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Intervenor-Defendants*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DR. CHRISTIAN ROBERT KOMOR, Case No.: CV-19-00293-TUC-RCC

pro se Plaintiff,

v.

**The UNITED STATES OF
AMERICA;** et al.,

Defendants.

**PROPOSED INTERVENOR-
DEFENDANTS' MOTION AND
MEMORANDUM IN SUPPORT
OF MOTION TO INTERVENE**

Kelsey Cascadia Rose Juliana, Xiuhtezcatl Tonatiuh Martinez, and Jaime Butler (collectively "Intervenor-Defendants") hereby move the Court for leave to intervene as Defendants in this action (Case No. CV-19-00293-TUC-RCC) as a matter of right pursuant to Federal Rules of Civil Procedure

Rule 24(a)(1) and (2) or, alternatively, to intervene permissibly pursuant to Rule 24(b)(1)(B). The individual applicants are three of the Youth Plaintiffs in *Juliana v. United States*, United States District Court for the District of Oregon – Eugene Division, Case No.: 6:15-cv-01517-AA. Because the *pro se* Plaintiff in the instant action substantially plagiarized most of the First Amended Complaint in the *Juliana* case and then filed that plagiarized complaint in this action, the legal claims and interests of the Youth Plaintiffs in the *Juliana* case could be adversely affected by this litigation, which does not appear to be pursued in good faith.

The grounds for the Motion to Intervene as of right are that the *pro se* plaintiff in the instant case, Christian Komor, substantially copied verbatim the factual and legal bases for the causes of action in the *Juliana* case, in which the proposed Intervenor-Defendants are among the Youth Plaintiffs. For example, the *pro se* plaintiff admitted as “absolutely true” that he simply copied “many of the factual statements” in the *Juliana* complaint. See Declaration of Julia A. Olson in Support of Motion to Intervene (“Olson Decl.”) ¶ 9. Because of the grave constitutional questions posed by the *Juliana* case and the complex evidentiary issues involved, the proposed Intervenor-Defendants believe the issues raised in the *Juliana* litigation must be litigated by experienced attorneys rather than in this plagiarized *pro se* action. Christian Komor’s *pro se* litigation of this action could potentially create legal issues for the proposed Intervenor-Defendants in litigating their

claims in the *Juliana* case, which were brought in good faith and under the expertise of legal professionals. Furthermore, the proposed Intervenor-Defendants believe this action is brought in bad faith and for the purpose of harassment. Finally, based on the history of litigation in the *Juliana* case, the interests of the named Defendants in the instant action (who are identical to the named Defendants in *Juliana*) are in opposition to those of the proposed Intervenor-Defendants, rendering the *Komor* Defendants unable to adequately represent the interests of these proposed Intervenor-Defendants.

The proposed Intervenor-Defendants seek to intervene in this action so that they can file a Motion to Dismiss or, in the alternative, a Motion to Stay the complaint brought by Christian Komor on several grounds, including under Rule 11 on the basis that the instant action is “being presented” for an “improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.” The grounds for the Motion to Dismiss and/or Stay will also include that, as a *pro se* plaintiff, Christian Komor is not capable of litigating the claims in his plagiarized complaint against the federal government.

Before filing this Motion, counsel for the proposed Intervenor-Defendants conferred with counsel for all parties in this case. The *pro se* plaintiff, Christian Komor, did not indicate his position on the motion but stated that he was unwilling to voluntarily dismiss the case. Counsel at the United States Department of Justice stated the *Komor* Defendants did not

take a position at this time. *See* Declaration of Andrea K. Rodgers in Support of Motion to Intervene (“Rodgers Decl.”) ¶ 6.

This Motion is supported by the following memorandum of law.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

a. *Juliana v. United States.*

On August 12, 2015, twenty-one youth plaintiffs (including the three proposed Intervenor-Defendants here), along with nonprofit Earth Guardians and James Hansen as guardian for future generations, filed a complaint against the United States, President Barack Obama, and eleven federal agencies in United States District Court for the District of Oregon – Eugene Division, Case No.: 6:15-cv-01517-TC. The First Amended Complaint was filed on September 10, 2015 and is attached to the Olson Decl. as **Exhibit 1**.

Among the claims, the one-hundred page First Amended Complaint alleges that the federal government has known since at least 1965 that carbon dioxide pollution was causing climate change at catastrophic levels and that transitioning away from fossil fuels was needed to protect the Youth Plaintiffs' constitutional rights to life, liberty, and property. Despite this knowledge, the Defendants in the *Juliana* case actively subsidized the fossil fuel industry and allowed fossil fuel production, exportation, and combustion to continue and grow. Because the actions of the Defendants in the *Juliana* case violate the Youth Plaintiffs' Fifth Amendment due process and equal protection rights, as well as the public trust doctrine, the Youth Plaintiffs in the *Juliana* case are seeking declaratory and injunctive relief, including an order requiring the Defendants in the *Juliana* case to prepare and implement

an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO₂ so as to stabilize the climate system and protect the vital resources on which the Youth Plaintiffs depend.

As set forth at length in the Olson Decl., ¶¶ 8-37, the *Juliana* litigation has a lengthy procedural history. The *Juliana* case has been developed over a period of ten years and is being prosecuted by experienced counsel. *Id.* at ¶ 38. The *Juliana* case has support of over twenty renowned and Nobel Laureate expert witnesses on all of the factual questions in the case, and has been supported by scholars in the legal academy, including constitutional scholar Erwin Chemerinsky. *Id.* at ¶ 20. The case is ready to be tried as soon as the Ninth Circuit Court of Appeals rules on the interlocutory appeal. *Id.* at ¶ 35.

Because the constitutional questions posed in the *Juliana* case are of the utmost importance, involve complex scientific evidentiary questions, and must be litigated by experienced attorneys, both counsel and plaintiffs in *Juliana* do not believe a *pro se* action of a plagiarized complaint apparently filed for the purpose of harassing and bartering with the Youth Plaintiffs is an appropriate vehicle for addressing these dire constitutional questions under the Fifth Amendment or the public trust doctrine. Olson Decl., ¶ 38.

b. The proposed Intervenor-Defendants.

The proposed Intervenor-Defendants are three of the twenty-one Youth Plaintiffs in the *Juliana* case. Kelsey Cascadia Rose Juliana is a

twenty-three year old student from Eugene, Oregon. Olson Decl., **Exhibit 1** at ¶¶ 16-19. Xiuhtezcatl Tonatiuh Martinez is a nineteen-year-old activist and artist from Boulder, Colorado. *Id.*, ¶¶ 20-22. Jaime Butler is an eighteen-year-old student who was raised on the Navajo Nation Reservation in Cameron, Arizona. *Id.*, ¶¶ 65-66. Due to increasingly severe water scarcity on the reservation, Jaime and her mother are no longer able to sustain the costs of hauling water for themselves and their animals and were forced to relocate to the Kaibab National Forest near Flagstaff, Arizona in 2011. *Id.*, ¶¶ 66-67.

c. Conversations with Christian Komor.

On March 5, 2019, Dr. Komor left a voicemail message for Julia Olson, co-lead counsel in the *Juliana* case. Olson Decl. ¶ 3. In his voicemail, Christian Komor expressed his interest in “combining forces” with Ms. Olson on a similar lawsuit. *Id.*

Ms. Olson spoke with Christian Komor the following week. *Id.* at ¶ 4. During this phone call, Christian Komor stated that he was a psychologist working with experts on algae carbon sequestration and had learned about *Juliana* from a March 3, 2019 *60 Minutes* segment. *Id.* Christian Komor then asked Ms. Olson to amend the *Juliana* complaint to include a request for relief using the algae carbon sequestration method that Christian Komor is working to promote. *Id.* Ms. Olson explained that the case was filed nearly four years ago, already pending in the Ninth Circuit Court of Appeals and

that the declaratory and injunctive relief the Youth Plaintiffs are requesting is the appropriate relief given the Constitutional role of the courts, as opposed to requests for specific prescriptive technologies or policy measures. *Id.*

Christian Komor then proceeded to threaten that he would file the *Juliana* complaint himself with his algae sequestration technology requested as the specific remedy if Ms. Olson did not amend the *Juliana* complaint. *Id.* Ms. Olson stated that she did not appreciate being threatened or harassed and would not be working with Christian Komor on this litigation. *Id.*

d. Christian Komor’s complaint.

On May 29, 2019, Christian Komor filed his *pro se* action in this Court, most of which was copied verbatim from the Youth Plaintiffs’ First Amended Complaint in *Juliana v. United States*. A highlighted comparison of the *Juliana* First Amended Complaint and the complaint filed by Christian Komor is attached to the Olson Declaration as **Exhibit 2**.

Of the 223¹ numbered paragraphs in Christian Komor’s complaint, 190 paragraphs are plagiarized in whole or in part from the *Juliana* First Amended Complaint. Christian Komor’s fifty-two page complaint consists largely of factual statements and legal arguments from the *Juliana* First Amended Complaint with the addition of the “rapid implementation” of

¹ Although the last numbered paragraph is 231, there are no paragraphs 151-159, and there are two paragraph 231s. This results in 223 total paragraphs.

Christian Komor's preferred carbon capture technology as a requested remedy. ECF No. 1 at ¶ 229.

e. Efforts to Dismiss the *Komor* case Prove Ineffective.

On June 7, 2019, Christian Komor sent a letter to Ms. Olson advising her that he had filed this suit and asking again that the Youth Plaintiffs add his preferred technology as a specific relief in their case. Olson Decl., ¶ 6. In this letter he stated that his purpose in requesting this relief was not for his own injuries but for "our children's future," and that he would rather the Youth Plaintiffs add his relief request to their suit than continue his own *pro se* action. *Id.*

In response to the June 7 letter, all counsel representing the Plaintiffs in *Juliana* wrote Christian Komor, requesting that he voluntarily dismiss his case. Rodgers Decl. ¶ 3. Counsel also stated their intent to intervene in the case should he decline to voluntarily dismiss the instant lawsuit. *Id.* On June 29, 2019, Christian Komor wrote an email, refusing to dismiss his complaint. *Id.* at ¶ 4. In his email, Christian Komor admitted that he "repeated many of the factual statements laid out in *Juliana v. United States* (Docket 18-3608). This is absolutely true as our cases are based are the same set of facts." ECF No. 24. *Id.* Mr. Komor declined to voluntarily dismiss his complaint.

III. ARGUMENT

a. The Proposed Intervenor-Defendants Have Standing to Intervene as Defendants.

An intervenor who neither initiates an action nor seeks review on appeal need not demonstrate Article III standing if she otherwise does not invoke the power of the federal courts. *See Vivid Entertainment, LLC v. Fielding*, 774 F.3d 566, 573 (9th Cir. 2014). Since Christian Komor purportedly invoked the federal court's jurisdiction by initiating the instant action, jurisdiction which the proposed Intervenor-Defendants believe is lacking, the proposed Intervenor-Defendants need only meet the elements of FRCP 24(a)(2) in order to demonstrate standing to intervene. *Id.*

b. The Proposed Intervenor-Defendants Should Be Permitted to Intervene as of Right.

To intervene as of right under FRCP 24(a)(2), an applicant must: (1) make a timely motion; (2) identify an interest in the subject of the litigation; (3) be situated such that disposing of the action may impair or impede the applicant's ability to protect that interest; and (4) show that existing parties may not adequately represent the proposed intervenor's interest. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996).

i. The Motion is Timely.

Because the proposed Intervenor-Defendants seek intervention within 8 weeks of the date that the complaint was filed (May 29, 2019), before the *Komor* Defendants have answered, and before any substantive proceedings

have begun, this Motion to Intervene is timely. *See League of United Latin American Citizens v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997).

ii. The Proposed Intervenor-Defendants Have an Interest in the Litigation.

The act of substantially plagiarizing the First Amended Complaint in the *Juliana* case creates a significant interest by the proposed Intervenor-Defendants in the subject of this litigation. Given the gravity of the injuries being experienced by the Youth Plaintiffs, the significance of the constitutional claims raised, and the complexity of the scientific evidentiary questions involved, the allegations and causes of action that have been copied from the *Juliana* case are far better suited to be litigated by experienced lawyers who have been building this case for nearly a decade, rather than by a *pro se* plaintiff who admits he lacks expertise and who plagiarized substantial portions of the First Amended Complaint.

iii. Disposal of this Action Would Impair Proposed Intervenor-Defendants' Ability to Protect Their Interests.

Christian Komor's act of plagiarism, along with his demands and threats that the Plaintiffs add his requested relief to the *Juliana* case as a condition for him not proceeding with his own case, demonstrates that this suit is filed in bad faith and for the purpose of bargaining with and harassing the Plaintiffs in *Juliana*. While Christian Komor may also have a legitimate "deep concern that there is evidence that we may soon be locking-in an

irreversible cascade failure of our planetary ecosystem,” Rodgers Decl., Exh. 2, that does not justify his act of copying the factual and legal allegations of the *Juliana* First Amended Complaint. Christian Komor’s *pro se* litigation of this action, without the legal expertise or experience needed to litigate the case, could preclude the Plaintiffs in *Juliana* from fully litigating their claims under the expertise of legal professionals as the instant case may result in an adverse ruling that would have implications for the *Juliana* litigation. Furthermore, the legal claims alleged in the *Juliana* case were specifically formulated and drafted to remedy the specific injuries alleged by the Plaintiffs, injuries that are notably absent in Christian Komor’s case.

iv. Existing Parties Do Not Adequately Represent Proposed Intervenor-Defendants.

Because the interests of the federal government defendants in this action are directly opposed to the interests of the proposed Intervenor-Defendants, who are currently litigating similar claims against the same federal government defendants in *Juliana*, the proposed Intervenor-Defendants cannot expect the *Komor* Defendants to adequately represent their interests in this matter. *See United States v. Aerojet General Corp.*, 606 F.3d 1142, 1153 (9th Cir. 2010).

c. Alternatively, This Court Should Grant the Proposed Intervenor-Defendants Permission to Intervene.

In the Ninth Circuit, a district court may grant permissive intervention where the applicant has shown: (1) the applicant has grounds for independent

jurisdiction; (2) the motion is timely; and (3) the applicant's defense has a question of law or fact in common with the main action. *See League of United Latin American Citizens*, 131 F.3d at 1308.

The independent jurisdictional grounds element does not apply in this action because this case alleges jurisdiction to hear and decide federal-question claims, jurisdiction that the proposed Intervenor-Defendants believe is lacking, and the proposed Intervenor-Defendants are bringing no new claims. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836 (9th Cir. 2011). As discussed above, this motion is timely because the proposed Intervenor-Defendants filed within eight weeks of the date that the *Komor* complaint was filed, before the *Komor* Defendants have answered, and before any substantive proceedings have taken place. *See League of United Latin American Citizens*, 131 F.3d at 1303, 1308 (the permissive intervention timeliness inquiry is the same as intervention as of right, though less lenient). Finally, the proposed Intervenor-Defendants' claims share a question of law or fact with the main action, since the claims in this action were plagiarized directly from the *Juliana* First Amended Complaint.

The proposed Intervenor-Defendants seek to intervene in this action so that they can file a Motion to Dismiss or, in the alternative, to Stay the complaint brought by Christian Komor on several grounds, including under Rule 11 on the basis that the instant action is "being presented" for an "improper purpose, such as to harass, cause unnecessary delay, or needlessly

increase the cost of litigation.” The grounds for the Motion to Dismiss will be that, as a *pro se* plaintiff, Christian Komor is not capable of litigating the claims in his plagiarized complaint against the federal government. Additional grounds include Christian Komor’s demands and threats that the Plaintiffs add his requested relief to the *Juliana* case, demonstrating that the instant suit is filed in bad faith and for the purpose of bargaining with and harassing the Plaintiffs in *Juliana*. The Motion to Stay would request a stay pending final judgment and exhaustion of all appellate proceedings in *Juliana*.

IV. CONCLUSION

For the foregoing reasons, the proposed Intervenor-Defendants respectfully request that this Court grant their motion to intervene as a matter of right pursuant to FRCP 24(a)(2) or, in the alternative, permissively pursuant to FRCP 24(b)(1)(B).

Respectfully submitted this 30th
day of July, 2019,

/s/ Adriane J. Hofmeyr
ADRIANE J. HOFMEYR

/s/ Andrea K. Rodgers
ANDREA K. RODGERS

*Attorneys for Proposed
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