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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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; ROLAND TANNER; LARRY JEFFERY; JASON A. JENNE; SETH JOHNSON; CHRISTOPHER M. MADSEN; RICHARD R. MADSEN; MARK A. MURPHY; CAMERON ROHNER; AND WARREN ROSEGREEN;

Defendants; and

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;

Relief Defendants.

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

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO NON-PARTIES' YOUNG AND SHAHABE'S MOTION FOR RECONSIDERATION

Plaintiff Securities and Exchange Commission (the "SEC") respectfully opposes non-parties Kristie Young and Omid Shahabe's (herein, the "Non-Party Investors") motion for reconsideration of Magistrate Judge Youchah's denial of their request for intervention. (Dkt. No. 387, herein, "Motion" or "Mot.") The Non-Party Investors fail to identify any error in Judge Youchah's order, nor do they raise any new arguments or provide new evidence not already considered by Judge Youchah. Instead, as with their original motion to intervene (*see* Dkt. No. 281), the thrust of the two Non-Party Investors' argument is simply that they must be allowed to intervene because otherwise they may not be able to obtain a complete return of their investment—a contention courts have repeatedly found insufficient to support intervention in an SEC enforcement action. In so doing, the Non-Party Investors' Motion fails to satisfy the standard of review for reconsideration, and mischaracterizes the applicable law and the basis for Judge Youchah's order. Accordingly, the Non-Party Investors' Motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The SEC initiated this action on April 12, 2022, when it filed its initial Complaint. (Dkt. No. 1.) That same day, the SEC moved, on an emergency and *ex parte* basis, for an asset freeze and other temporary injunctive relief as to the original eleven Defendants and eleven Relief Defendants, which Judge Mahan granted. (*See* Dkt. Nos. 2, 3.) The SEC also obtained a preliminary injunction and asset freeze against those Defendants and Relief Defendants for the pendency of this case (*see* Dkt. 56), obtained appointment of the Receiver over certain corporate Defendants and Defendants' personal assets (*see* Dkt. No. 88), filed an Amended Complaint adding eight new Defendants (*see* Dkt. No. 118), and obtained orders extending the preliminary injunctive relief, asset freeze, and receivership to the new Defendants (*see* Dkt. Nos. 206, 207). The SEC has diligently prosecuted this action and has, through its efforts and the efforts of the Receiver, already secured over 80 million dollars of assets which may be available to satisfy any eventual judgment for disgorgement and/or civil penalties against Defendants.

On August 31, 2022—nearly five months after the SEC initiated this case, and over four months after the SEC obtained its initial asset freeze and preliminary injunction—the Non-Party

Investors filed their motion for intervention. (*See* Dkt. No. 281.) The Non-Party Investors allege, in the proposed Intervenor Complaint attached to their motion, that they collectively invested $725,000 in Defendants' fictitious "purchase agreement" scheme between August 31, 2021 and February 12, 2022. (Dkt. 281, Prop. Intervenor Compl. ¶¶ 6, 15.) They allege they were provided copies, in both 2021 and 2022, of standardized documentation used by Defendants in the scheme, including at least one Purchase Agreement (in their words, a "PI Contract"). (*Id*. ¶¶ 8, 10, 11.) Non-Party Investor Shahabe alleges he was solicited into the investment scheme by Defendant Denny Seybert (named as a defendant in the SEC's initial complaint), and Non-Party Investor Young alleges she was solicited by Shahabe, and invested through Seybert. (*See id.* ¶ 8.)

The exemplar Purchase Agreement the Non-Party Investors attach to their proposed Intervenor Complaint, like the standard Purchase Agreements provided by Defendants to investors in other instances, purports to be an agreement between a tort plaintiff (the "Seller"), as represented by his attorney ("Attorney"), and Defendant J&J Purchasing, LLC (the "Buyer"). (*Id*. at Ex. A, Dkt. No. 281 at 37.) The Agreement represents that "Seller has a claim arising from a slip and fall incident," that "Seller has settled the Claim," and that "the entire amount of the settlement is $280,115.00." (*Id*.) The Agreement further provides that "Seller desires to sell and assign to Buyer an interest in the Proceeds," and that "Buyer desires to purchase the interest in the Proceeds." (*Id*.) "Proceeds" is specifically defined in the Agreement as "The entire amount of the settlement . . . less legal fees, superior medical liens existing on the date of this Agreement, [and] costs and disbursements payable to Attorney under the existing fee agreement between Seller and Attorney." The Agreement goes on to represent that "Seller hereby sells, transfers, conveys and assigns to Buyer a $116,250 interest ('Interest') in the Proceeds for a purchase price of $100,000.00 ('Purchase Price')." (*Id*.) As the Non-Party Investors allege, the Purchase Agreement also contains a provision whereby "Seller agrees and hereby directs that all Proceeds received in connection with the Claim are held in Trust for Buyer until Buyer has been

fully paid its Interest." (*Id*., Dkt. No. 281 at 38.) The Non-Party Investors allege they are parties to the Purchase Agreement by assignment. (Dkt. No. 281, Prop. Intervenor Compl. ¶ 8.)

Based on these factual allegations, the Non-Party Investors requested the Court permit them to intervene in the SEC's enforcement action and bring claims for declaratory relief, unspecified claims for violations of the federal securities laws, and Nevada state law claims for equitable disgorgement and equitable restitution. (*See id*., Dkt. No. 281 at 32–35.) They argued the SEC and Receiver are unwilling or unable to make a Nevada state law claim for a "resulting trust" and as such they request "a judicial declaration of their right to pursue equitable claims against Defendants and Relief Defendants without being subject to the receivership established by this Court." (Dkt. No. 281, Mot. at 7.) In their proposed Prayer for Relief, the Non-Party Investors requested, in addition to declaratory relief, "equitable disgorgement and restitution," "the costs of bringing this action, including a reasonable sum for investigative fees and a reasonable sum for attorneys' fees as allowed by law," "prejudgment interest," and "any other equitable relief this Court deems proper." (Dkt. No. 281, Prop. Intervenor Compl. at 10.)

After fully evaluating these facts, the Non-Party Investors' allegations, the applicable law, and the parties' extensive briefing on these issues (*see* Dkt. Nos. 281, 300, 303, 314, 316), on November 28, 2022, Magistrate Judge Youchah denied the Non-Party Investors' motion to intervene in a 15-page opinion and order. (*See* Dkt. No. 373.) Among other things, Judge Youchah evaluated the timing of the Non-Party Investors' motion, along with the facts alleged in their proposed Intervenor Complaint, and determined that the relief they requested was untimely. (*Id*, Op. and Order at 11–12.) Furthermore, Judge Youchah determined that the Non-Party Investors' motion was not supported by the legal standard for intervention as of right or for permissive intervention, because (as other courts have determined in nearly identical situations) the Non-Party Investors' interests are adequately represented by the SEC and the Receiver, there is nothing that distinguishes the Non-Party Investors from every other investor in the alleged Ponzi scheme, and because intervention would prejudice the existing parties to the case and all other investors. (*Id*. at 12–14.) As one part of that analysis, Judge Youchah rejected the Non-

Party Investors' argument that their state law "resulting trust" theory provided a unique avenue of recovery that exempted the Non-Party Investors' investments in the scheme from the Receivership Estate. (*Id*. at 13.)

ARGUMENT

As the Non-Party Investors acknowledge, they bear a very high burden in requesting that this Court overturn Judge Youchah's well-reasoned decision. Under Local Rule IB 3-1, a magistrate judge's ruling on non-dispositive matters, as here, is subject to reconsideration only where the moving party makes a showing that "the magistrate judge's order is clearly erroneous or contrary to law." L.R. IB 3-1(a); *see also* FED. R. CIV. PROC. 72(a); 28 U.S.C. § 636(b)(1); *Heyman v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, Case No.: 2:15-cv-01228-APG-GWF, 2019 WL 7602241, at *2 (D. Nev. Feb. 28, 2019).

An order is "clearly erroneous" where, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Chee*, 191 F. Supp. 3d 1150, 1152 (D. Nev. 2016) (citing *United States v. Hinkson*, 585 F.3d 1247, 1260 (9th Cir. 2009)). This standard of review "'is significantly deferential' to a magistrate judge's determination," *Mayorga v. Ronaldo*, 491 F. Supp. 3d 840, 846 (D. Nev. 2020) (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993)), and "[t]he reviewing court may not simply substitute its judgment for that of the deciding court." *Grimes v. City & County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). An order is "contrary to law" where "it fails to apply or misapplies relevant statutes, case law, or rules of procedure." *United States v. Desage*, 229 F. Supp. 3d 1209, 1213 (D. Nev. 2017) (citing *Jadwin v. County of Kern*, 767 F. Supp. 2d 1069, 1110-11 (E.D. Cal. 2011)) (internal quotation marks omitted).

The Non-Party Investors' Motion does not meet these standards. The Non-Party Investors assert Judge Youchah's order is "clearly erroneous because it makes an obvious factual mistake regarding timeliness," and "is also contrary to law because it commits clear errors regarding Nevada's resulting trust doctrine." (Dkt. No. 387, Mot. at 1–2.) The Non-Party

Investors, however, identify no "factual mistake" in Judge Youchah's holding that their motion was untimely; and simply accuse Judge Youchah of not contravening their own allegations regarding the purported "resulting trust" to create an alternative cause of action they have not alleged. And in any event, their "resulting trust" theory, even if legally viable, would not support the Non-Party Investors' request for intervention—and the Non-Party Investors do not challenge Judge Youchah's findings in that regard. As such, the Non-Party Investors' Motion for Reconsideration should be denied.

I. JUDGE YOUCHAH CORRECTLY DETERMINED THE NON-PARTY INVESTORS' MOTION FOR INTERVENTION WAS UNTIMELY.

Despite claiming that Judge Youchah made an "obvious factual error" in finding their motion for intervention was untimely, the Non-Party Investors fail to identify any fact Judge Youchah misstated in deciding their motion. Instead, the thrust of the Non-Party Investors' request for reconsideration is that Judge Youchah misapplied an unpublished Ninth Circuit decision, *CFTC v. Forex Liquidity LLC*, No. 8:07-cv-01437-CJC-RNB, 384 Fed. Appx. 645, 646–47 (9th Cir. 2010) (herein, "*Forex*."). (*See* Dkt. No. 387, Mot. at 6.) But it is the Non-Party Investors who misconstrue *Forex*.

Pursuant to Rule 24(a)(2), the Court must permit a non-party to intervene when: (1) their request to intervene is timely, (2) they have an interest relating to the property or transaction that is the subject of the case, (3) the disposition of the action may impair or impede the applicant's ability to protect the interest, and (4) their interest is not adequately represented by the existing parties. *See* FED. R. CIV. P. 24(a)(2); *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996). The non-party seeking intervention bears the burden of establishing ***all*** of these criteria. *In re Novatel Wireless Secs. Litig.*, No. 08-cv-1689, 2014 U.S. Dist. LEXIS 85994, at *6 (S.D. Cal. June 23, 2014); *see also Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). In other words, although the Ninth Circuit generally "interprets the requirements broadly in favor of intervention," *Donnelly v. Glickman*,

159 F.3d 405, 409 (9th Cir. 1998), "[f]ailure to satisfy any one of the requirements is fatal to the application, and [the Court] will not reach the remaining elements if one of the elements is not satisfied." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009) (upholding the denial of Rule 24 motion to intervene for failure to satisfy adequacy of representation requirement) (citation omitted). In short, if the Non-Party Investors' motion to intervene is untimely, they have no right to intervention in this case.

Judge Youchah determined that the Non-Party Investors failed to make a proper showing that their motion was timely. (Dkt. No. 373, Order at 11–12.) Judge Youchah noted that to determine whether an intervention request is timely, courts consider (1) the stage of the proceeding at which intervention is sought; (2) the risk of prejudice to other parties; and (3) the reason for and length of a movant's delay. (*Id*. at 11, citing *League of United Latin American Citizens v. Wilson*, 131 F.3d at 1297, 1302 (9th Cir. 1997).) Judge Youchah held that the Non-Party Investors failed to meet these criteria because (a) the Receiver has already completed a substantial amount of work, (b) interruption of the Receiver's work would likely result in prejudice to investors, and (c) the Non-Party Investors provided no rationale for their delay. (*Id*. at 11–12.) The Non-Party Investors do not challenge Judge Youchah's determination that there was no rationale for their failure to object to the SEC's motion to appoint the Receiver: rather, they take issue with Judge Youchah's findings that the Receiver has already completed a substantial amount of work, and that their intervention would prejudice investors.

As to the Non-Party Investors' contention that Judge Youchah made an "obvious factual mistake" in determining that the Receiver has completed a large amount of work, the Non-Party Investors' Motion identifies no fact Judge Youchah misstated. Rather, the Non-Party Investors take issue with Judge Youchah's comparison of this case to *CFTC v. Forex Liquidity LLC*, No. 8:07-cv-01437-CJC-RNB, 384 Fed. Appx. 645, 646–47 (9th Cir. 2010). (*See* Dkt. No. 387, Mot. at 6.) But it is not a "factual mistake" to cite an analogous case, and even if *Forex* is not completely identical to the current situation, nothing in that case or elsewhere suggests that the Ninth Circuit was setting forth any limitation on when a motion for intervention can be deemed

untimely. In other words, the Non-Party Investors accuse Judge Youchah of making a "factual mistake" by not reading *Forex* to prohibit a finding of untimeliness in any case where a receiver has not completed the same amount of work as the receiver in *Forex*. That simply mischaracterizes *Forex*, which does not purport to set forth the precise time at which a motion to intervene becomes untimely.

Likewise, there is no merit to the Non-Party Investors' argument that Judge Youchah erred in determining that their intervention would cause prejudice to the parties. As in their original motion for intervention, the Non-Party Investors attempt a sleight of hand regarding the result of their intervention. That is, the Non-Party Investors criticize Judge Youchah for not crediting their unsupported claim (made not through declarations, but through attorney argument) that they "hope" to "further this enforcement action" and to "bolster the SEC's and receiver's efforts," (*see* Dkt. No. 387, Mot. at 6–7) but omit that the specific relief they seek would do exactly the opposite.

To be clear, the primary relief the Non-Party Investors request from the Court is a modification of the Court's original and amended receivership orders: and not merely a clarification of those orders, but a declaratory judgment making the Court's prior orders a nullity. As their motion for intervention makes clear, the substance of this request for declaratory relief is for the Court to determine that their principal investments—and perhaps any and all gains made on those investments by Defendants or Relief Defendants since the Non-Party Investors invested—are ***not part of the Receivership Estate*** because they are held by Defendants under the Nevada state law construct of a "resulting trust." (*See* Dkt. No. 281, Mot. for Intervention at 11–12.) Indeed, the Non-Party Investors claim that if their "property rights" in their investment and any gain on that investment "are subject to a resulting trust, the receiver cannot control their principal." (*Id.*, Mot. for Intervention at 12 (emphasis omitted).) In short, the primary argument the Non-Party Investors present for intervention is that certain, yet unidentified "property

interests" presently part of the Receivership Estate should be removed from the Estate via a declaratory judgment.[1]

Furthermore, as the Non-Party Investors do not contest, the factual basis for the Non-Party Investors' "resulting trust" argument is not unique to them. Nearly every investor in the scheme—to whom Defendants provided the same standardized, fictitious "Purchase Agreements" and made the same representations regarding the purported "Proceeds" funding the scheme—could make the same argument. In fact, counsel for the Non-Party Investors suggest they will pursue class allegations under Rule 23.[2] (*See* Dkt. No. 281, Mot. for Intervention at 24 n.13.) Thus, as a practical matter, the Non-Party Investors are proposing that ***nearly every dollar and asset currently within the Receivership Estate be removed from the Receiver's control*** so not to "usurp" the Non-Party Investors (and later, presumably, the entire "class" of investors')

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[1] The Non-Party Investors do not even attempt to explain how, under their "resulting trust" theory, the Court would untangle the numerous transactions at issue or trace the multiple payments they made into the scheme to specific property now held by the Receivership Estate. Nor do they even attempt to identify exactly what "property interests" they believe they are entitled to, when it is clear from the limited discovery produced by Defendants that investor payments were regularly commingled, disbursed through and to numerous bank accounts, and used by Defendants and Relief Defendants to purchase various and assorted luxury goods. In this regard, it is notable that the expensive and time-consuming tracing analysis required to make such determinations has been found inequitable in other Ponzi cases. *See*, *e.g.*, *United States v. 13328 & 13324 State Highway 75 N.*, 89 F.3d 551, 553 (9th Cir. 1996); *SEC v. Elliott*, 953 F.2d 1560, 1569 (11th Cir. 1992).

[2] Counsel for the Non-Party Investors appears to be using intervention to obtain status as class counsel, mentioning that "[b]ased on their experience with class litigation, Intervenors' counsel may recommend amending the Complaint in Intervention at that time in order to add class allegations under FRCP 23(b)(2)." (Dkt. No. 281, Mot. at 24 n.13.)

"right to control their own recovery." (*Id*., Mot. for Intervention at 10, 12.)

Judge Youchah did not err in holding that despite the Non-Party Investors' attorneys' purported "hope" to "further this enforcement action," the actual effect of their intervention would be to cause significant prejudice to the SEC and to the Receiver—who have been working diligently to identify and maximize the value of numerous real estate, vehicles, and other assets derived from Defendants' fraudulent scheme. Nor did Judge Youchah err in determining that the Non-Party Investors' intervention would be highly prejudicial to the hundreds of investors who have not intervened in this case, by requiring them to either intervene or allow the Non-Party Investors to potentially gain priority in the distribution of assets at the conclusion of this action. That the Non-Party Investors' lawyers (who stand to gain millions in attorneys' fees if their intervention and proposed class action are approved) "hope" to "bolster" the Receiver and SEC cannot change the prejudicial nature of the relief they are requesting.

II. JUDGE YOUCHAH CORRECTLY CONCLUDED THAT THE NON-PARTY INVESTORS' "RESULTING TRUST" THEORY DOES NOT WARRANT INTERVENTION.

Nor did Judge Youchah make a "legal error" in concluding that the Non-Party Investors' claimed "resulting trust" theory did not warrant intervention. Again, the Non-Party Investors mischaracterize Judge Youchah's order: Judge Youchah considered the resulting trust theory as one of a number of factors ruling against intervention; and concluded, correctly, that the Non-Party Investors' reliance on that theory could not provide a basis for intervention here.

Judge Youchah did ***not*** hold or insinuate, as the Non-Party Investors suggest, that if their "resulting trust" theory was viable then intervention would be required or permissible. To the contrary, Judge Youchah provided several reasons why the Non-Party Investors' motion did not meet the requirements of Rule 24(a). In particular, Judge Youchah determined that although the Non-Party Investors had an interest relating to the property or transaction that is the subject of the case, nonetheless there was no argument that the Non-Party Investors' interests would be impaired absent intervention, there "was nothing before the Court to suggest that Receiver has

been or will be derelict in his duties or will fail to adequately represent the interests of the receivership estate and, by extension, investor-victims" and "there is nothing before the Court that differentiates [the Non-Party Investors] from any other investors victims in this alleged Ponzi scheme." (Dkt. No. 373, Op. and Order at 13–14.) The Non-Party Investors' Motion does not (and cannot) take issue with these findings, and thus must fail regardless of whether their "resulting trust" claim is viable under Nevada law, because these independent findings are sufficient to deny their motion.

In any event, Judge Youchah did not err in holding that the Non-Party Investors had failed to plead any unique "resulting trust" theory under Nevada law. Under Nevada law, a "resulting trust" may arise in circumstances where "one pays all or part of the purchase price for [property] and the conveyance is made to another," such that in those circumstances "the latter may hold upon a resulting trust for the former." *Werner v. Mormon*, 462 P.2d 42, 44 (Nev. 1969). In other words, where Party A takes money from Party B, purchases specified property with that money, but puts title to that property in the name of Party A, the law may require Party A to hold the property in trust for Party B. However, "before a resulting trust arises the circumstances must raise an inference that the person paying all or part of the purchase price does not intend that the person taking the property should have the beneficial interest therein." *Id*. A mere "loan" does not give rise to a resulting trust. *Id*. Alternatively, a resulting trust may occur when parties intend to create an express trust, but the trust fails in whole or in part. *Bemis v. Estate of Bemis*, 967 P.2d 437, 441 n.4 (Nev. 1998).

Here, as the Non-Party Investors admit, the Purchase Agreements were fake—and Defendants obviously had no intent of creating any express trust on the investors' behalf. Furthermore, the "trust" phrasing in the Purchase Agreement that Non-Party Investors cite does not state that ***the Non-Party Investors' investment principal*** was to be "held in trust." To the contrary, it provides that the "Proceeds" (i.e., a specifically defined term comprising the purported settlement funds resulting from the fictitious settlement claim) were to be "held in Trust for Buyer until Buyer has been fully paid its Interest." (*Id*., Dkt. No. 281 at 38.) But there

were no Proceeds, because Defendant Beasley simply invented the purported slip-and-fall settlements out of whole cloth. Nothing in any Purchase Agreement suggests or indicates that the parties intended the "Purchase Price"—a separately defined term representing the investment principal—to be "held in trust" by any party (or non-party) to the Purchase Agreement. What's more, the "Purchase Agreement" specifies the "Seller"—another defined term identifying the purported slip-and-fall plaintiff—as the party to hold the Proceeds "in trust." But again, there was no "Seller," and so the party supposedly making the promise to hold funds in trust never saw the Purchase Agreement and never made any such promise.

The Non-Party Investors still do not explain how they can obtain a resulting trust on one piece of property (the "Purchase Price") simply because the fictitious Purchase Agreement said that a separately defined piece of property (the "Proceeds") was to be "held in trust" until the Purchase Price and interest were paid. And they still do not explain how the law permits them to bootstrap a nonexistent promise by a supposed slip-and-fall victim (the "Seller") to hold those nonexistent "Proceeds" in trust to create a resulting trust on whatever property Defendants (or other investors) acquired with the investment principal. In truth, any resulting trust on the "Proceeds" would be nothing more than a trust on a fiction—there were never any "Proceeds," because there were no slip-and-fall settlements and no payouts by insurance companies to the purported "Seller" of those purported claims (who made no such promise).[3]

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[3] And if, counterfactually, the described investment scheme was real, the Purchase Agreement does not describe a trust but a "loan" on which investors hoped to obtain interest—which cannot support a resulting trust under Nevada law. *See Werner*, 462 P.2d at 44. That is, the investment documentation does not provide any indication that the investors, stepping into the shoes of the "Buyer," intended that the purported slip-and-fall plaintiff not have the beneficial interest on the principal investment: there is no limitation on what the "Seller" can do with, or earn from, the investment principal. Indeed, the entire scheme was papered to look like a litigation finance or

Given this reality, Judge Youchah correctly determined that the "Express Trust Provision" the Non-Party Investors relied upon for their "resulting trust" theory did not say what the Non-Party Investors alleged it said, and thus did not create a resulting trust under Nevada law for the benefit of the Non-Party Investors. The Non-Party Investors argue that because Nevada law, in the alternative, permits the imposition of a resulting trust in other circumstances, Judge Youchah erred: but this argument ignores what the Non-Party Investors themselves alleged in their proposed Intervenor Complaint. The Non-Party Investors' claim was not that the general "facts and circumstances" of their investment situation created a resulting trust, but that—in their own words—"Equity favors impressing a resulting trust on Intervenors' investment in PI contracts owned by purported Buyers ***containing the Express Trust Provision***." (Dkt. No. 281, Prop. Intervenor Compl. ¶ 21(d) (emphasis added); *see also id.* ¶ 13 ("The foregoing ***features of Intervenors' PI contracts*** indicate or imply the parties intended a trust relationship" (emphasis added)). That is, the Non-Party Investors specifically advanced their "resulting trust" claim on what they called the "Express Trust Provision" in the Purchase Agreement—not because the "facts and circumstances" of their interactions with one specific Defendant created a resulting trust for each of their particular investments.[4] Judge Youchah was not required to hypothesize new, unpled theories the Non-Party investors could have alleged in the alternative, or evaluate the strength of those alternative theories under Nevada law.

Furthermore, even assuming that the Non-Party Investors could plead some other

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payday loan scheme, in which a desperate slip-and-fall plaintiff would obtain a loan for medical or personal expenses and repay that loan once the tort settlement was finalized.

[4] If this was not the case, and if the Non-Party Investors' "resulting trust" theory was premised not on the standardized language of the Purchase Agreements but on their (and the Defendant's they invested through) particular intents and actions, the Non-Party Investors' proposed "class action" would likely devolve into hundreds of individual suits regarding each investor's and each Defendant's intent as of the time each investment was made.

"resulting trust" theory in the alternative, neither that theory, nor any evidence the Non-Party Investors could discover or produce in support of that theory,[5] would provide a basis for intervention. That is, if ***every*** Ponzi investment creates a "resulting trust" right for the investor, the Non-Party Investors cannot differentiate their request for intervention with the requests for intervention repeatedly rejected in other SEC enforcement actions. *See generally*, *e.g.*, *SEC v. Santillo*, 327 F.R.D. 49 (S.D.N.Y. 2018); *SEC v. TLC Investments & Trade Co.*, 147 F. Supp. 2d 1031 (C.D. Cal. 2013). The Non-Party Investors cannot have their cake and eat it to: either they have some unique "resulting trust" created by the particular language of the Purchase Agreements in this case; or every Ponzi investor has a "resulting trust" theory and there is nothing to distinguish this case from the cases denying intervention. Judge Youchah correctly determined that the Non-Party Investors have no unique theory based on the language of the Purchase Agreement, and any alternative "resulting trust" theory the Non-Party investors may allege is not unique to them and is no basis to require, or permit, intervention here.

CONCLUSION

For these reasons, the SEC respectfully requests that the Court deny the Non-Party Investors' Motion.

DATED this 23rd day of December, 2022.

/s/ Casey R. Fronk
Casey R. Fronk
Michael E. Welsh
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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[5] The Non-Party Investors argue that Judge Youchah erred in not permitting them to take discovery on their claims or present any evidence they discovered at an evidentiary hearing—but as discussed above, there is nothing such evidence could show that would create a "resulting trust" theory unique to this case and not equally available in every Ponzi case. Furthermore, there is no requirement that the court hold an evidentiary hearing on a motion for intervention.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2022, I caused **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO NON-PARTIES' YOUNG AND SHAHABE'S MOTION FOR RECONSIDERATION** to be served to all parties entitled to service through the Court's ECF system and to the following individuals by the means indicated below:

By U.S. Mail, first class, postage prepaid, to:

Matthew Wade Beasley and
Beasley Law Group PC and
PAJ Consulting, Inc. (as Registered Agent)
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump, NV 89060

Jason M. Jongeward and
JL2 Investments, LLC
[redacted]
Washington, UT [redacted]

Rocking Horse Properties, LLC
c/o Denny Seybert
[redacted]
Henderson, NV [redacted]

Warren Rosegreen and
Triple Threat Basketball, LLC
[redacted].
Henderson, NV [redacted]

Jeffrey Judd
[redacted]
Las Vegas, NV [redacted]
- and -
[redacted]
Henderson, NV [redacted]

Jason A. Jenne
[redacted]
Las Vegas, NV [redacted]

By email to the following:

Anthony Michael Alberto, Jr. and Monty Crew, LLC
[redacted]

Dyke Huish
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/s/ Casey R. Fronk
Casey R. Fronk