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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MATTHEW WADE BEASLEY, et al.,

Defendants.

Case No. 2:22-cv-00612-CDS-EJY

ORDER

Pending before the Court is a Motion to Intervene brought by Omid Shahabe and Kristie Young.¹ ECF No. 281. The Court has considered the Motion to Intervene, the Response filed by Receiver (ECF No. 300),² the Response filed by the Securities and Exchange Commission (the “SEC”) (ECF No. 303), and the Replies filed by Intervenors (ECF Nos. 314, 316).

I. RELEVANT BACKGROUND

The instant litigation commenced on April 12, 2022, when the SEC filed suit against multiple Defendants alleging that from at least March 2017 to March 2022 they engaged in a convoluted series of securities offerings underpinning a large Ponzi scheme ensnaring over 600 investors.³ ECF No. 1 ¶¶ 1-3. The SEC seeks injunctive relief against Defendants under the Securities Acts of 1933 and 1934, as well as equitable disgorgement against all Relief Defendants.⁴ *Id.* ¶¶ 81-90.

Simultaneously with the Complaint, the SEC moved for and was granted a Temporary Restraining Order (“TRO”) that froze any and all real and personal property related to the counts filed against Defendants and Relief Defendants. ECF No. 3 at 7-14. The Court subsequently granted

¹ Omid Shahabe and Kristie Young are referred to herein as “Intervenors.”

² Receiver filed a Declaration in support of his Response. ECF No. 301.

³ Defendants include: Matthew Wade Beasley; Beasley Law Group PC; Jeffrey J. Judd; Christopher R. Humphries; J&J Consulting Services, Inc., an Alaska Corporation; J&J Consulting Services, Inc., a Nevada Corporation; J and J Purchasing LLC; Shane M. Jager; Jason M. Jongeward; Denny Seybert; and Roland Tanner.

⁴ Relief Defendants include: The Judd Irrevocable Trust; PAJ Consulting Inc.; BJ Holdings LLC; Stirling Consulting, L.L.C.; CJ Investments, LLC; JL2 Investments, LLC; Rocking Horse Properties, LLC; Triple Threat Basketball, LLC; ACAC LLC; Anthony Michael Alberto, Jr.; and Monty Crew LLC.

1 the SEC’s request for a Preliminary Injunction affirming the provisions in the TRO related to the
2 asset freeze. ECF No. 56 at 6.

3 On June 3, 2022, the Court appointed Geoff Winkler as Receiver “for the purposes of
4 marshaling and preserving all assets of the Defendants and those assets of certain Relief Defendants
5 that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in
6 constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d)
7 may otherwise be includable as assets of the estates of the Defendants” ECF No. 88 at 2.⁵
8 Among other provisions, the Receivership Order mandates that: (1) “All persons and entities having
9 control, custody or possession of any Receivership Property are hereby directed to turn such property
10 over to the Receiver”; (2) “The Receiver is authorized to take immediate control of all personal
11 property of the Receivership Defendants”; and (3) “[P]ersons or entities which have possession,
12 custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or
13 indirectly, and of the Receivership Defendants ... shall ... [c]ooperate expeditiously in providing
14 information and transferring funds, assets and accounts to the Receiver or at the direction of the
15 Receiver.” *Id.* at 8-9. The Receivership Order was amended on July 28, 2022. ECF No. 207.

16 **II. SUMMARY OF PARTY ARGUMENTS**

17 **A. Summary of the Motion to Intervene.**

18 Intervenor, two individuals who assert they are victims of the alleged Ponzi scheme, ask the
19 Court to allow them to intervene and grant them “a judicial declaration of their right to pursue
20 equitable claims against Defendants and Relief Defendants without being subject to the receivership
21 established by this Court.” ECF No. 281 at 7. These requests emanate from Intervenor’s
22 interpretations of the nature of the Ponzi scheme and a phrase in the sample purchase agreement
23 allegedly used by Defendants when soliciting investors:

24 Seller agrees and hereby directs that all Proceeds received in connection with the
25 Claim, are held in Trust for Buyer until Buyer has been fully paid its Interest.

28 ⁵ The Order appointing Geoff Winkler as Receiver is referred to herein as the “Receivership Order.”

1 *Id.* at 39. Intervenors allege the setup and operation of the Ponzi scheme favors the imposition of a
2 resulting trust on Intervenors' investments in these purchase agreements forming the basis of
3 Defendants' fraud. *Id.* at 2. According to Intervenors, as the funds invested through the purchase
4 agreements are subject to a resulting trust, the funds are exempt from the receivership estate. *Id.*

5 1. 15 U.S.C. § 78u(g).⁶

6 Prior to discussing the issue of a resulting trust or any other reason supporting intervention
7 as a matter of right, and contrary to the position taken by Receiver and the SEC, Intervenors argue
8 that Section 21(g) of the Securities Exchange Act of 1934 is not an "impenetrable wall" preventing
9 private intervention involving SEC enforcement actions. ECF No. 281 at 7 citing *S.E.C. v. American*
10 *Pension Services, Inc.*, Case No. 2:14-cv-00309-RJS-DBP, 2015 WL 248575, at *3 (D. Utah Jan.
11 20, 2015) ("the plain language of the Section 21(g) does not act as an automatic bar to Movant's
12 motion for intervention"). Intervenors also refer the Court to an Eighth Circuit case similarly holding
13 Section 21(g) does not bar intervention in an SEC initiated action absent SEC consent. *S.E.C. v.*
14 *Flight Transportation Corp.*, 699 F.2d 943, 949-50 (8th Cir. 1983).⁷

15 Intervenors argue their interpretation of 15 U.S.C. § 78u(g) is further supported by the
16 statute's legislative history, which stands for the proposition that permission from the SEC is not
17 required in all cases before a private party intervenes in an SEC initiated lawsuit. ECF No. 281 at 8
18 citing *S.E.C. v. Novus Technologies, LLC*, Case No. 2:07 cv 0235 DB, 2008 WL 115114, at *2 (D.
19 Utah Jan. 10, 2008) ("[T]he legislative history behind the statute, the plain language of the statute
20 and [Federal] Rule [of Civil Procedure] 24(b) do not support the SEC's position that Section 21(g)
21 is an absolute bar to intervention."). Rather, the purpose of the statute "is simply to exempt the
22 Commission from the compulsory consolidation and coordination provisions applicable to
23 multidistrict litigation." *Flight Transportation*, 699 F.2d at 950. Relying on this legislative intent,
24 Intervenors contend the facts in this case do not implicate the concerns Congress was trying to
25 prevent when enacting 15 U.S.C. § 78u(g). ECF No. 281 at 9. Instead, Intervenors say they are

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27 ⁶ Case law refers to 15 U.S.C. § 78u(g) and Section 21(g) of the Securities and Exchange Act of 1934
interchangeably. See, e.g., *S.E.C. v. TLC Investments and Trade Co.*, 147 F.Supp.2d 1031, 1039-40 (C.D. Cal. 2001).

28 ⁷ Intervenors contend the Eighth Circuit is the only circuit to reach the issue of SEC's permission for intervention.
The Court found no Ninth Circuit case on point.

1 asserting “factual and legal issues without introducing potential complications like personal damage
2 claims ... [and that intervention] will resolve a major stumbling block that could derail the
3 litigation.” *Id.* For these reasons, Intervenors contend the SEC and Receiver’s arguments regarding
4 a legal bar to their intervention arising from the statute must be rejected by the Court.

5 2. *Intervention as a Matter of Right.*

6 Shifting to Fed. R. Civ. P. 24(a)(2), Intervenors aver that they meet the necessary criteria for
7 mandatory intervention. *Id.* at 9. To intervene as a matter of right, the proposed intervenor must
8 demonstrate: (1) its application is timely; (2) the intervenor has a “significantly protectable interest
9 relating to the transaction that is the subject of the litigation”; (3) the intervenor must be situated
10 such that the outcome “of the action may, as a practical matter, impair or impede” the intervenor’s
11 “ability to protect its interest”; and (4) the intervenor’s interest will “be inadequately represented by
12 the parties before the court.” *League of United Latin American Citizens v. Wilson*, 131 F.3d 1297,
13 1302 (9th Cir. 1997) (internal citation omitted).

14 Focusing on timeliness, Intervenors say this is an easily met “low bar.” ECF No. 281 at 23.
15 Intervenors contend they filed the Motion in the early stages of this litigation, that intervention “will
16 prejudice no one,” and that “a supporting role will resolve a serious issue by allowing the parties to
17 advance the litigation on sure footing instead of derailing it.” *Id.* Intervenors further state the filing
18 of their Motion, after Receiver’s appointment, was necessitated by their due diligence when
19 reviewing the documentation, analyzing the complexities, exploring the various theories, and
20 weighing “the possible options before determining the motion’s impact on the competing interests
21 involved.” ECF Nos. 314 at 3; 316 at 9. Intervenors argue that since the key question is the “actual
22 proceedings on the substance of the merits,” and intervention will protect every investor’s economic
23 interests, the Motion should be considered timely. *Id.*

24 Moving to the remaining considerations for intervention, Intervenors state there is ample and
25 undisputed evidence that they were victims of the Ponzi scheme alleged in the SEC’s Complaint and
26 therefore have a significant protectable interest in the subject matter of this litigation. ECF No. 281
27 at 9-10. Intervenors next contend that without intervention any potential disposition of this case will
28 impair their future ability to protect their interests. *Id.* at 10. Intervenors allege that this prong of

1 the Ninth Circuit’s guidance under Rule 24(a)(2) favors mandatory intervention: (1) because
2 Receiver has taken exclusive control of the assets of the receivership estate, the only way for
3 Intervenors to affirm their rights is through a declaratory judgment; (2) there are Supreme Court-
4 imposed vulnerabilities in the SEC’s enforcement powers regarding equitable disgorgement; (3) the
5 doctrine of *in pari delicto* may prevent Receiver’s right to recover on behalf of all alleged Ponzi
6 scheme victims as Receiver “stands in the shoes” of the very entities he is legally pursuing; and (4)
7 the allocation method for distributing any disgorged funds will not be fair and equitable to all
8 victims. *Id.* at 10-21.

9 Finally, Intervenors assert that their interests are inadequately represented by Receiver
10 because: (1) the SEC prefers a receivership over investor participation; (2) the SEC is either
11 unwilling or unable to assert the resulting trust theory of the case that Intervenors are advocating;
12 (3) the SEC’s obligation to use disgorged funds for investor restitution is legally fuzzy; and (4) legal
13 avenues such as objecting to Receiver’s eventual recommendations, appealing to the Ninth Circuit,
14 and filing separate litigation are uncertain to succeed or counterproductive. *Id.* at 21-22.

15 3. *Permissive Intervention.*

16 Intervenors argue if for some reason the Court finds they are not entitled to intervene as a
17 matter of right, permissive intervention should be granted under Fed. R. Civ. P. 24(b). *Id.* at 23. In
18 summary fashion, Intervenors argue their Motion is timely, involves common questions of law or
19 fact, and will result in no undue delay or prejudice. *Id.*

20 B. Receiver’s Opposition.

21 Citing case law and responding to Intervenors’ 15 U.S.C. § 78u(g) argument, Receiver states
22 intervention is impermissible in this SEC initiated enforcement action because Intervenors requested
23 the SEC’s permission to intervene and the request was denied.⁸ ECF No. 300 at 5. Receiver further
24 warns that if the Court grants intervention it will undermine the mission of Receiver and lead to the

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26 ⁸ *SEC v. Egan*, 821 F.Supp. 1274, 1275-76 (N.D. Ill. 1993) (denying petition to intervene where the “SEC has
27 expressly refused to consent to the proposed third-party complaint on the ground that it ‘would complicate the issues,
28 delay th[e] ... action and significantly interfere with the Commission’s ... responsibilities’”); *SEC v. Homa*, Case No.
99 C 6895, 2000 WL 1468726, at *2 (N.D. Ill. Sept. 29, 2000) (finding the bar to intervention to be “plain and
unambiguous” and citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 n.17 (1979) in which the Supreme Court
acknowledged that consolidation of a private action with one brought by the SEC is prohibited by statute).

1 receivership estate’s “death by a thousand cuts” arising from hundreds of other victims of this Ponzi
2 scheme who may seek to intervene. *Id.* at 2. Finally, Receiver points out that Intervenors must
3 satisfy all four criteria for mandatory intervention under the Ninth Circuit’s test and failure to meet
4 even one element is fatal to their effort.⁹ *Id.*

5 *I. Intervention as a Matter of Right.*

6 Receiver contends intervention as a matter of right fails for a number of reasons not the least
7 of which is because Intervenors cannot demonstrate their interests will be inadequately
8 represented.¹⁰ *Id.* at 7. As cited by Receiver, where “one of the duties of the existing parties is to
9 represent the interests of the intervenor, intervention will not be allowed unless a compelling
10 showing of inadequate representation is made.” *In re Christina Thompson*, 965 F.2d 1136, 1142-43
11 (1st Cir. 1992). Mere conclusory speculation by intervenors is insufficient to establish inadequacy.
12 *Id.* at 1143.

13 Receiver demonstrates that his goals and the goals of Intervenors are aligned; that is, to
14 maximize the value of the receivership estate for all investors and creditors impacted by the Ponzi
15 scheme. ECF No. 300 at 8. Further, case law confirms “absolute satisfaction” relating to the amount
16 of funds recovered by Receiver is not the bar by which adequate representation is to be measured.
17 *Id.* citing *American Pension Services, Inc.*, 2015 WL 136322 at *4. In sum, because Intervenors
18 cannot demonstrate their interests are inadequately represented by Receiver, Receiver argues
19 Intervenors fail to meet one criteria for intervention as a matter of right under Rule 24(a)(2). *Id.* at
20 9. For this reason alone, the Motion to Intervene can be denied.

21 Responding to Intervenors’ *in pari delicto* argument, Receiver cites case law excepting court
22 appointed receivers from the doctrine when that receiver seeks to recover the proceeds of an
23 allegedly fraudulent scheme. *Id.* at 10 citing *FDIC v. O’Melveny & Myers*, 61 F.3d 17 (9th Cir.
24 1995). Receiver argues a court appointed receiver is different from other entities that might be
25 subject to the doctrine. *Id.* at 11.¹¹ Receiver further points to the Ninth Circuit’s adoption of the

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27 ⁹ *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

¹⁰ *Spangler v. Pasadena City Board of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

28 ¹¹ Receiver references case law describing as “evil zombies” the entities formerly under the control of nefarious actors that are transferred to a receiver’s stewardship. *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995).

1 principle that a receiver working to “redress injuries” as a consequence of an entity’s engagement in
2 a Ponzi scheme is not subject to the limitations imposed by the *in pari delicto* doctrine. *Id.* at 11-12
3 citing *Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008).

4 With respect to Intervenor’s resulting trust argument, Receiver cites case law demonstrating
5 Intervenor are not entitled to any special treatment with respect to the funds they invested with
6 Defendants.¹² *Id.* at 12-13. Receiver explains the “investment agreements” were never real and the
7 funds belonging to the Intervenor—like all victims—were commingled with funds contributed by
8 other investors and diverted for nefarious purposes. *Id.* For this reason, neither Intervenor nor any
9 of the other victim is entitled to unique treatment regarding their funds, including the creation of a
10 resulting trust. *Id.*

11 Finally, Receiver disputes the notion that the participation by the Intervenor in the instant
12 litigation would further the recovery process and that the distribution process will be unfair to
13 Intervenor’s interests. *Id.* at 13-15. Receiver explains the time for objecting to any plan of
14 distribution arises when such plan is presented to the Court. *Id.* at 15. It is then, prior to any
15 approval, that input from interested parties will be sought. *Id.*¹³

16 2. *Permissive Intervention.*

17 Receiver argues permissive intervention under Rule 24(b)(1)(B) is inappropriate in this case
18 because the equities strongly militate against intervention. *Id.* at 9. As Intervenor have indicated
19 their intent is to maximize their own recovery—at the expense of Receiver’s and the SEC’s mission
20 to maximize all the aggrieved parties’ recovery—Receiver asks the Court to deny the Motion to
21 Intervene and to allow Receiver to continue his work unimpeded. *Id.* at 9-10.

22 C. The SEC’s Opposition.

23 Citing case law and acknowledging the Ninth Circuit has not addressed the effect of the
24 statute, the SEC argues 15 U.S.C. § 78u(g) prohibits intervention absent SEC approval and, for this
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27 ¹² See, e.g., *United States v. Real Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 553 (9th
Cir. 1996) (holding that requiring tracing would “frustrate equity”).

28 ¹³ Receiver cites Intervenor’s apparent desire for potential class formation as another sign Intervenor seek to
undermine the mission of Receiver in this case. *Id.* at 16.

1 reason alone, the Court should reject the Motion to Intervene. ECF No. 303 at 18 *citing Egan*, 821
2 F.Supp. at 1275-76; *Homa*, 2000 WL 1468726 at *2 *citing Parklane Hosiery*, 439 U.S. at 331-32
3 n.17.

4 *I. Intervention as a Matter of Right.*

5 The SEC echoes Receiver's arguments and contends Intervenors fail to satisfy the Ninth
6 Circuit criteria for intervention under Rule 24(a)(2). *Id.* at 5. The SEC argues that Intervenors have,
7 at minimum, failed to satisfy the first, third, and fourth prongs of the Ninth Circuit test. *Id.* at 6.
8 First and foremost, the SEC contends Intervenors did not timely file the Motion to Intervene as they
9 waited nearly five months between the commencement of this case and the filing of the instant
10 Motion. *Id.* The SEC points out that Intervenors have not given any reasons why they were unable
11 to propose intervention before now or why they failed to lodge any objection to the Motion by the
12 SEC to appoint Receiver that was filed and granted several months ago. *Id.*

13 Further, the SEC disputes the notion that Intervenors' proposed relief would not prejudice
14 the litigation arguing the requested declaratory judgment would create a major obstacle to case
15 progress, especially because Intervenors effectively ask that their property interests be extricated
16 from the receivership estate. *Id.* at 7. The SEC notes Intervenors have not explained how this
17 extrication could feasibly be done. *Id.* As nearly every investor in the scheme could make this
18 identical argument, the SEC reiterates that granting the Motion to Intervene could lead to a snowball
19 effect resulting in the receivership estate's depletion. *Id.* at 7-8. The SEC asserts the proper time to
20 object to Receiver's authority was when his appointment was pending or when the Receivership
21 Order was amended. *Id.* at 8.

22 The SEC contends Intervenors fail to show the denial of the Motion to Intervene would
23 impair or impede their ability to protect their interests since Intervenors' situation is common to all
24 the investors who were victims of the alleged Ponzi scheme. *Id.* at 8-11. The SEC contends
25 Intervenors' theory of the formation of a resulting trust "makes no sense" because the purchase
26 agreement itself indicates there never was an expectation that the funds paid to Defendants were to
27 be held in trust. *Id.* at 12. Rather, the purchase agreement specified that the "proceeds" of the
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1 scheme were to be “held in Trust for the Buyer until Buyer has been fully paid its interest.”¹⁴ *Id.* at
2 4. The SEC contends because there were never any “proceeds” given the investment opportunity
3 was a scam, there was nothing to be held in trust. *Id.* at 13. Further, even if there was merit to the
4 resulting trust argument, the SEC avers there is no distinction between Intervenors and the other
5 victims of the Ponzi scheme. *Id.* at 13-14. The SEC rejects the notion Intervenors deserve any
6 preferential treatment over the other investor victims involved in this litigation. *Id.* at 14.

7 Finally, the SEC argues Intervenors have not demonstrated that their interests are
8 inadequately represented by Receiver and the SEC. *Id.* at 15. The SEC cites to the three factors that
9 the Ninth Circuit instructs courts to consider when analyzing the adequate representation prong¹⁵
10 and argues that applicable case law instructs an investor’s desire to maximize his or her own recovery
11 is not a reason to assert his or her interests are inadequately represented.¹⁶ *Id.* at 15-16. The SEC
12 argues the same reasoning should apply here as there is no legal or factual distinction between
13 Intervenors and the other investor victims. *Id.* at 16.

14 2. *Permissive Intervention.*

15 Regarding permissive intervention under Rule 24(b)(1)(B), the SEC argues that allowing
16 intervention here is inappropriate. *Id.* at 16-17. The SEC delineates the factors specified by the
17 Ninth Circuit¹⁷ and tells the Court it has discretion to consider the implications of allowing
18 intervention in a case, including whether the intervention will prolong or unduly delay the litigation
19 and whether the intervenor will significantly contribute to the full development of the underlying
20 factual issues. *Id.* at 17.

21 The SEC avers that Intervenors’ request is untimely, that the resulting trust theory has no
22 legal or factual basis warranting intervention, and that any intervention by Intervenors would not aid
23 the actions of Receiver and the SEC, but could instead be seen as “[o]pening the door to [a] floodgate
24 of litigation” in the case. *Id.* The SEC asks the Court to deny the Motion to Intervene and allow

25 ¹⁴ The “Buyer” signifies the purchaser of the contract—here, Intervenors.

26 ¹⁵ The Ninth Circuit defines three factors for district courts to consider when evaluating adequate representation
27 including whether: (1) the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s
28 arguments; (2) the present party is capable and willing to make such arguments; and (3) a proposed intervenor would
offer any necessary elements to the proceeding. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003).

¹⁶ *TLC Investments, supra*, 147 F.Supp.2d at 1039-40.

¹⁷ *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989).

1 Intervenor—along with the other investor victims—their fair and equitable right to be heard at the
2 appropriate time; that is, when Receiver promulgates a plan of distribution of receivership assets at
3 the conclusion of his work. *Id.* at 18.

4 D. Intervenors’ Replies to Receiver’s and SEC’s Oppositions.

5 Intervenor contend the argument made by Receiver under 15 U.S.C. § 78u(g) “belies both
6 law and logic.” ECF No. 314 at 3. Intervenor aver the vast majority of case law instructs that the
7 statute is not to be interpreted as a blanket ban against intervention without SEC permission, and
8 that denying intervention here could lead to an interlocutory appeal under 28 U.S.C. 1292(b) and
9 potential months of delays in the litigation.¹⁸ *Id.*

10 Intervenor argue that the Court should analyze timeliness “in light of all the
11 circumstances.”¹⁹ *Id.* In this case, Intervenor contend they needed time to evaluate their options
12 and the implications of any potential intervention on their interests. *Id.* Further, if the Court allows
13 intervention, Intervenor believe that it will actually expedite and clear hurdles in the litigation, as
14 the resulting trust theory could be applied to all the investor victims and prevent future attempts at
15 intervention. *Id.* at 3-4.

16 Finally, Intervenor reiterate their belief that (1) Intervenor have an equitable right to defend
17 their “significantly protectable” investments through the creation of a resulting trust, (2) it is
18 impossible for Receiver to adequately represent Intervenor’s interests here, and (3) Intervenor’s
19 request is not based solely on personal preferences but rather concerns over the legal and factual
20 bases being used by Receiver in his work. *Id.* at 4-11.

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28 ¹⁸ *In re Cinematronics, Inc.*, 916 F.2d 1444, 1446 (9th Cir. 1990).

¹⁹ *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1232 (10th Cir. 2010).

1 **III. DISCUSSION**²⁰

2 A. Mandatory Intervention is Denied.

3 1. *The Motion to Intervene is Untimely.*

4 Timeliness is the “threshold” issue for the analysis of intervention as a matter of right under
5 Rule 24(a)(2). *League of United Latin American Citizens*, 131 F.3d at 1302. If a motion to intervene
6 is untimely, it is unnecessary to reach any of the remaining elements under Rule 24. *Id.* Three
7 factors are taken into account when considering the timeliness of a motion to intervene: “(1) the
8 stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties;
9 and (3) the reason for and length of the delay.” *Id.* (quotations and citation omitted). As an
10 overarching factor, “any substantial lapse of time weighs heavily against intervention.” *Id.* (citation
11 omitted).

12 In 2010, the Ninth Circuit found an attempt to intervene was untimely primarily because (1)
13 the court-appointed receiver had already completed a substantial amount of work as it related to his
14 duties in the case, and (2) “permitting intervention at such a late stage of the proceedings would
15 likely disrupt the orderly and efficient administration of the estate and may also result in prejudice
16 to [the defendant’s] numerous creditors and customers” *U.S. Commodity Futures Trading*
17 *Com’n v. Forex Liquidity LLC*, 384 Fed.Appx. 645, 646-47 (9th Cir. 2010) (internal quotations
18 omitted). Here, Receiver has, in the five plus months since he was appointed, gathered over \$80
19 million in assets for the benefit of the receivership estate. ECF No. 366 at 4.²¹ Receiver’s work has
20 been substantial, and intervention “would likely disrupt the orderly and efficient administration of
21 the estate” and “may also result in prejudice to ... numerous [investors] ..., particularly because all
22 of those ... [investors’] accounts remain frozen.” *Forex Liquidity LLC*, 384 Fed.Appx. at 647. In
23 sum, while Intervenors filed their Motion only four and one-half months after this case commenced,
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25 ²⁰ As explained in *TLV Investments*, the case law regarding 15 U.S.C. § 78u(g), and whether this statute requires
26 SEC permission to intervene, is heavily debated by courts throughout the country. 147 F.Supp.2d at 1039-40. However,
27 as was true in that case, the Court does not resolve the statutory interpretation question here “because even setting aside
28 ... [the statute], the ... [Intervenors] have not met their burden in seeking to intervene.” *Id.* at 1040.

²¹ The Court obtained this number from an Omnibus Motion to Approve Second Quarterly Applications for Fees
and Reimbursement of Expenses for Receiver and Receiver’s Counsel for the Period from July 1, 2022 through
September 30, 2022.

1 the substantial progression and formation of the receivership estate to date supports denial of
2 intervention.

3 With respect to Intervenor's argument regarding delay, the Court questions Intervenor's
4 contention that several months of due diligence were required to review documentation, analyze
5 complexities, explore various theories, and weigh possible options before determining the Motion's
6 impact on the competing interests involved. The Motion to Appoint Receiver was filed in early May
7 2022. Intervenor acknowledges they learned of the alleged Ponzi scheme in March 2022, and were
8 aware of the SEC's Complaint filed in mid-April 2022. ECF No. 281 at 23. There is no contention
9 by Intervenor they were unaware of the developments in the case, including the Motion to Appoint
10 Receiver. The SEC's proposed order was clear on the scope of the Receiver's authority that the SEC
11 desired. ECF No. 67-2. This was the time at which to object and present an argument to the Court
12 why a receivership might not be the best way to achieve maximum recovery. Intervenor did not
13 object. These facts taken together support the conclusion that the Motion to Intervene is untimely.

14 2. *While Intervenor Has a Significantly Protectable Interest, They Fail to*
15 *Establish the Remaining Factors Required to Intervene as a Matter of Right.*

16 The Court agrees that intervention would severely complicate the mission of Receiver,
17 potentially undermine the eventual distribution of receivership estate assets, and prejudice the
18 interests of the other investor victims involved in the litigation. Receiver was granted broad
19 discretion by the Court to implement a plan of distribution following the completion of his work.
20 ECF No. 88 at 17. There can be no serious debate that every dollar spent litigating, including
21 opposing the instant Motion to Intervene, is money that will be unavailable to distribute to victims
22 of the alleged Ponzi scheme.

23 Further, how the litigation would proceed were Intervenor to pursue segregation of assets
24 is, at best, unclear as Intervenor's recovery of their investments would necessarily prejudice others
25 who are also alleged victims of the Ponzi scheme at issue. That is, Intervenor's segregation would
26 potentially put them at the head of the proverbial line and deplete receivership assets through
27 litigation filed by others seeking to prevent Intervenor from obtaining an unfair distribution. Even
28 Intervenor's suggested "limited participation" has the potential to prejudice other investor victims.

1 Any form of relief that interrupts the work of Receiver will undoubtedly lead to the incursion of fees
2 and costs for the receivership estate.

3 The Court also disagrees with Intervenors' assertions that the *in pari delicto* doctrine could
4 serve as an obstacle to Receiver's progress in marshaling assets for the receivership estate. The
5 Ninth Circuit instructs that receivers are held to a different standard than other successors in interest
6 when it comes to available equitable defenses. *FDIC*, 61 F.3d at 19. With respect to the *in pari*
7 *delicto*, the doctrine would frustrate the purposes of a receivership to impute to the appointed
8 receiver the wrongful conduct of the entities to be taken over. *Id.*

9 The Court rejects Intervenors' contentions that the funds invested by Intervenors and other
10 investors through the purchase agreements are subject to a resulting trust and, as a consequence, are
11 exempt from the receivership estate. There is no resulting trust that occurred as a consequence of
12 the nature of the purchase agreements. The language of the purchase agreement provided to the
13 Court as part of Intervenors' filing is clear. The contract states that "[the] Seller agrees and hereby
14 directs that all Proceeds received in connection with the Claim, are held in Trust for Buyer until
15 Buyer has been fully paid its Interest." ECF No. 281 at 39. Upon examination, the word "Proceeds"
16 refers to the eventual funds to be distributed from the personal injury lawsuits that were the
17 underpinning of the supposed investment scheme. The "Proceeds" do not represent the initial
18 investment made by Intervenors or any other investor. Therefore, it was not Intervenors'
19 investments that were to be held in trust, but the funds that were to be distributed after the settlement
20 of personal injury lawsuits. The resulting trust theory does not apply here, and the funds invested
21 by Intervenors are property of the receivership estate.

22 The Court finds meritless Intervenors' argument that their interests will be impaired if
23 Receiver is allowed to maintain his current activities to the exclusion of the participation of other
24 outside parties. Receiver's role is to garner all receivership property and present a plan to equitably
25 distribute that property. ECF No. 88. There is nothing before the Court to suggest that Receiver has
26 been or will be derelict in his duties or will fail to adequately represent the interests of the
27 receivership estate and, by extension, investor-victims such as Intervenors. In fact, the Court notes
28 that Receiver has moved with admirable speed in marshaling over \$80 million as of his November

1 15, 2022 filing for fees and costs. ECF No. 366 at 4. Motion practice, which would almost certainly
2 ensue if the instant Motion to Intervene was granted, will only detract from Receiver’s time and
3 deplete assets of the receivership estate. The Court is not unsympathetic to the concerns of
4 Intervenors that they may not recover as much of their investments as they might hope. However,
5 it is impractical and unproductive for courts to permit parties to intervene solely on that basis.
6 “[A]bsolute satisfaction” cannot and will not be a justification used by parties when attempting to
7 claim that their interests are not being adequately represented by a court-appointed receiver.²²

8 Finally, there is nothing before the Court that differentiates Intervenors from any other
9 investors victim in this alleged Ponzi scheme. The purchase agreement filed alongside Intervenors’
10 Motion is a template purchase agreement, not one unique to Intervenors. Intervenors acknowledge
11 that this scheme was perpetrated not just against them but upon other investors involved in this
12 litigation.

13 Intervenors have not met the burden required to demonstrate a right to intervene under Fed.
14 R. Civ. P. 24(a)(2). As such their Motion seeking mandatory intervention under this Rule is denied.

15 B. Permission Intervention is Denied.

16 The Ninth Circuit instructs that for a court to permit intervention under Rule 24(b)(1)(B)—
17 permissive intervention—three factors must each be met: “(1) an independent ground for
18 jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant’s
19 claim or defense and the main action.” *Beckman Industries, Inc. v. International Insurance Co.*, 966
20 F.2d 470, 473 (9th Cir. 1992). It is the Court’s discretion to allow or deny intervention as it considers
21 whether the intervention will cause undue delay or prejudice to the original parties, if the proposed
22 intervenor’s interests are adequately represented by the existing parties, and whether the judicial
23 economy favors intervention. *Paher v. Cegavske*, Case No. 3:20-cv-00243-MMD-WGC, 2020 WL
24 2042365, at *3 (D. Nev. Apr. 28, 2020).

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28 ²² *American Pension Services*, 2015 WL 136322 at *4.

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For the reasons stated above, the Court finds that the Motion to Intervene is not timely. In addition, the interests of Intervenors are adequately represented by Receiver whose mission is to maximize recovery on behalf of the investors involved with the alleged Ponzi scheme perpetrated by Defendants. The Court denies intervention under Rule 24(b)(1)(B).

IV. ORDER

IT IS HEREBY ORDERED that the Motion to Intervene (ECF No. 281) is DENIED.

Dated this 28th day of November, 2022.


ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE