

No.: 24-40564

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

BROOK JACKSON,

Qui Tam Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Intervenor Plaintiff-Appellee

VENTAVIA RESEARCH GROUP, LLC,

Defendant-Appellees,

PFIZER, INC., and ICON PLC,

Defendants

On Appeal from the United States District Court

for the Eastern District of Texas

No. 1:21-cv-00008-MJT

Judge Michael J. Truncale United States District Judge

**APPELLANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE OPENING BRIEF AND RECORD EXCERPTS**

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UNOPPOSED MOTION FOR EXTENSION OF TIME

Under Rule 26(b) of the Federal Rules of Appellate Procedure and Fifth Circuit Rule 31.4, Appellant Brook Jackson – Relator in the *qui tam* action below—through counsel, seeks an extension of time from November 25, 2024, until January 24, 2025, to file the opening brief and record excerpts on this appeal. This is Appellant’s first motion for an extension of time in connection with the opening brief.

The District Court’s final judgment was entered on November 13, 2023. Pursuant to the Appellant’s Briefing Notice, Appellant’s Brief and the record excerpts are due November 25, 2024. Appellant now seeks an extension of 60 days in which to file the brief and record excerpts. Good cause exists to grant a 60-day extension of time for this brief, given the unavailability of lead counsel due to health reasons, unavoidable scheduling conflicts, and the intervening holidays. Appellees do not oppose this motion.

I. An Extraordinary Amount of Work Is Required to Prepare the Brief

The requested extension of time is reasonable and necessary under the unique circumstances of this case, and good cause exists. In the underlying action under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, Relator Brook Jackson alleged that Defendants Pfizer Inc., ICON PLC and Ventavia Laboratories defrauded the government by claiming federal funds to deliver COVID-19

vaccines authorized or approved by the Food and Drug Administration for the safe and effective prevention of COVID-19. She alleged that Defendants engaged in fraud in the design, conduct, analysis, and reporting of clinical trials to obtain Emergency Use Authorization (EUA) for a vaccine against COVID-19.

Overwhelming evidence developed without formal discovery established that defendants knew the modified RNA technology developed by defendants and marketed by Pfizer did not prevent infection or transmission of SARS-Cov-2; that Pfizer's vaccines posed unreasonable risks of serious harm to injected individuals; and that defendants' clinical trial fraud was necessary to obtain authorization under the objective standards of the EUA statute, 21 U.S.C. § 360bbb-3. In her second amended complaint [Doc. No. 118], Relator seeks return to the federal fisc treble damages and penalties for the billions of dollars wrongfully paid to Pfizer under its contracts with the government.

This appeal is from the District Court's order [Doc. No. 158], entered on August 9, 2024, granting the United States Department of Justice's Motion to Intervene and Dismiss Relator's *qui tam* action against Defendants under 31 U.S.C. § 3730(c)(2)(A), and granting Ventavia Research Group, LLC's Motion to Dismiss Relator's employment retaliation claim in the second amended complaint. Both motions were extensively briefed by Relator and the 25-page order was entered by the District Court more than three months after a two-and-a-half hour

hearing held on May 1, 2024. Relator anticipates that preparation of Appellant's Brief will require an extensive and coordinated effort to conduct a detailed review of the briefing and hearing transcript leading up to the issuance of the order.

The Department of Justice's motion raises important questions under the United States Constitution and its Amendments, the False Claims Act, and the Federal Rules of Civil Procedure. Many case authorities were addressed in the briefing before the District Court and substantial additional research will be required of Appellant's counsel to update developments in this novel area of law. In addition, Relator's complaint and the opposition to the motion present several complex factual issues concerning the scientific fraud of which defendants were accused, and the ultimate consequences to public health from authorization of a vaccine with negative efficacy and causing serious harm. Relator's opposition to the Department of Justice's motion included declarations by Dr. Peter McCullough [Doc. No. 137-1] and Joseph Fraiman [Doc. No. 137-2], and thirteen exhibits [Doc. No. 146], consisting of scientific literature, court filings and correspondence between the Department and Senator Charles Grassley, the author and principal protector of the False Claims Act.

Because this appeal involves an unprecedented motion by the United States Department of Justice, based on a contested statement of national health policy, to intervene for purposes of dismissing an action shown (without evidentiary

contradiction) to be meritorious, Relator anticipates an unusual amount of work will be required to prepare the opening brief. Relator and her counsel intend to review the pertinent case law, from before and after the Supreme Court's decision in *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 143 S. Ct. 1720, 1734 (2023), the extensive legislative history of the False Claims Act and its amendments, and the changing government statements of national health policy in relation to the now widely recognized fraud by defendants in developing the modified genetic biologic vaccine technology.

II. Unavailability of Counsel Due to Unavoidable Conflicts and Medical Leave

Appellant's counsel have made diligent efforts to meet the deadlines set out in this Court's original briefing schedule. However, an extension of time is necessary due to unavoidable scheduling conflicts and leaves of absence required by Appellant's counsel.

Several of Relator's attorneys have experienced personal emergencies that have prevented substantial work on Relator's opening brief since the scheduling notice was filed. Attorney Lexis Anderson was on an extended leave of absence to care for her mother on hospice and to handle personal matters following her mother's passing. Ms. Anderson was unavailable for several weeks during this time. In addition, attorney Robert Barnes was recently hospitalized for more than a week. Although he has recently returned home, he is still receiving medical care,

he has not been able to return to work in his full capacity and is not expected to make a full recovery for several weeks.

Although Relator had two additional attorneys representing her in the district court, and both have filed appearances in this Court, participation by Ms. Anderson and Mr. Barnes is necessary to accomplish the important work in preparing the opening brief for the appeal. In addition, since the issuance of the scheduling order, the other attorneys have had unavoidable conflicts which have prevented them from performing the substantial work required for the brief. Both Attorney Warner Mendenhall and Attorney Jeremy Friedman were required to file an amended complaint in the Western District of New York on November 1, and a reply to an answer on a petition for review in the California Supreme Court on November 4. Mr. Mendenhall currently has a brief due in the Sixth Circuit on November 27. In addition, since the scheduling notice, Mr. Mendenhall was obligated to testify before the Oklahoma Legislature; traveled to attend multiple-day conferences in Florida and Pittsburg; and traveled to Wisconsin for depositions. During the week of October 21, Mr. Friedman filed an opening brief and multi-volume appendix in an appeal pending in the First Circuit; appeared in Pasadena for oral argument in an appeal before the Ninth Circuit on November 18. In addition, Mr. Friedman was obligated to appear for an in-person settlement conference November 1, including

multiple follow-up conferences and/or communications with the settlement judge in the weeks that followed. Mr. Friedman has two more mediations this week.

III. Additional Conflicts and the Intervening Holidays Require Counsel to Request and Extension Until January 24, 2024.

Appellant requests a sixty (60) day extension for the opening brief, because such an extension is needed due to these prior conflicts and unavailabilities, the conflicts that exist through the end of this year, and the intervening holidays. In December, Mr. Mendenhall has a hearing on a temporary restraining order, an appellate brief due in the Sixth Circuit, and a motion to dismiss due in the Northern District of Illinois. During that same time period, Mr. Friedman must oppose a summary judgment motion in an arbitration, and file a summary judgment motion in a case pending in the Northern District of California. An opposition to a cross-motion for summary judgment will be due soon after the new year.

IV. Conclusion

For the foregoing reasons, Appellant respectfully requests to extend the briefing schedule by sixty (60) days until January 24, 2025, to file the opening brief and record excerpts on this appeal.

Date: November 18, 2024

Respectfully submitted,

BARNES LAW LLP
MENDENHALL LAW GROUP
LAW OFFICE OF JEREMY L.
FRIEDMAN

By: /s/ Jeremy L. Friedman
Jeremy L. Friedman, Esq.

Attorneys for Appellant BROOK JACKSON

DECLARATION OF COUNSEL

I, Jeremy L. Friedman, Esq., declare and state:

1. I am one of the attorneys representing Relator Brook Jackson in this action. I make the following declaration based upon my own personal knowledge. If called as a witness hereto, I would and could testify competently to the following.
2. All of the factual statements in this application regarding work required for the opening brief and unavailability of counsel are true and correct.
3. We communicated with counsel for Appellees regarding this request, and we were informed that there are no objections.

I declare under penalty of perjury of the laws of Louisiana and the United States that the foregoing is true and correct. Executed this 18th day of November, 2024.

/s/ Jeremy L. Friedman
Jeremy L. Friedman

CERTIFICATE OF SERVICE

I, Jeremy L. Friedman, certify that on November 18, 2024, I served the attached **APPELLANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF AND RECORD EXCERPTS**, by electronically filing the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

/s/ Jeremy L. Friedman

Jeremy L. Friedman, Esq.

CERTIFICATE OF COMPLIANCE

This brief complies with the length limits of the Federal Rule of Appellate Procedure 27(a)(2)(B) and contains 1342 words.

Dated: November 18, 2024

/s/ Jeremy L. Friedman
Jeremy L. Friedman, Esq.

Counsel for Appellant