

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 SECOND UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE OPENING BRIEF AND RECORD EXCERPTS**

Robert E. Barnes, Esq.
robertbarnes@barneslawllp.com
Lexis Anderson, Esq.
lexisanderson@barneslawllp.com
BARNES LAW
700 S. Flower Street, Suite 1000
Los Angeles, California 90017
Telephone: (310) 510-6211
Facsimile: (310) 510-6225

Warner Mendenhall, Esq.
warner@warnermendenhall.com
MENDENHALL LAW GROUP
190 North Union St., Suite 201
Akron, OH 44304
Telephone: (330) 535-9160
Facsimile: (330) 762-9743

Jeremy L. Friedman, Esq.
jlfried@comcast.net
LAW OFFICE OF JEREMY L.
FRIEDMAN
2801 Sylhowe Road
Oakland, CA 94602
Telephone: (510) 530-9060
Facsimile: (510) 530-9087

Attorneys for Appellant Brook Jackson

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 additional extension of time from December 27, 2024, until January 27, 2025, to file the opening brief and record excerpts on this appeal. This is Appellant’s second motion for an extension of time in connection with the opening brief, and it is not opposed by Appellees.

After the initial due date was set in the Briefing Notice for Appellant’s brief and record excerpts, Appellant sought a 60-day extension of time. Good cause existed for that extension, in light of the significant amount of work that is required, and the unavailability of counsel due to pre-existing scheduling conflicts and temporary leaves of absence due to health conditions. This included a week’s hospitalization of Appellant’s lead counsel. On November 21, 2024, the Clerk’s Order was entered granting the extension in part, for 30 days, setting the current December 27 due date.

Since the first extension, Appellant’s counsel continue to have had limited immediate availability to meet or to accomplish substantial work on the brief. Prior existing scheduling conflicts have persisted, and lead counsel was re-hospitalized. As a result, good cause exists to grant an additional 30-day extension of time. Appellees do not oppose this motion.

I. An Extraordinary Amount of Work Remains to be Performed

The requested extension of time is reasonable and necessary under the unique circumstances of this case. 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 was held on May 1, 2024. Relator anticipates that preparation of the Brief will require an extensive and coordinated effort by counsel 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 serious resulting 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.

The United States had previously only rarely exercised its authority under § 3730(c)(2)(A) to seek dismissal in a non-intervened *qui tam* case. Until recently the Department of Justice followed well-developed internal guidance, called the “Granston Memo,” which set content-neutral factors based on legitimate government purposes, tied largely to a showing of a disproportionate burden placed upon the Government if the relator pursues a case with little or no benefit.

In Brook Jackson’s case, however, the motion to intervene and dismiss was unprecedented. The Department of Justice abandoned reliance on the Granston Memo’s exemplification of valid governmental purposes, and it decided to terminate the *qui tam* action based on the content of Brook Jackson’s claims. As constituted at that time, the Department of Justice sought to silence individuals and professionals from speaking truth about the lack of benefits of, grievous harms caused by, and clinical trial fraud behind, Pfizer’s Covid-19 biologics. Jackson’s *qui tam* seeks to redress harms caused to the federal fisc by these same truths. Rather than basing its motion on a factual showing that the burden of continued litigation outweighed the merits of the case, the then-constituted Department of Justice sought dismissal *because* of the widely recognized merits to her claims. In

so doing, the Department of Justice lawyers asserted a statement of national health policy that was then, and certainly is now, unsupported by any valid purpose.

In light of the unprecedented nature of the underlying motion, as well as the changing landscape of the Department of Justice's practices, Appellant's counsel anticipate that 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. Unavoidable Conflicts and Medical Leaves

Appellant's counsel have made diligent efforts to meet the deadlines set out in this Court's original briefing schedule, and since the initial grant of 30 days, they have tried to find time to meet and plan out work for the opening brief. Due to unavoidable scheduling conflicts and a continuing leave of medical absence, another extension of time for 30 days is required.

Several of Relator's attorneys have experienced personal emergencies that have continued to interfere with their ability to perform substantial work on the brief. As was stated in the previous application, attorney Robert Barnes was

hospitalized in November for more than a week. His medical care has been ongoing. While he was released from the hospital, he was not released by his doctors to fully return to work, and unfortunately, he was re-admitted to the hospital on December 13, 2024. He was not discharged until December 19 – one day prior to the filing of this motion. Attorney Barnes’s continuing medical concerns have prevented him from returning to work in his full capacity and from dedicating substantial time and effort to Appellant’s brief.

Furthermore, attorney Anderson has additional scheduling conflicts that divert time and resources from Appellant’s brief. She has another opening appeal brief, in the matter of *Shroyer et al. v. Garcia*, 03-24-00687-CV in the Third District Court of Appeals of Texas, due on Friday, December 27, 2024. Ms. Anderson also has several other scheduling conflicts and ongoing projects that have diverted necessary time and resources that were delayed due to the passing of her mother in October 2024. Because of that tragedy, Ms. Anderson was unable to work full-time for several weeks and a number of matters at Barnes Law have been continued as a result.

Although Relator has two other attorneys representing her in this appeal, participation by Ms. Anderson and Mr. Barnes is necessary to accomplish the important work in preparing the opening brief. In addition, as set forth in the first extension motion, since the issuance of the scheduling order, the other attorneys

have had unavoidable conflicts scheduled through the end of the year and into January of 2025. In the weeks before this motion was filed, and continuing into January, Mr. Mendenhall had 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. Both he and Mr. Friedman were required to join an in-person meeting in Arizona before the end of the year. During that same time period, Mr. Friedman was required to oppose a summary judgment motion in an arbitration, and he is due to file a summary judgment motion in a case pending in the Northern District of California. In addition, Mr. Friedman must complete final discovery prior to commencement of a trial that begins on February 3, 2025, and prepare for a multi-party mediation scheduled in Southern California for January 30.

Combined with the expected conflicts and unavailabilities around the end of the year holidays, these unavoidable conflicts and medical unavailabilities have prevented counsel from performing the substantial work required for this important appeal. No undue delay will be caused to this appeal of a long-pending matter, and no objection to the extension request is raised by appellees.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests an extension until January 27, 2025, to file the opening brief and record excerpts on this appeal.

Date: December 20, 2024

Respectfully submitted,

BARNES LAW
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 the United States that the foregoing is true and correct. Executed this 20th day of December, 2024.

/s/ Jeremy L. Friedman
Jeremy L. Friedman

DECLARATION OF COUNSEL

I, Robert E. Barnes, declare:

1. I am over 18 years of age and competent to testify in this manner.
2. I live in Clark County, Nevada and I am counsel for Plaintiff in the above-captioned matter.
3. All statements made in this declaration are true to the best of my own personal knowledge.
4. If called upon as a witness, I could and would competently testify to the following facts based upon my own personal knowledge or information and belief.
5. I suffered a medical illness that resulted in my hospitalization from November 7, 2024 to November 14, 2024. I was diagnosed with severe muscular infection near the spinal cord and compromised by multiple hernias and ulcers.
6. My hospital discharge came with home health care, a home IV, and a 6-week schedule of nurse-given daily IV medication. My physical movements and travel are limited until late January 2025.
7. Furthermore, I was also re-admitted to the hospital on December 13, 2024 and was not discharged until December 19, 2024.

8. As a result of the above, I have had inadequate time to properly prepare Appellant's brief in this case.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. I executed this declaration on December 20, 2024.

/s/ Robert E. Barnes
Robert Barnes
CA. Bar ID #: 235919

DECLARATION OF COUNSEL

I, Lexis Anderson, declare:

1. I am over 18 years of age and competent to testify in this manner.
2. I live in Bastrop County, Texas. All statements made in this declaration are true to the best of my own personal knowledge.
3. I am counsel for Appellant in the above-captioned case. If called upon as a witness, I could and would competently testify to the following facts based upon my own personal knowledge or information and belief.
4. On October 20, 2024, my mother passed away. I was unable to return to full-time work for several weeks.
5. As a result of the above, my work and progress on many cases was delayed and many deadlines were continued.
6. Due to a number of outstanding projects, I have been unable to dedicate the necessary time and resources to Appellant's brief.
7. Furthermore, as of the time of this filing, I have another appeal brief due on December 27, 2024 in the matter of *Shroyer et al. v. Garcia*, 03-24-00687-CV in the Third District Court of Appeals of Texas that has diverted necessary time and resources.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. I executed this declaration on December 20, 2024.

/s/ Lexis Anderson
Lexis Anderson
TX Bar ID #: 24127016

CERTIFICATE OF SERVICE

I, Jeremy L. Friedman, certify that on December 20, 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 1,647 words.

Dated: December 20, 2024

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

Counsel for Appellant