

1 WILLIAM R. URGA, ESQ. # 1195
2 BRIAN E. HOLTHUS, ESQ. #2720
3 DAVID J. MALLEY, ESQ. #8171
4 JOLLEY URGA WOODBURY & HOLTHUS
5 50 S. Stephanie Street, Suite 202
6 Henderson, Nevada 89012
7 Telephone: (702) 699-7500 / Facsimile: (702) 699-7555
8 Email: wru@juwlaw.com; beh@juwlaw.com; djm@juwlaw.com

6 EDWARD W. COCHRAN, ESQ.
(OHIO Bar No. 0032942)
20030 Marchmont Rd.
7 Shaker Heights, OH 44122-2852
8 Tel: (216) 751-5546 / Fax: (216) 751-5564
9 Email: edward@edwcochran.com
(Admitted pro hac vice)

6 GEORGE W. COCHRAN, ESQ.
(OHIO Bar No. 0031691)
1981 Crossfield Circle
7 Kent, OH 44240
8 Tel: (330) 607-2187 / Fax: (330) 230-6136
9 Email: lawchrist@gmail.com
(Admitted pro hac vice)

Attorneys for Intervenors

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 MATTHEW WADE BEASLEY, et al.,

17 Defendants.

CASE NO.: 2:22-cv-00612-CDS-EJY

**PROPOSED INTERVENORS OMID
SHAHABE AND KRISTIE YOUNG’S
MOTION TO RECONSIDER THE
MAGISTRATE JUDGE’S ORDER
DENYING MOTION TO INTERVENE**

ORAL ARGUMENT REQUESTED
(LR 78-1)

20 Pursuant to 28 U.S.C § 636(b)(1)(A) and LR IB 3-1, Proposed Intervenors Kristie
21 Young and Omid Shahabe (“Intervenors”) jointly move this Court to reconsider Magistrate
22 Judge Youchah’s Order of November 28, 2022 ("Order") denying their Motion to
23 Intervene. (ECF No 373). For cause, Intervenors state:

- 24
25
26 1. The Order is clearly erroneous because it makes an obvious factual mistake
27 regarding timeliness;
28

JOLLEY URGA attorneys
at law
WOODBURY & HOLTHUS
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

2. It is also contrary to law because it commits clear errors regarding Nevada’s resulting trust doctrine.

The responding parties have not relayed their position in this matter.

DATED this 12th day of December, 2022.

JOLLEY URGA WOODBURY & HOLTHUS

By: /s/ William R. Urga, Esq.
WILLIAM R. URGA, ESQ. # 1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
T: (702) 699-7500 / F: (702) 699-7555

GEORGE W. COCHRAN, ESQ.
(OHIO Bar No. 0031691)
1981 Crossfield Circle
Kent, OH 44240
T: (330) 607-2187 / F: (330) 230-6136
(Admitted pro hac vice)

EDWARD W. COCHRAN, ESQ.
(OHIO Bar No. 0032942)
20030 Marchmont Rd.
Shaker Heights, OH 44122-2852
T: (216) 751-5546 / F: (216) 751-5564
(Admitted pro hac vice)

MEMORANDUM OF POINTS AND AUTHORITIES

I. Relevant Background

On April 12, 2022, the Securities Exchange Commission ("Commission") filed a complaint for securities fraud in the federal district of Nevada against the named Defendants, Relief Defendants and Individual Relief Defendants (collectively “Defendants”). (ECF No. 1). A freeze on Defendants’ assets to prevent further dissipation of investor funds was ordered on April 21, 2022, along with a preliminary injunction prohibiting the fraud’s continuation or destruction of relevant documents and requiring an

JOLLEY URGA attorneys
WOODBURY & HOLTHUS at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

1 accounting of Defendants’ assets. (ECF No. 56). The Commission is also seeking
2 permanent injunctions, disgorgement of ill-gotten gains, legal interest and appropriate
3 penalties. On June 3, 2022, the Court exercised exclusive jurisdiction and control over the
4 Defendants and appointed Geoff Winkler (“Receiver”) to serve as Commission’s receiver
5 in order to marshal and preserve Receivership Assets. (ECF No. 88). On August 31, 2022,
6 Intervenor moved to intervene in order to obtain a judicial declaration of their right to
7 pursue equitable claims and defenses unavailable to the Receiver or Receivership Estate.
8

9
10 As alleged in their Complaint, one of the Defendants acted as Intervenor’s liaison
11 as they acquired various interests in personal injury contracts purportedly purchased by a
12 J&J entity from a distressed seller at significant discount. The profit on each investment
13 was characterized as “interest in the Proceeds.” The standardized purchase agreement
14 contains the following declaration: “Seller agrees and hereby directs that all Proceeds
15 received in connection with the Claim, are held in Trust for Buyer until Buyer has been
16 fully paid its Interest.” In the totality of circumstances surrounding Intervenor’s
17 relationship with the Defendant, this declaration serves as compelling evidence for
18 imposing a resulting trust under Nevada law. Much is at stake with this issue: if
19 Intervenor’s property rights are subject to a resulting trust, the receiver cannot control their
20 principal and the SEC cannot usurp their recovery. *See Mitsui Mfrs. Bank v. Unicom*
21 *Comput. Corp. (In re Unicom Comput. Corp.)*, 13 F.3d 321 (9th Cir. 1994).
22
23
24

25 The purpose of Intervenor’s motion is radically different from a typical intervention.
26 Most critically, Intervenor *expressly limit* their involvement to “a supporting role in the
27 Commission’s enforcement action that will *further*—not impede—its efficient and
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1 effective resolution.” (ECF No. 281. at 7). They believe their equitable ownership in the
2 invested funds will “resolve a serious issue by allowing the parties to advance the litigation
3 on sure footing instead of derailing it.” (ECF No. 281 at 23). Rather than maximize their
4 own recovery, Intervenors seek to represent all “similarly situated” investors on an
5 aggregate basis by exercising the Court’s equitable jurisdiction. Given the unusual nature
6 of their request—and the complex issues raised—they asked the Court to set the matter for
7 oral argument in order to explain their objective, quantify the value of their involvement,
8 and address any questions.
9

10
11 The Magistrate Judge chose instead to deny Intervenors’ motion on the papers. After
12 sidestepping the need for Commission consent, the Magistrate Judge cited two grounds for
13 the decision. First was Rule 24’s threshold issue of timeliness. Because the Receiver had
14 already completed a substantial amount of work, the Magistrate Judge was concerned that
15 allowing intervention would disrupt estate administration and prejudice creditors. Second,
16 the Magistrate Judge ruled Nevada’s resulting trust doctrine doesn’t apply because
17 Intervenors did not execute an “express trust” to cover their funds. (ECF No. 373 at 13).
18 On December 12, 2022, Intervenors timely exercised the right to object by moving to
19 reconsider both findings.
20
21

22 **II. Standard Of Review**

23 “A district judge may reconsider any pretrial matter referred to a magistrate judge
24 in a civil or criminal case under LR IB 3-1, when it has been shown the magistrate judge's
25 order is clearly erroneous or contrary to law.” *Castro v. Poulton* 2:15-cv-1908-JCM-GWF
26 (D. Nev. 8/18/2017) at *14. A magistrate judge's order is clearly erroneous if the court is
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1 left with “a definite and firm conviction that a mistake has been committed.” *United States*
2 *v. Williams* 2:14-cr-00099-APG-PAL (D. Nev. 2/11/2015). “Clearly erroneous review is
3 significantly deferential, requiring that the appellate court accept the [trial] court's findings
4 absent a definite and firm conviction that a mistake has been made.” *United States v. Syrax*,
5 235 F.3d 422, 427 (9th Cir. 2000). The court's choice among multiple plausible views of
6 the evidence doesn't qualify. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74
7 (1985). However, the standard is lower than required for a habeas corpus petition because
8 the reviewing court need not find the challenged findings are *unsupported* in the record.
9 *Madsen v. Baker* (D. Nev. 2018) (citing *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir.
10 2004). Applying these benchmarks to their motion, Intervenors' hold a definite and firm
11 conviction that the Magistrate Judge's order is both clearly erroneous and contrary to law.
12 As demonstrated below, Intervenors' motion for reconsideration meets the applicable
13 standard of review.

14 **III. Argument**

15 **A. The Order Is Clearly Erroneous Because It Makes An Obvious Factual 16 Mistake Regarding Timeliness.**

17 Intervenors' first ground for reconsideration is that the Magistrate Judge committed
18 abuse of discretion by making an obvious factual mistake regarding the motion's
19 timeliness. Generally, Rule 24(a) is liberally construed in favor of potential intervenors.
20 *Forest Conservation Council (“FCC”) v. United States Forest Serv.*, 66 F.3d 1489, 1493
21 (9th Cir. 1995). In addition to mandating broad construction, judicial review is “guided
22 primarily by practical considerations,” not technical distinctions. *United States v.*
23 *Stringfellow*, 783 F.2d 821, 826 (9th Cir.1986). In our circuit, a district court considers
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1 three criteria: (1) the stage of the proceedings; (2) whether the parties would be prejudiced;
2 and (3) the reason for any delay in moving to intervene. *Nw. Forest Res. Council v.*
3 *Glickman*, 82 F.3d 825, 836 (9th Cir. 1996).

4
5 In the present case, the Court found Intervenor’s motion untimely because the
6 Receiver had already completed substantial work and intervening at this stage would both
7 disrupt the estate’s administration and prejudice creditors. (ECF No. 373 at 11) (citing *U.S.*
8 *Commodity Futures Trading Comm’n v. Forex Liquidity LLC* 8:07-cv-01437-CJC-RNB
9 (9th Cir. 8/10/2010)). Specifically, the Court noted that the Receiver has gathered over \$80
10 million in assets in the five months since his appointment. (Id. at 10).

11
12 The Court’s findings on timeliness are clearly erroneous in two ways. First, the
13 petitioner in *Community Futures* moved to intervene after the receiver had already
14 conducted discovery, filed an interim report, developed a second interim report and even
15 outlined a distribution plan (with input from creditors, customers and even the proposed
16 intervenor). Only at that late stage of proceedings did the court conclude it “would likely
17 disrupt the orderly and efficient administration of the estate” and “may also result in
18 prejudice to Forex’s numerous creditors and customers.” *Community Futures*, at 3. In
19 contrast, our Receiver has not even initiated litigation leading to Defendants’ liability on
20 the merits—much less conduct discovery or develop a distribution plan with input from all
21 interested parties. Therefore, finding the motion tardy because intervention at this “late
22 stage would prejudice the Receiver was clear factual error.

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26 Second, and more critically, the Order ignores Intervenor’s actual purpose for filing
27 the motion. Rather than using their position to pursue claims injurious to the Commission’s
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1 enforcement or to compete for control with the Receiver, “Intervenors hope to *further* this
 2 enforcement action by using their significantly protectable interests to bolster the SEC’s
 3 and receiver’s efforts without opening the floodgates of private litigation.” (ECF 316 at 5).

4 Intervenors explained how this would work:

5
 6 Intervenors’ goal is precisely *opposite* the SEC’s ‘doom and gloom’. If their
 7 motion is granted, Intervenors will assist the Commission and receiver by
 8 representing all Ponzi victims for the limited purpose of fortifying
 9 Defendants’ liability and enhancing victims’ recovery while foreclosing
 10 copycat litigation. To that end, they are willing to cooperate with the receiver
 in exchange for using their unique property rights in a representative capacity
 to offset the vulnerabilities identified in their motion.

11 (Id.). Given the limited role Intervenors agreed to play, it was *impossible* for the
 12 Commission or Receiver to be prejudiced by granting intervention. Consequently, the
 13 Order’s obvious factual mistake regarding the consequence of intervention was clearly
 14 erroneous.
 15

16 **B. The Order Is Also Contrary to Law Because It Commits Clear Errors**
 17 **Regarding Nevada’s Resulting Trust Theory.**

18 “A decision is ‘contrary to law’ if it applies an incorrect legal standard or fails to
 19 consider an element of the applicable standard.” *Alexander v. Keener* (D. Nev. 2/10/2014)
 20 (citing *Conant v. McCoffey*, C 97-0139, 1998 WL 164946, at *2 (N.D. Cal. Mar. 16,
 21 1998)). In the present case, the Magistrate Judge committed abuse of discretion by applying
 22 a standard for impressing a resulting trust that is contrary to Nevada law.
 23

24 While the execution of an express trust may be the *strongest* evidence of a resulting
 25 result, it is cannot be the *only* factor considered. A resulting trust applies whenever a person
 26 disposes of property under circumstances which raise an inference that he does not intend
 27 the person taking or holding the property to have a beneficial interest. *Rest., Trusts 2d*, §
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1 404. The most common example is a transfer of property made to one person when the
2 purchase price is paid by another. Id. In such event, Nevada imposes a resulting trust in
3 favor of the person who paid the purchase price. *Werner v. Mormon*, 85 Nev. 662, 462
4 P.2d 42 (1969). This longstanding theory is most appropriate when “the acts or expressions
5 of the parties indicate an intent that a trust relation results from their transaction.” *Bemis v.*
6 *Estate of Bemis*, 114 Nev. 1021, 967 P.2d 437, 444 (1998) (citing 76 Am.Jur.2d Trusts §
7 163 (1992)). A resulting trust may also arise due to the failure of an express trust. Id. (citing
8 *Washburn v. Park East*, 795 F.2d 870, 872 (9th Cir.1986)). In particular, a purchase-money
9 resulting trust is an equitable remedy designed to implement what the law assumes to be
10 the intentions of a putative trustor. *In re Estate of Hock*, 655 P.2d 1111, 1114 (Utah 1982).
11 Such intent may be inferred from the circumstances. *Fidelity National Title Insurance Co.*
12 *v. Schroeder* 179 Cal.App.4th 834, 847-848 (2009). The victim’s intention at the time of
13 the transfer is what matters, not down the road. *Taylor v. Rupp*, 133 F.3d 1336, 1341 (10th
14 Cir. 1998).

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18 The totality of circumstances surrounding Intervenors’ relationship with the
19 Defendant include *all* of the foregoing factors: (1) Intervenors intended for their
20 investments to be subject to a trust relationship; (2) the acts or expressions of the parties
21 indicated an intent that a trust relation would result; (2) the purchase price paid by
22 Intervenors for each contract was transferred to another Ponzi victim without
23 corresponding consideration; (3) Intervenors did not intend other victims to obtain a
24 beneficial interest in their investment and (4) the express trust Intervenors relied upon has
25 failed.
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1 Against this backdrop, Magistrate Judge’s summary dismissal of Intervenors’
2 resulting trust claim was clearly contrary to law. First, it ignored that Nevada’s resulting
3 trust doctrine requires the court to examine the totality of circumstances surrounding the
4 parties’ relationship—not just on whether an express trust was executed. Second, it failed
5 to conduct the hearing requested by Intervenors to address any questions the Magistrate
6 Judge may have—including Intervenors’ factual and legal basis for alleging the imposition
7 of a resulting trust under the circumstances presented.
8

9
10 Courts have consistently recognized the importance of conducting such hearings
11 before ruling on complex matters. See, e.g. *Burke v. USF Reddaway, Inc.* 3:13-cv-0017-
12 LRH-WGC (D. Nev. 6/10/2014) at *2 (“The court notes that the magistrate judge heard
13 argument on the motion to quash and, at the hearing, made several specific rulings that
14 addressed both Burke's timeliness challenge and the relevancy of the discovery request. []
15 Thus, the magistrate judge took Burke's arguments into consideration before deciding the
16 motion.”); *Moreno v. Cortez-Masto* 3:11-cv-0179-0LRH-WGC (D. Nev. 1/24/2013) at *2
17 (“the court notes that although the order itself is brief, the Magistrate Judge heard argument
18 on the underlying motion for retaliation on June 11, 2012. Thus, the court finds that
19 Moreno's motion received adequate attention and review from the Magistrate Judge and
20 that his objection to the initial order's brevity is therefore, without merit.”); *May v. Haas*
21 (D. Nev. 11/07/2014) at *2 (“The court notes that the Magistrate Judge heard argument on
22 the motion to compel and, at the hearing, made several specific rulings that addressed the
23 relevancy of the discovery request. [] Thus, the Magistrate Judge took plaintiffs' arguments
24 into consideration before deciding their motion.”).
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1 Last but not least, the Magistrate Judge dismissed the principal allegation of
2 Intervenor’s complaint in intervention without allowing a reasonable opportunity to
3 conduct discovery in order to find direct or circumstantial evidence that might buttress
4 their trust allegation. It also failed to “accept as true all well-pled factual allegations in the
5 complaint,” as required before dismissing a complaint for failure to state a claim. *Sgrillo*
6 *v. GEICO Cas. Co.*, 323 F.Supp.3d 1167, 1169 (D. Nev. 2018). The Magistrate Judge’s
7 finding is contrary to law because it commits obvious errors regarding Nevada’s resulting
8 trust doctrine.
9

10
11 **IV. Conclusion**

12 Intervenor’s freely acknowledge the high burden of proof required to modify a
13 magistrate judge’s order that denies a pretrial motion. Intervenor’s respectfully submit,
14 however, that affirming the present order would eradicate the abuse of discretion standard
15 completely. In the interest of justice, Intervenor’s respectfully ask the Court (1) to
16 reconsider the order denying their right to intervene and (2) to remand with instructions to:
17

- 18 1. Set aside the Order’s finding on timeliness;
- 19 2. Set this matter for oral argument and/or evidentiary hearing on the applicability of
20 Nevada’s resulting trust doctrine and Intervenor’s limited role as aggregate
21 representatives in equity;

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3. Issue a revised Order that applies the correct standard for impressing a resulting trust according to the facts presented.

DATED this 12th day of December, 2022.

JOLLEY URGA WOODBURY & HOLTHUS

By: /s/ William R. Urga, Esq.
WILLIAM R. URGA, ESQ. # 1195
BRIAN E. HOLTHUS, ESQ. #2720
DAVID J. MALLEY, ESQ. #8171
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
T: (702) 699-7500 / F: (702) 699-7555

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(OHIO Bar No. 0032942)
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(OHIO Bar No. 0031691)
1981 Crossfield Circle
Kent, OH 44240
T: (330) 607-2187/F: (330) 230-6136
(Admitted pro hac vice)

Attorneys for Intervenors

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Jolley Urga Woodbury & Holthus and that on this 12th day of December, 2022, I caused the document entitled **PROPOSED INTERVENORS OMID SHAHABE AND KRISTIE YOUNG’S MOTION TO RECONSIDER MAGISTRATE JUDGE’S ORDER DENYING MOTION TO INTERVENE** to be served on the parties in this action via the Court’s CM/ECF System.

/s/ Linda Schone
An employee of JOLLEY URGA
WOODBURY & HOLTHUS

JOLLEY URGA attorneys
WOODBURY & HOLTHUS at law
50 S. STEPHANIE STREET, SUITE 202, HENDERSON, NV 89012
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555