigation. In addition, the court notes that the complaint in the instant action was filed on July 9, 2013, and subsequently, other related Fifth Amendment takings cases were filed. Consequently, the court assume Mr. Sammons was aware of his rights at least since the filing in 2013 of the instant action or the related cases.

With respect to whether the existing parties would be more prejudiced by the court's granting Mr. Sammons's motion than he would be prejudiced by the court's denying the motion, the court concludes that the case is simply too far down the discovery track to be disrupted by a motion for intervention to challenge the court's jurisdiction. To date, there have been over 330 docket entries in this case. Indeed, after defendant filed its initial motion to dismiss on December 9, 2013, the case was suspended on January 2, 2014, based on the parties' joint request. Since that time, the parties, but primarily plaintiffs, have conducted jurisdictional and merits-based discovery. The scope of that discovery has been the subject of numerous status conferences and orders, and much of that discovery is the subject of a protective order and therefore only available to certain counsel and their experts. In addition, following the June 10, 2016, ripening of plaintiffs' motion to compel, the court conducted an in camera review of numerous documents and, in an eighty-one-page decision dated September 20, 2016, granted plaintiffs' motion in its entirety. The documents at issue, which are subject to the court's protective order, will be used by plaintiffs to meet the jurisdictional challenges raised by defendant's motion to dismiss. Thus, because the parties are actively engaged in massive discovery efforts, and because they would be obliged to expend unnecessary time, expense, and other resources to respond to a vacuous motion, the court concludes that they would be more prejudiced by the court's granting Mr. Sammons's motion than he would be prejudiced by the court's denying it.

Furthermore, there do not exist any unusual circumstances that tip the balance in favor of either granting or denying the motion. For these reasons, the court, in an exercise of its discretion, finds Mr. Sammons's motion to be untimely. Accordingly, Mr. Sammons fails to meet the fourth requirement of the test for intervention.

## III. CONCLUSION

Because Mr. Sammons's motion to intervene is both ill-conceived and fails to satisfy the requirements of RCFC 24, the motion is **DENIED**.

**IT IS SO ORDERED.**

MARGARET M. SWEENEY
Judge