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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. RALPH IANNELLIE and ESSEX CAPITAL CORPORAITON, Defendants.	Case No.: 2:18-cv-05008-FMO **PROPOSED INTERVENOR JIM GALLY'S NOTICE OF MOTION AND MOTION TO CLARIFY, MODIFY OR GRANT RELIEF FROM RECEIVERSHIP INJUNCTION; AND, TO INTERVENE** Hearing Date: July 24, 2025 Time: 10:00 a.m. Ctrm: 6D Judge: Hon. Fernando M. Olguin Complaint Filed: June 5, 2018 Trial Date: None

NOTICE OF MOTION TO CLARIFY, MODIFY OR GRANT RELIEF FROM RECEIVERSHIP INJUNCTION; AND, TO INTERVENE

TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 24, 2025, at 10:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 6D of the above-entitled Court, located at 350 West First Street, Los Angeles, California, 90012, proposed intervenor Jim Gally ("Gally") will and hereby does move this Court for an Order: (i) to clarify, modify or grant Gally relief from the Receivership Injunction so that he may file litigation against non-Receivership entity 915 ELM AVENUE CVL, LLC ("CVL"); and, (ii) to allow Gally to intervene as a party in the above-captioned action pursuant to Federal Rule of Civil Procedure 24. Gally seeks relief from the stay and to intervene to protect his interests that the Securities and Exchange Commission ("SEC"), Essex Capital Corporation ("Essex"), Ralph Iannelli ("Iannelli") and CVL (collectively, the "Parties") have placed at issue in this proceeding.

Specifically, Gally sold his lumberyard property and business in Carpinteria, CA (the "Lumberyard") to non-Receivership entity CVL, in which Iannelli and another person named William Reyner ("Reyner") were LLC Members. Part of the CVL acquisition included cash which was paid at closing and part of the acquisition included a deferred promissory note from Essex for $1.5 million. Gally transferred the Lumberyard to CVL and, soon thereafter, the Iannelli and Essex Ponzi scheme was exposed. As a result, Gally was not paid on the deferred promissory note.

The Receiver has himself pled that the Essex note was to be paid with Ponzi funds. Gally would never have agreed to sell the Lumberyard to CVL if he knew the truth, that Ianelli planned to use Essex Ponzi funds to complete the purchase. That fact was concealed from Gally by CVL which defrauded Gally into selling his Lumberyard to CVL.

Gally holds claims against CVL, including for fraud, which Gally seeks to pursue, but presently cannot due to the Receivership Injunction, the scope of which was and remains overbroad due to a misrepresentation to the Court. The Receiver has acknowledged the misrepresentation and resultant overbreadth in the Injunction, but has not acted to correct it to Gally's detriment.

Essex and Iannelli jointly misrepresented to the Court that Iannelli was the "Listed Owner" of the Lumberyard when they knew that CVL was the listed owner. As a result, the Receivership Injunction improperly froze the Lumberyard. The actual Listed Owner of the Lumberyard is CVL, a non-Receivership entity that remains a stand-alone going-concern operating the Lumberyard even today. CVL was itself forced to file a motion to remove the freeze on the Lumberyard. Subsequently, before the Court heard CVL's motion, Essex, Iannelli and CVL entered into a settlement agreement to resolve the dispute over the Lumberyard which remains in the possession of CVL.

The Receiver for Iannelli/Essex has stated his intent to liquidate his partial interest in CVL and use sale proceeds to pay himself and to partially pay net loser investors in the Essex Ponzi scheme, which does not include Gally who did not invest in Essex but rather sold his Lumberyard to CVL. At the direction of the Receiver, Gally did submit a claim against Essex as Essex issued the fraudulent promissory note.

The Receiver contends that Gally's submission of a Receivership claim against Essex cuts off Gally's rights against non-Receivership entity CVL. The Receiver offers no legal authority for the position and merely points to the instructions for Receivership claim form which purport to warn claimants that submitting a claim against the Receivership "may" result in the loss of "other remedies." Even accepting the Receiver's interpretation of the claim form instructions, the words address the potential loss of "other remedies" against the Receivership. The words say nothing at all about any potential waiver or loss of independent claims against non-

Receivership third-parties like CVL. It makes no sense to shield CVL from Gally's fraud claims so that CVL can keep the Lumberyard CVL defrauded Gally out of. Nothing could be less equitable. The Receiver's interpretation of the facially ambiguous claim instructions would further harm Gally who has suffered enough due to CVL's fraud.

At present, the Receivership Injunction precludes Gally from asserting that non-Receivership entity CVL defrauded him. Likewise, the Injunction precludes a Lumberyard patron who is injured while shopping at the Lumberyard from suing CVL without first spending thousands of dollars to seek permission to do so from this Court. Receiver's Counsel agrees the Injunction requires anyone harmed by CVL to seek permission of this Court before suing CVL. That is an unconstitutional taking. The Injunction is indefensibly overbroad and must be modified to allow Gally and others harmed by non-Receivership entity CVL to pursue their legal rights.

Gally hereby moves the Court: to modify the injunction to clarify that it does not cover non-Receivership entity CVL; alternatively, Gally seeks relief from the Injunction so Gally may sue CVL to protect his Lumberyard sale rights; and, Gally seeks to intervene so his rights are protected as a party, or alternatively, if Gally is denied the right to sue CVL, Gally moves for an Order directing that the Lumberyard or any interest in its owner CVL shall not be sold, transferred, or encumbered until such time as Gally has obtained review of such a denial.

Gally met and conferred with the Receiver in May and June, 2025, the SEC in June 2025, and Ianelli in June 2025 and attempted to meet and confer with CVL and the several Intervenors in June 2025. No one consented to the relief sought herein. The SEC and the Receiver made it clear the motion was necessary.

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This motion is based on this notice, the attached memorandum, the declaration of Michael P. Denver, the declaration of Patrick C. Bageant, the declaration of Jim Gally, upon matters for which the Court may take Judicial Notice, upon all papers and documents in the file for this matter, and upon oral argument hereon.

DATED: June 23, 2025 DENVER LAW, P.C.

By: /s/ *Michael P. Denver*
MICHAEL P. DENVER
Attorneys for JIM GALLY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. THE STAY SHOULD BE MODIFIED TO CLARIFY THAT IT DOES NOT COVER CVL. ALTERNATVIELY, GALLY SHOULD BE GRANTED RELIEF FROM THE STAY TO SUE CVL FOR FRAUD AND RESCISSION AND GALLY SEEKS TO INTERVENE

Separate and apart from the Iannelli/Essex Ponzi scheme, Iannelli and Reyner formed and used a single purpose entity, CVL, to purchase the Lumberyard owned by Gally, an innocent business owner who did not invest in the Essex Ponzi scheme. CVL (via at least Iannelli) defrauded Gally into selling his Lumberyard to CVL for cash that was paid and with an Essex promissory note that was not paid as the Essex Ponzi scheme was exposed before Ianelli could pay Gally Ponzi funds. Due to Ianelli's fraud which is imputed to CVL as Ianelli was a CVL LLC member, CVL now possesses the Lumberyard that was never fully paid for. The Receiver, who now holds Iannelli's partial interest in CVL, plans to sell his partial interest in CVL it to fund the Receivership and partially pay investors in the Essex Ponzi scheme, which does not include Gally as he never invested in Essex.

The Receiver's plan to ignore CVL's fraud on Gally and to cut-off Gally's right to sue CVL so that the Receiver may maximize the value of his partial interest in CVL and sell it to Ianelli's co-member Reyner, will benefit fraudster CVL, Reyner and the Receiver, while inequitably re-harming the innocent Gally. Equity demands that Gally's rights arising out of CVL's fraud be protected and that he be allowed to assert them to seek rescission, or alternatively, for damages, including the unpaid portion of the Lumberyard purchase price.

Gally seeks the requisite modification or relief from the Receivership Injunction to sue CVL, even though CVL and the Lumberyard are not assets of the Receivership, because the Injunction requires anyone harmed by the going concern CVL or its Lumberyard to obtain this Court's permission before suing CVL for anything, be it the Lumberyard fraud, a discrimination claim by a Lumberyard employee, or a Lumberyard customer's slip and fall.

Gally also seeks to intervene to allow him to act as a party while getting relief from the Injunction and to protect himself if his rights to sue CVL are denied by seeking review of any such denial before the Lumberyard is improperly liquidated for the benefit of the Receiver and Essex Ponzi investors which does not include Gally.

II. RLEVANT BACKGROUND REGARDING THE ESSEX FRAUD ON PONZI SCHEME INVESTORS, CVL'S SEPARATE FRAUD ON GALLY AND THE RECEIVERSHIP INJUNCTION'S CONFLATION OF THE TWO DISTINCT FRAUDS

Iannelli used his Essex entity run a Ponzi scheme that defrauded dozens of Essex investors. (ECF 1, SEC Complaint, at ¶ 4.) Receiver Winkler was appointed by the Court to, among other things, recover the assets of Iannelli and Essex and to use them to partially pay Essex Ponzi investors. (ECF 66.)

Separate and apart from Iannelli's Essex Ponzi scheme, Iannelli and Reyner formed CVL, for the specific purpose of purchasing the Lumberyard from Gally. (ECF 115-3, at ¶ 8.) Reyner and Iannelli were both Members in CVL. *Id*., at ¶ 18. The Lumberyard purchase price CVL agreed to totaled $4,175,000 which was to occur in two separate payments of $2,675,000 and $1,500,00. (Declaration of Jim Gally in support hereof ("Gally Decl."), ¶2 and Exh. 1 thereto, the Purchase Agreement). CVL paid the initial $2,675,000 to Gally with proceeds from a bank loan and took possession of the Lumberyard, while the second payment of $1,500,000, which was to come from Essex, was never paid. (Gally Decl., ¶2.) Iannelli intended to use Essex Ponzi funds to pay the second installment to Gally. (ECF 241- p.4:6-20, Winkler Decl., ¶ 2.)

Gally did not know Iannelli and Essex were running a Ponzi scheme and if he had, Gally would never have agreed to sell his Lumberyard to CVL. (Gally Decl., ¶3.) CVL retains the Lumberyard which remains a going concern. (ECF 241 pp. 8-9.)

Although neither CVL nor the Lumberyard are "Receivership assets," in 2018 the Receiver subjected both CVL and the Lumberyard to an Injunctive freeze. See Order Regarding Permanent Injunction [ECF 113 ("September Order") at 4:7]. This was done (i) as to CVL by a representation to the Court that CVL was an entity "affiliated" with Essex (ECF 125, p.10) and (ii) by a misrepresentation that the Lumberyard was owned by Iannelli, when that was not true. (ECF 115-1 p.11:17-28.) The Lumberyard was acquired from Gally, not by Iannelli, but by CVL, as conclusively demonstrated by the deed to the Property. (See ECF. 115-3, Reyner Decl., at ¶ 8 & Ex. 1.) Nonetheless, the Receiver has not corrected the misrepresentation regarding Lumberyard ownership. *Ibid.*

On December 6, 2018, the Receiver submitted a Proposed Order that sought, in part, to place an "immediate freeze" on the Lumberyard and to protect Essex "affiliated entities" and CVL from litigation. The Court signed the Order on December 21, 2018. (ECF 66 ("December Order").)

III. THE RECEIVER HOLDS NO CLAIM TO OWNERSHIP OF THE LUMBERYARD OR ANY OTHER CVL ASSET

Essex is not a Member of CVL. See (ECF 115-3, Reyner Decl. at ¶ 4 (listing members).) Although Iannelli was a CVL Member, his interest now held by the Receiver was and remains limited solely to his "membership interests." The law regarding an LLC member's rights, or his/her creditors' rights to LLC assets is clear and well established. A limited liability company is distinct from its members. Cal. Corp. Code § 17701.04(a); *Grigoryan v. Experian Info. Solutions, Inc.*, 84 F.Supp.3d 1044, 1079 (C.D. Cal. 2014). Therefore, members of a limited liability company have no direct ownership in the company's assets. *Grigoryan*, 84 F.Supp.3d at 1079. Rather, each member's interest is limited to their transferable interest (i.e., right to receive distributions), their right, to the extent provided for in the Operating Agreement, to vote or participate in management, and any rights granted for access to information regarding the company. Cal. Corp. Code § 17701.02(r), (aa). Iannelli's status as a member of CVL gave him no direct ownership over any of CVL's assets. Because CVL's assets are distinct from Iannelli's, CVL's assets are also not available to pay his debts, or those of the Receiver, as Iannelli's successor in LLC membership. Any judgment against Iannelli can be enforced against his transferable interest (right to distributions) in CVL, but the creditor, like Iannelli or any other person to whom he transfers his interests in CVL, cannot interfere with the management and activities of CVL. See Cal Code Civ. P. § 708.310; Cal. Corp. Code §§ 17705.02, 17705.03; La *Jolla Bank, FSB v. Tarkanian*, 2013 U.S. Dist. LEXIS 97846, *3-4 (E.D. Cal. 2013); Comments to Revised Uniform Limited Liability Company Act (July 6-12, 2013) at 127 (creditor cannot "interfere with the management and activities of the limited liability company"). Therefore, even if the Receiver or someone else obtained Iannelli's membership interests, the transferee receives no right to access CVL's assets, to manage CVL, or to interfere with its Lumberyard business. See Cal. Corp. Code § 17705.02(a)(3)(A) (transfer does not entitle transferee to "vote or otherwise participate in the management or conduct of the activities of a limited liability company."), § 17705.03 (court can order charging order against "transferable interest of the judgment creditor," which requires the limited liability company to pay the judgment creditor "any distribution that would otherwise be paid to the judgment debtor.") CVL's assets therefore belong to CVL, not to Iannelli or Essex, the assets should not be protected by the Injunction.

IV. GALLY IS ENTITLED TO RELIEF FROM THE INJUNCTIVE STAY TO SUE CVL

The Ninth Circuit has three factors to consider in deciding whether to lift a receivership stay: "(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim." *SEC v. Universal Financial*, 760 F.2d 1034, 1038 (9th Cir. 1985).

A. Denying Gally Relief from the Injunction Will Not Genuinely Preserve the Status Quo of the Receivership Res, but it Will Cause Gally to Suffer Substantial Irreparable Injury.

When considering a request for relief from a Receivership Injunction or stay, the Ninth Circuit requires the Court to balance the interest of the receiver and also the moving party: "[T]he interests of the Receiver are very broad and include not only protection of the receivership res, but also protection of defrauded investors and considerations of judicial economy." *SEC v. Universal Financial*, 760 F.2d 1034, 1038 (9th Cir. 1985).

First, as to the status quo of the Receivership res, Winkler was appointed Receiver for Essex, not CVL. CVL is not an entity in Receivership. CVL was not used to defraud investors in the Essex Ponzi scheme. CVL was formed specifically to purchase the Lumberyard from Gally. While Receiver Winkler holds Ianelli's partial interest in CVL, he does not and cannot hold any legitimate ownership interest in CVL assets, such as CVL's cash, or the Lumberyard CVL defrauded Gally out of. While the Receiver's partial interest in CVL may be part of the Receivership res, the Lumberyard taken from Gally by non-Receivership entity CVL is not part of the legitimate Receivership res. Allowing Gally to sue to CVL to recover his Lumberyard, or to recover damages arising from his sale of the Lumberyard to CVL will not disturb the status quo of the legitimate Receivership res.

Second, as to substantial harm to Gally: Gally did not invest in the Essex Ponzi scheme; his property was taken by CVL's fraud and Gally was never fully paid for it. The Lumberyard CVL acquired by fraud should not be used, directly or indirectly, to pay the Essex Receiver and Essex investors. Ignoring CVL's legal debt to Gally and using the Receivership Injunction to bar Gally from suing CVL will substantially and irreparably harm Gally.

Moreover, the relief Gally seeks to enable him to sue CVL should be granted because the Injunction insulates the going-concern Lumberyard, not just from Gally, but from all legal recourse in any shape or form. In other words, the Lumberyard, which is open for business today, cannot be sued by a patron that is run over by a forklift, by an employee who claims he is being discriminated against due to race or otherwise, or even by a tax authority should CVL decide not to pay taxes. The Injunction should be modified to allow lawful claims that CVL harmed people to be pursued without first filing papers with this Court. Receiver's Counsel acknowledges the overbreadth of the Injunction as to non-Receivership entity CVL and the Receiver should have sought to correct the Injunction on his own rather than forcing Gally to file this Motion.

B. Now is the Appropriate Time to Grant Gally Relief from the Injunction

"Where the motion for relief from the stay is made soon after the receiver has assumed control over the estate, the receiver's need to organize and understand the entities under his control may weigh more heavily than the merits of the party's claim. As the receivership progresses, however, it may be less plausible for the receiver to contend that he needs more time to explore the affairs of the entities. The merits of the moving party's claim may then loom larger in the balance." *SEC v. Wencke*, 622 F.2d 1363, 1374 (9th Cir. 1980); *SEC v. Universal Financial*, 760 F.2d 1034, 1038 (9th Cir. 1985). The cases are significant by what they mean by "early in the case." When the Ninth Circuit heard the original *Wencke* case, the receivership had been pending for two years. The Court denied relief from stay and sent the matter back to the District Court to reexamine the necessity for the stay. Upon remand, the District Court continued the stay in effect and the movant again appealed. When the Ninth Circuit heard the *Wencke* case again, the receivership had been pending for six years. The Ninth Circuit felt that was long enough and, therefore, lifted the stay.

Here, the Stay or Injunction has been in effect for over 6 years. The Receiver has already stipulated to lifting the stay as to other litigants who were pursuing actual Receivership assets, not CVL. (ECF 163.) He articulated his grasp of CVL

Lumberyard-related issues when he moved to settle the Lumberyard dispute with the other CVL Member (ECF 241) which motion was granted. Based on Receiver's prior actions, it is clear that relief from the Injunction for Gally to sue CVL is appropriate at this stage in the case.

C. Gally Holds a Meritorious Claim for Rescission or Damages Based on CVL's Fraud

Gally was defrauded by CVL in CVL's purchase of Gally's Lumberyard because Iannelli intended to use Ponzi funds to complete CVL's purchase of the Lumberyard and Iannelli's intent to defraud Gally is properly imputed to CVL. (*Uecker v. Ng (In re Mortgage Fund '08 LLC*) Bankr.N.D.Cal. Aug. 14, 2013, Nos. 11-49803 rle, 12-4099 rle) 2013 Bankr. LEXIS 3385). Gally's claim that CVL defrauded him into selling his Lumberyard is a proper basis on which to seek rescission. Cal. Civ. Code § 1689. The Court should not weigh the merits of Gally's effort to rescind, or alternatively to recover damages for, among other things, the unpaid purchase price, but rather the Court should only consider whether Galley's claim is colorable. *SEC v. Wencke*, 742 F.2d 1230, 1232 (9th Cir. 1984); *US v. Acorn Tech Fund, L.P.*, 429 F.3d 438, 444 (3rd. Cir. 2005). Here, Gally contracted to sell his Lumberyard to CVL, with the majority of funds paid up front and another payment deferred. The Receiver states the second installment to be paid by CVL to Gally was to come from Iannelli's intended diversion of Essex Ponzi money. (ECF 241, p.4:6-20.) Gally did not know that Essex was a Ponzi scheme, or that CVL intended for Gally to be paid over $1M in stolen money. Iannelli and CVL concealed from Gally the intent to pay Gally with Ponzi funds which Gally would never have accepted. *Ibid*. That CVL did not actually pay the second installment to Gally does not undercut the colorable nature of Gally's fraud claim as Ianelli's fraudulent intent (even if unrealized) is still properly imputed to CVL. Likewise, Gally has a colorable claim that CVL damaged Gally by Gally's non-receipt of the full Lumberyard purchase price.

Gally is prepared to refund the partial purchase money paid by CVL to Gally which funds came from a bank loan, not Ponzi money. Gally seeks relief from the Injunction so that it is modified in scope to allow him to assert the rights the Injunction improperly takes from Gally to sue CVL for recission and damages, including the unpaid portion of the purchase price. Gally should be granted relief from the Stay so he may sue CVL. If the Court will not modify the Injunction's overbreadth as to CVL, Gally should also be allowed to intervene to protect his rights as a party.

V. GALLY SHOULD BE ALLOWED TO INTERVENE[1]

Gally seeks to intervene in this case as a matter of right under Fed. R. Civ. P. 24(a)(2) or, alternatively, permissively under Fed. R. Civ. P. 24(b)(1)(B). Courts broadly construe the requirements for intervention to favor granting intervention to ensure that the proposed intervenor's interests are protected. *Southwest Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001 (citing *Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995); see also *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002).

A. Intervention as of Right

The Ninth Circuit applies a four-part test to assess intervention as a matter of right: (1) the applicant must have a "significantly protectable" interest relating to the

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[1] Gally's memorandum supporting his motion to intervene fully states the legal and factual grounds for intervention. Gally intends to sue CVL in State Court in Santa Barbara County, which is the location of the Lumberyard, the location of the fraud and the location of the parties to the transaction. Therefore, and particularly given Gally's limited intent to protect the improperly targeted Lumberyard, Gally respectfully submits that literal compliance with Fed. R. Civ. P 24(c) (*i.e.*, submitting a pleading) is not required. *See, e.g. Beckham Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992) ("Courts, including this one, have approved intervention motions without a pleading where the court was otherwise appraised of the grounds for the motion."); *Shores v. Hendy Realization Co.,* 133 F.2d 738, 742 (9th Cir. 1943) (holding that although petitioner did not meet the literal terms of Rule 24, intervention was proper because he had fully stated the legal and factual grounds for intervention); *Su v. Siemens Indus.*, 2013 WL 3477202 at *2 (N.D. Cal. 2013) (where proposed intervenor provides a statement of its interest to intervene, it submission provides sufficient notice to the court and the parties to satisfy Rule 24(c)).

property or transaction that is the subject of the action; (2) the application must be timely; (3) the applicant must be so-situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). Gally satisfies each of these requirements:

1. Gally has a "significantly protectable" interest at issue in this Receivership action

The test for a "legally protectable" interest in the subject of the dispute is not a "bright-line rule." *United States v. Alisal Water Corp*., 370 F.3d 915, 919 (9th Cir. 2004). A party has a sufficient interest for intervention purposes if it will "suffer a practical impairment of its interest as a result of the pending litigation." *Cal.Ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Gally seeks the modification of the Injunction which overbroadly insulates the going-concern non-Receivership entity CVL and the Lumberyard from any and all legal recourse by the entire world. Additionally, Gally seeks to rescind based on CVL's fraud in its purchase of the Lumberyard from Gally. Alternatively, Gally holds a claim for damages, including CVL's refusal to pay the full purchase. If Gally is unable to sue CVL, CVL will unfairly get to keep the unpaid-for Lumberyard. Gally's interests are "legally protectable."

2. Gally's motion is timely.

Timeliness for intervention depends on: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of delay." *United States v. Alisal Water Corp*., 370 F. 3d 915, 921 (9th Cir. 2004). As stated above, relief from a Receivership Injunction is not appropriate until such time as the Receiver has had sufficient time (measured in years) to work on and understand the estate. Receiver Winkler has reached that point. Accordingly, Gally's motion for relief from the Injunction is neither premature, nor tardy. It is timely. Moreover, as Gally seeks only to protect his interests in the Lumberyard sale by correcting the scope of the Injunction and does not seek to alter any other prior orders that impact the Parties, there is no conceivable prejudice to any party. Finally, the claims are timely in terms of the statutes of limitation, which were tolled by the Receivership stay. *FTC v. Connolly*, 2007 U.S. Dist. LEXIS 98446, *10.

3. Disposition of this action may impair Gally's ability to protect his interests.

An intervenor satisfies this requirement if the action may "as a practical matter impair or impede the movant's ability to protect its interest." *Cunningham v. David Special Commitment Ctr.*, 158 F.3d 1035, 1038 (9th Cir. 1998). The movant need only make a "minimal" showing that the representation of its interests by existing parties "may be inadequate." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). The Supreme Court has stated that the burden of making a showing of inadequacy should be treated as "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). The Receivership Injunction precludes Gally from suing CVL which Gally needs to do to either recover his Lumberyard, or recover damages including the unpaid portion of the Lumberyard purchase price that he was never paid. If Gally cannot obtain relief from the Injunction (or seek review of a denial for relief) Gally's ability to protect his rights against the non-Receivership entity CVL will be harmed.

4. Gally's interests are not adequately represented by the existing parties.

Reyner and the Receiver's plan is to profit off the Lumberyard without CVL ever fully paying Gally for it. The Receiver intends to sell his partial interest in the Lumberyard to fund the Receivership and partially pay Ponzi investors which excludes Gally. Neither CVL, Reyner, the Receiver or anyone else will advocate for Gally or protect his rights to sue for rescission or to recover damages form CVL. The Receiver will not support Gally even though Counsel acknowledges the Injunction precludes the entire world from suing the going concern CVL Lumberyard for anything without first obtaining an Order from this Court. Gally is on his own. Any decisions from this Court, whether interim or final, could impair Gally's ability to protect his interests, especially where the Court is being asked to make decisions based on incorrect information, such as who actually owns the Lumberyard. Gally is entitled to intervene as of right.

B. Alternatively, Gally is entitled to intervene permissively.

Permissive intervention is appropriate where (1) the moving party has a claim or defense which shares a common question of law or fact with the main action; (2) the motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims. *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998).

1. Common Question.

The existence of a common question is liberally construed in favor of intervention. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108-1109 (9th Cir. 2002); 7C Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357-63 (3d ed. 1986). This element is satisfied as long as there is a single common question of either fact or law. *Meyer Goldberg, Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 164 (6th Cir. 1987). Based on the Injunction and the positions taken by the Receiver, the existing action involves questions related to Gally's proposed action, including: (i) whether the scope of the Receivership Injunction is proper or whether it overbroadly insulates non-Receivership entity and going-concern CVL and its Lumberyard from any and all suit; (ii) the question of who has a claim to rightful ownership of the Lumberyard as between Gally and CVL which defrauded Gally out of the Lumberyard; and (iii) the question of who has a claim to rightfully access CVL's assets, as between the Receiver and the defrauded Gally. This nexus is sufficient to satisfy the minimal burden of showing one common question of either law or fact.

2. Timeliness.

As set forth above in the section on Intervention as of Right, Gally's Motion is timely.

3. Jurisdiction.

The SEC's and Receiver's claims to CVL's assets are based on their powers under the federal Securities Act and the Exchange Act. Any attempt by Gally to correct the scope of the Injunction, perfect his claims to assets CVL possesses and/or to clarify the proper scope of the SEC's and Receiver's rights to either preclude Gally or to claim "ownership" over CVL assets does not disturb that jurisdiction.

VI. CONCLUSION

For the foregoing reasons, Gally respectfully requests that the Court allow Gally: to free Gally from the Receivership Injunction's protection of CVL, either via the Court's modification of the Injunction, or by ordering that Gally is granted relief from it so that Gally may sue CVL to protect Gally's rights arising out of the Lumberyard sale; to intervene to ensure his rights are protected; and, if Gally is denied the right to sue CVL, to issue an Order directing that the Lumberyard shall not be sold, transferred or encumbered until such time as Gally has obtained review of such a denial.

DATED: June 23, 2025 DENVER LAW, P.C.

By: /s/ *Michael P. Denver*
MICHAEL P. DENVER
Attorneys for JIM GALLY

CERTIFICATE OF SERVICE

I, Michael P. Denver, hereby certify that on June 23, 2025, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the email addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

By: */s/ Michael P. Denver*
Michael P. Denver