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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

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19 SECURITIES AND EXCHANGE
COMMISSION,

20 Plaintiff,

21 vs.

22 MATTHEW WADE BEASLEY, *et al.*,

23 Defendants,

24 THE JUDD IRREVOCABLE TRUST, *et al.*,

25 Relief Defendants.
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Case No. 2:22-cv-00612-CDS-EJY

Judge Hon. Cristina D. Silva

**OPPOSITION OF RECEIVER, GEOFF
WINKLER, TO MOTION TO
RECONSIDER MAGISTRATE JUDGE'S
ORDER DENYING MOTION TO
INTERVENE**

1 **TO ALL INTERESTED PARTIES AND THIS HONORABLE COURT:**

2 **PLEASE TAKE NOTICE** that Geoff Winkler (the "Receiver"), the Court-appointed
3 receiver in the above-referenced action for certain entity defendants and over the personal property
4 assets of certain individual defendants and relief defendants (collectively, the "Receivership
5 Defendants"), hereby opposes the Motion [ECF No. 387] of proposed intervenors Kristie Young
6 and Omid Shahabe (collectively, the "Movants") for reconsideration of Magistrate Judge
7 Youchah's Order [ECF No. 373] denying their earlier Motion to Intervene [ECF No. 281]. As
8 detailed below, the Movants' Motion fails to satisfy the standard of review for a motion for
9 reconsideration and mischaracterizes the applicable law and the basis for Magistrate Judge
10 Youchah's Order. Accordingly, the Receiver respectfully requests that this Court deny the Motion
11 and affirm Magistrate Judge Youchah's Order.

12 **I. INTRODUCTION.**

13 In her Order denying Movants' Motion to Intervene, Magistrate Judge Youchah correctly
14 determined that the relief requested therein – permission to intervene to pursue independent
15 investor class claims against entities and assets already in receivership and subject to the
16 Receiver's authority and control – was untimely, unsupported by the legal standard for
17 intervention as a matter of right, and unsupported by the legal standard for permissive
18 intervention. Among other things, Magistrate Judge Youchah correctly determined that he Motion
19 to Intervene was untimely, that the Movants' interests are already adequately represented by the
20 Receiver, and that permitting them to intervene at this time would be highly prejudicial to the
21 Receiver and the plaintiff Securities and Exchange Commissions (the "Commission").

22 In their Motion, Movants' contest Magistrate Judge Youchah's finding that their Motion to
23 Intervene was untimely and attempt to relitigate the "resultant trust" theory which was the focus of
24 their Motion to Intervene. Notably, the Movants mischaracterize the chronology and case law
25 relevant to the timeliness of their Motion to Intervene, and ignore the fact that, even if they are
26 correct with respect to their resultant trust theory (and they are not), their interests are already
27 adequately represented in this matter and permissive intervention is therefore unwarranted.

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1 As both the Receiver and the Commission observed in opposing the Motion to Intervene,
2 the relief sought by the Movants would impose a significant hardship upon the receivership,
3 thereby injuring other investors in and creditors of the Receivership Defendants. The Movants'
4 Motion to Intervene is a motion to skip to the head of the line in order to obtain a unilateral
5 benefit, to the detriment of a longstanding and highly successful receivership, and at the expense
6 of other investors and creditors. Their latest Motion does nothing to alter that basic fact and the
7 Receiver respectfully requests that the Court deny the Motion.

8 **II. ARGUMENT.**

9 **A. Magistrate Judge Youchah's Order May Only Be Rejected For Clear Error.**

10 Under Local Rule LR IB 3-1, a magistrate judge's ruling on non-dispositive matters such as
11 those addressed in Magistrate Judge Youchah's Order, is subject to reconsideration on where it
12 "has been shown [that] the magistrate judge's order is clearly erroneous or is contrary to law."
13 Local Rule LR IB 3-1(a); Fed. R. Civ. Proc. 72(a); 28 U.S.C. § 636(b)(1); Heyman v. Nevada ex
14 rel. Bd. of Regents of Nevada Sys. of Higher Educ., 2019 WL 7602241, at *2 (D. Nev. Feb. 28,
15 2019).

16 A magistrate judge's factual finding is "clearly erroneous" only if, "although there is
17 evidence to support it, the reviewing court on the entire evidence is left with the definite and firm
18 conviction that a mistake has been committed." United States v. Chee, 191 F. Supp. 3d 1150,
19 1152 (D. Nev. 2016) (citing United States v. Hinkson, 585 F.3d 1247, 1260 (9th Cir. 2009)).
20 Under a review for clear error, "the scope of [the] review limits [the reviewing court] to
21 determining whether the [magistrate judge] reached a decision that falls within any of the
22 permissible choices the court could have made." Hinkson, 585 F.3d at 1261. Ultimately, as the
23 Movants themselves concede, "[t]his standard of review 'is *significantly deferential*' to a
24 magistrate judge's determination." Mayorga v. Ronaldo, 491 F. Supp. 3d 840, 846 (D. Nev. 2020)
25 (quoting Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal., 508 U.S.
26 602, 623 (1993)) (emphasis added). Accordingly, a magistrate judge's pretrial order issued under
27 28 U.S.C. § 636(b)(1)(A) is not subject to de novo determination, and "[t]he reviewing court may
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1 not simply substitute its judgment for that of the deciding court." Grimes v. City & County of San
2 Francisco, 951 F.2d 236, 241 (9th Cir. 1991).

3 A magistrate judge's legal conclusion is "contrary to law" only where "it fails to apply or
4 misapplies relevant statutes, case law, or rules of procedure." United States v. Desage, 229 F.
5 Supp. 3d 1209, 1213 (D. Nev. 2017) (citing Jadwin v. County of Kern, 767 F. Supp. 2d 1069,
6 1110-11 (E.D. Cal. 2011)) (internal quotation marks omitted). "The 'contrary to law' standard
7 allows independent, plenary review of purely legal determinations by the Magistrate Judge."
8 Jadwin, 767 F. Supp. 2d at 1110.

9 Here, in order to grant the Motion, this Court would need to determine that Magistrate
10 Judge Youchah committed clear error, or entered a finding contrary to law with respect to her:
11 (1) analysis of the untimeliness of the Movants' Motion to Intervene; (2) rejection of the Movants'
12 "resultant trust" theory; (3) determination that the Movants' interests are already adequately
13 addressed; and (4) determination that, given the totality of the circumstances – specifically
14 including the Movants' delay in filing their Motion to Intervene, the extended period of the
15 Receiver's appointment, and the remarkable success the Receiver has achieved to date –
16 permissive intervention is unwarranted, and would be potentially prejudicial to the receivership.
17 The evidence and argument presented by the Receiver and the Commission support Magistrate
18 Judge Youchah's analysis and conclusions and her Order is not contrary to law. The Movants'
19 Motion should therefore be denied.

20 **B. The Motion To Intervene Was Indeed Untimely.**

21 As noted in Magistrate Judge Youchah's Order, timeliness is a threshold question for the
22 purposes of a request to intervene as a matter of right. See, e.g., United States v. Oregon, 913 F.2d
23 576, 588 (9th Cir. 1990) (affirming denial of motion to intervene on, among other things,
24 timeliness grounds). In order to determine whether an intervention request is timely, courts
25 consider (1) the stage of the proceeding at which intervention is sought; (2) the risk of prejudice to
26 other parties; and (3) the reason for and length of a movant's delay. Id.

27 Here, as Magistrate Judge Youchah noted, the Movants learned of the alleged Ponzi
28 scheme at issue in this matter in March 2022, and were aware of the Commission's Complaint

1 filed in mid-April 2022, well before the Receiver's appointment. (See ECF No. 281 at 23.) Given
2 that, as detailed in the Receiver's Opposition to the Motion to Intervene (which the Receiver
3 incorporates by reference), the aims of the receivership are directly at odds with any individual
4 creditor or limited group of creditors of the Receivership Defendants seeking unilateral relief on
5 their own, "[t]his was the time at which to object and present an argument ... [as to] ... why a
6 receivership might not be the best way to achieve a maximum recovery." (ECF No. 373 at 12.)
7 Yet the Movants failed to act, seeking intervention months into the Receiver's appointment and at
8 a time when the Receiver's efforts to recover assets for the benefit of *all* creditors (not merely the
9 Movants) were already bearing significant fruit.

10 In their Motion, the Movants attempt to distinguish Magistrate Judge Youchah's cited
11 authority, CFTC v. Forex Liquidity LLC, 384 Fed. Appx. 645, 646-47 (9th Cir. 2010), claiming
12 that the relevant circumstances here are different because, "the petitioner in Community Futures
13 [*sic*] moved to intervene after the receiver had already conducted discovery, filed an interim
14 report, developed a second interim report and even outlined a distribution plan" – developments
15 they claim have not occurred here. *The Movants could not be more wrong*; their suggestion that
16 the circumstances before this Court can be meaningfully distinguished from those in Forex
17 Liquidity suggests a remarkable unfamiliarity with the record and the Receiver's efforts and
18 achievements to date.

19 Indeed, in the more than six (6) months since his appointment and as of the date of this
20 Opposition, the Receiver has, among other things, already: (1) prepared and filed a report and
21 recommendation – accepted by the Court – regarding the administration of two then-pending
22 bankruptcy cases directly implicating a number of critical Receivership Defendants; (2) prepared
23 and filed two interim reports [ECF Nos. 215, 343]; (3) prepared and filed a report and liquidation
24 plan [ECF No. 284] that previewed his anticipated distributions to creditors of the receivership
25 estate; (4) undertaken significant discovery and document recovery efforts in order to secure
26 information critical to the administration of the receivership estate and for his ongoing forensic
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1 accounting¹; and (5) recovered and commenced the sale, pursuant to Court orders, of millions of
2 dollars in real and personal property assets for the benefit of creditors of the estate. In other
3 words, the actions taken by the Receiver at this stage in the proceedings are remarkably analogous
4 to those highlighted in Forex Liquidity, underscoring the propriety of Magistrate Judge Youchah's
5 analysis. That the Movants so readily dismiss or ignore these achievements underscores the
6 questionable nature of their claims – summarily made – that their contemplated litigation against
7 the Receivership Defendants will actually *assist* the Receiver and the Commission, an issue
8 Magistrate Judge Youchah properly identified when addressing the potentially prejudicial impact
9 upon the receivership of the Movants' proposed intervention.

10 Put simply, the Movants were aware of the alleged Ponzi scheme at the heart of this action
11 and the Commission's Complaint months *before* the Receiver was appointed. Their Motion to
12 Intervene was filed months *after* the Receiver's appointment and *after* the Receiver had already
13 made substantial progress in identifying and marshaling millions of dollars in assets for the benefit
14 of all of the Receivership Defendants' creditors (not merely the Movants). Intervention at this
15 point will "likely disrupt the orderly and efficient administration of the estate" in a manner that
16 would prejudice not only the Receiver, but those depending upon his efforts as well. Any
17 assertion by the Movants that their action would be an equally or more efficient means of securing
18 an outcome similar to that sought by the Receiver should be viewed as an admission that the effect
19 of their intervention would be to supplant the Receiver, and nothing could be more prejudicial
20 than that. Magistrate Judge Youchah committed no error in denying the Motion to Intervene on
21 these grounds.

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26 ¹ The Movants appear to suggest in their Motion that the Receiver is obligated to undertake
27 discovery and litigation against the entities in receivership in order to collect from them. (See
28 ECF No. 387 at 6.) Such an assertion suggests a misunderstanding of the Receiver's position
vis-à-vis these entities. As the Movants themselves acknowledged in their Motion to Intervene
(see ECF No. 281 at 16), as a matter of law, the Receiver steps into the shoes of the entities in
receivership, with exclusive authority and control over their documents and assets. He
therefore does not need to sue them to secure such authority and control.

1 **C. The Movants' "Resulting Trust" Theory Does Not Justify Permissive**
2 **Intervention.**

3 The "resulting trust" that the Movants' claim justifies their intervention is a fiction. As a
4 preliminary matter, the Movants themselves have already conceded that the investment
5 agreements in issue "were fictitious." (See ECF No. 281 at 6.) As such, the "trust" language used
6 in those agreements to induce the Movants' investment is irrelevant here. More critically, many of
7 the Commission's pleadings filed in the initial stages of this action document how investors'
8 money was transferred out through the Receivership Defendants' initial intake accounts, to other
9 accounts, and ultimately used to purchase assets ranging from multi-million dollar homes, to a
10 private aircraft, to luxury automobiles and cryptocurrency. (See, e.g., ECF Nos. 2, 21, 23, 24, 67,
11 87.)

12 In other words, whatever representations may have been made to the Movants regarding
13 the nature and security of their investment, the reality is that their funds were commingled with
14 funds contributed by other investors, and diverted for purposes entirely unrelated to the initially
15 stated investment goals. It is for this very reason that receivers are not obligated to "trace" funds
16 in Ponzi disgorgement actions. See, e.g., United States v. 13328 & 13324 State Highway 75 N.,
17 89 F.3d 551, 553 (9th Cir. 1996) (holding that requiring tracing would "frustrate equity"); SEC v.
18 Elliott, 953 F.2d 1560, 1569 (11th Cir. 1992) (rejecting tracing as inequitable); FTC v. Bronson
19 Partners, LLC, 654 F.3d 359, 374 (2d Cir. 2011); SEC v. Banner Fund Int'l, 211 F.3d 602, 617
20 (D.C. Cir. 2000). The Movants' argument regarding a resulting trust is antithetical to the
21 principles underlying these decisions. Their demand that the Court recognize their theory as
22 overriding the interest of all other creditors amounts to a demand for a finding that the Movants
23 are *unique*, possessing an investment unlike that of any other investor, and which remains
24 distinctive and segregated – regardless of the misrepresentations and commingling allegedly
25 undertaken by the Receivership Defendants – and should be set apart to be pursued by *them alone*.
26 *None* of the applicable authority supports such a finding and Magistrate Judge Youchah was
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1 absolutely correct to reject the argument.² This is particularly so because, as noted in the Order,
 2 under the investment agreements in issue, "it was not Intervenor's investments that were held in
 3 trust, but the funds that were to be distributed after the settlement of personal injury lawsuits."
 4 (ECF No. 373 at 13.) Since the settlements of personal injury lawsuits upon which the alleged
 5 Ponzi scheme was predicated never existed, the proceeds to be distributed therefrom never existed,
 6 and "[t]he resulting trust theory does not apply here, and the funds invested by the Intervenor are
 7 property of the receivership estate." (*Id.*) Magistrate Judge Youchah committed no error in
 8 denying the Motion to Intervene on these grounds.

9 **D. The Movants' Interests Are Already Adequately Protected.**

10 While their Motion does not directly address the issue, Magistrate Judge Youchah also
 11 determined that the Movants' interests were already adequately protected in this matter, and
 12 accordingly that no intervention was warranted.

13 As noted in the Order, the Movants have failed to establish that they can satisfy all
 14 required elements in order to intervene as a matter of right, critically including that their interests
 15 are inadequately protected. To satisfy all required elements, a proposed intervenor must:
 16 (1) timely file an application; (2) possess a 'significantly protectable' interest relating to the
 17 property or transaction that is the subject of the action; (3) be so situated that the disposition of the
 18 action may as a practical matter impair or impede its ability to protect that interest; and (4) be
 19 inadequately represented by the parties to the action. California ex rel. Lockyer v. U.S., 450 F.3d
 20 436, 441 (9th Cir. 2006) (citing Sierra Club v. EPA, 995 F.2d 1478, 1481 (9th Cir. 1993)). Failure
 21 to satisfy any one of the requirements is fatal to a motion to intervene. Perry v. Proposition 8
 22 Official Proponents, 587 F.3d 947, 950 (9th Cir. 2009).

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 26 ² The Movants' complaints regarding Magistrate Judge Youchah's election not to hold an
 27 evidentiary hearing or permit the Movants to take preliminary discovery are a red herring. As
 28 a preliminary matter, the Receiver has located no authority that compels a magistrate judge to
 hold an evidentiary hearing on a motion to intervene. Perhaps more importantly, authorizing
 discovery by non-parties would reflect exactly the sort of "race to the courthouse" and
 unilateral action that a receivership is created to avoid, to say nothing of the unwarranted
 expense such discovery would impose upon a receivership.

1 Importantly, the fact that an interested party might *prefer* to intervene, and insert itself into
2 a receiver's administration of an estate does not give rise to a *right* to intervene. See, e.g., SEC v.
3 Am. Pension Servs., Inc., 2015 WL 136322, *2 (D. Utah Jan. 20, 2015) (finding a movant's
4 interests were not impaired solely because he disagreed with the receiver's administration plans
5 and was, as here, "similarly situated" to other creditors); SEC v. Nadal, 2009 U.S. Dist. LEXIS
6 94302, *4-5 (M.D. Fl. Sept. 24, 2009). As the Am. Pension Servs. court and Magistrate Judge
7 Youchah noted, investors are not entitled to the "absolute satisfaction" and their apparent
8 dissatisfaction with the existence of a receivership does not give rise to a right to intervene. Am.
9 Pension Servs., Inc., 2015 WL 136322 at *4; see also ECF No. 373 at 14. Magistrate Judge
10 Youchah committed no error in denying the Motion to Intervene on these grounds.

11 **E. Intervention Would Be Prejudicial To The Receivership.**

12 As provided for in Fed. R. Civ. P. Rule 24(b)(3), in exercising its discretion to allow a
13 permissive intervention, a court must consider whether the intervention will result in prejudice or
14 undue delay. Here, Magistrate Judge Youchah correctly observed that "intervention would
15 severely complicate the mission of the Receiver, potentially undermine the eventual distribution of
16 receivership estate assets, and prejudice the interests of other investor victims[.]" (See ECF
17 No. 3737 at 12.) In support of this conclusion, she noted that, among other things: (1) this Court
18 had already granted the Receiver broad discretion to implement a distribution plan following the
19 completion of his work; (2) the cost of litigating, including with respect to the intervention
20 question, would necessarily reduce the value of the receivership estate; (3) because the Movants
21 are seeking relief that would unilaterally benefit them, the proposed intervention would place them
22 "at the head of the proverbial line and depleting receivership assets through litigation"; (4) even
23 the Movants' proposed "limited participation" could "interrupt[] the work of the Receiver [and]
24 undoubtedly lead to the incursion of fees and costs for the receivership estate." (Id. at 12-13.)

25 In their Motion, the Movants' ignore all of these concerns, responding only by restating
26 their unsupported, summarily presented claims that the proposed intervention would be "radically
27 different from a typical intervention" and would see the Movants perform "a supporting role in the
28 ... enforcement action that will further – not impede – its efficient and effective resolution[.]"

1 (See ECF No. 387 at 3-4; internal quotation marks omitted.) Given that the Movants' efforts have
2 already imposed a cost upon the receivership estate – increased as a result of having to prepare the
3 instant Opposition – the Receiver views these unsupported claims with skepticism, and he
4 wholeheartedly agrees with the concerns raised by Magistrate Judge Youchah, and respectfully
5 submits that she made no error in concluding an intervention would be prejudicial.

6 **F. There Is At Least One Additional Basis For Denying The Motion.**

7 Magistrate Judge Youchah's Order denying the Motion to Intervene did not address *all* of
8 the grounds for denying the motion, presumably because those issues that were identified were
9 sufficient to deny the motion. However, and out of an abundance of caution, the Receiver
10 reaffirms his arguments regarding the Movants' failure to meet and confer with the Commission
11 prior to filing their Motion to Intervene, let alone secure the Commission's assent to intervention
12 as required pursuant to 15 U.S.C. § 78u(g) ("no action for equitable relief instituted by the
13 Commission pursuant to the securities laws shall be consolidated or coordinated with other actions
14 not brought by the Commission, even though such other actions may involve common questions
15 of fact, unless such consolidation is consented to by the Commission"); see also SEC v. Egan, 821
16 F. Supp. 1274, 1275-76 (N.D. Ill. 1993) (denying intervention where the "SEC has expressly
17 refused to consent to the proposed third-party complaint on the ground that it 'would complicate
18 the issues, delay th[e] ... action and significantly interfere with the Commission's ...
19 responsibilities"). Given that the Movants failed to seek, and did not obtain, the Commission's
20 consent to intervene, denial of the Motion to Intervene on this basis would have been appropriate
21 on this basis as well.

22 **III. CONCLUSION.**

23 The Movants have failed to demonstrate that Magistrate Judge Youchah committed clear
24 error, or denied their Motion to Intervene on a basis contrary to law. Magistrate Judge Youchah
25 correctly found that the Motion to Intervene was untimely, that the Movants' "resulting trust"
26 theory was inapplicable, that the Movants' interests are already adequately represented in this
27 matter, and that their proposed intervention would be prejudicial to the administration of the
28 receivership, and therefore to the interests of other investors and creditors. The challenges the

1 Movants have raised to Magistrate Judge Youchah's analysis represent nothing more than
2 unsupported statements of disagreements, or arguments predicated upon inapposite or inapplicable
3 case law. The Motion should be denied, and the analysis underlying Magistrate Judge Youchah's
4 Order adopted and affirmed.

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6 Dated: December 20, 2022

SEMENZA KIRCHER RICKARD

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8 */s/ Jarrod L. Rickard*

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CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Kircher Rickard. in Clark County. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

On the 20th day of December, 2022, I served the document(s), described as:

**OPPOSITION OF RECEIVER, GEOFF WINKLER, TO MOTION TO RECONSIDER
MAGISTRATE JUDGE'S ORDER DENYING MOTION TO INTERVENE**

by serving the original a true copy of the above and foregoing via:

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b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with Semenza Kircher Rickard’s practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

c. **BY PERSONAL SERVICE.**

d. **BY DIRECT EMAIL.**

e. **BY FACSIMILE TRANSMISSION.**

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Olivia A. Kelly
An Employee of Semenza Kircher Rickard